

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **2006-01-05** | Period of Report: **2005-12-29**  
SEC Accession No. **0001299933-06-000093**

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FILER

**ANDERSONS INC**

CIK: **821026** | IRS No.: **341562374** | State of Incorpor.: **OH** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: **000-20557** | Film No.: **06513102**  
SIC: **5150** Farm product raw materials

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

December 29, 2005

**The Andersons, Inc.**

(Exact name of registrant as specified in its charter)

Ohio

000-20557

34-1562374

(State or other jurisdiction  
of incorporation)

(Commission  
File Number)

(I.R.S. Employer  
Identification No.)

480 West Dussel Drive, Maumee, Ohio

43537

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

419-893-5050

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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[Top of the Form](#)

### **Item 1.01 Entry into a Material Definitive Agreement.**

See disclosure under Item 2.03 of this Current Report, which is incorporated by reference in this item 1.01.

### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

On December 29, 2005, The Andersons Rail Operating I, LLC ("TARO I"), a wholly owned subsidiary of The Andersons Inc. ("The Andersons") entered into a new long term debt agreement ("Term Loan Agreement") with several banks including Siemens Financial Services, Inc. acting as Agent. Under the Term Loan Agreement, TARO I borrowed \$41 million with a term of 7 years and a 40% balloon payment due at maturity. The proceeds from the loan are being used to acquire, from The Andersons, 2,293 railcars and related leases which are covered by the Security Agreement, incorporated herein by reference and attached hereto as exhibit 10.14. The Andersons will use the proceeds from the sale for general corporate purposes. The Andersons will also provide for the management of the railcars (as set forth in the Management Agreement, incorporated herein by reference and attached hereto as exhibit 10.15) and will provide for the servicing of the leases (as set forth in the Servicing Agreement, incorporated herein by reference and attached hereto as exhibit 10.16).

The foregoing description of the Term Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the agreement which is filed as exhibit 10.17 hereto and is incorporated herein by reference.

### **Item 9.01 Financial Statements and Exhibits.**

10.14 Security Agreement, dated as of December 29, 2005, made by The Andersons Rail Operating I, LLC in favor of Siemens Financial Services, Inc. as Agent.

10.15 Management Agreement, dated as of December 29, 2005, made between The Andersons Rail Operating I, LLC and The Andersons Inc., as the Manager.

10.16 Servicing Agreement, dated as of December 29, 2005, made by The Andersons Rail Operating I, LLC and The Andersons Inc., as the Servicer.

10.17 Term Loan Agreement, dated as of December 29, 2005, between The Andersons Rail Operating I, LLC, as borrower, the lenders named herein, and Siemens Financial Services, Inc., as Agent and Lender.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

The Andersons, Inc.

January 5, 2006

By: *Michael J. Anderson*

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*Name: Michael J. Anderson*

*Title: President and CEO*

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[Top of the Form](#)

### Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
10.14	Security Agreement
10.15	Management Agreement
10.16	Servicing Agreement
10.17	Term Loan Agreement

SECURITY AGREEMENT

made by

THE ANDERSONS RAIL OPERATING I LLC

in favor of

SIEMENS FINANCIAL SERVICES, INC.,

as Agent

Dated as of

December 29, 2005

SECURITY AGREEMENT

SECURITY AGREEMENT dated as of December 29, 2005 (this "Security Agreement"), made by THE ANDERSONS RAIL OPERATING I LLC (the "Borrower") in favor of SIEMENS FINANCIAL SERVICES, INC., as Agent (in such capacity, the "Agent") and the several banks and other financial institutions or entities (the "Lenders") from time to time parties to the Term Loan Agreement, dated as of December 29, 2005 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), among the Borrower, the Lenders and the Agent.

RECITALS

A. Pursuant to the Loan Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein.

B. It is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Loan Agreement that the Borrower shall have executed and delivered this Security Agreement to the Agent.

ARTICLE I  
DEFINITIONS.

Section 1.1 Definitions. Terms defined in the preamble hereof shall have their respective meanings when used herein. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Loan Agreement. The following terms shall have the following meanings for the purposes of this Security Agreement:

"Additional Collateral" has the meaning specified in Section 6.2(b).

"Collateral" has the meaning specified in Section 2.1.

"Cash Collateral Account" has the meaning specified in Section 3.1.

"Collateral Accounts" means the Collection Account and the Cash Collateral Account.

"Collection Account" has the meaning specified in Section 3.1.

“Eligible Investments” shall mean any one or more of the following obligations or securities:

(i) direct obligations of, and obligations fully guaranteed as a timely payment by, the United States, or any agency or instrumentality of the United States the obligations of which are backed by the full faith and credit of the United States;

(ii) demand and time deposits in, certificates of deposit of, bankers’ acceptances issued by, or federal funds sold by any commercial bank, depository institution or trust company incorporated under the laws of the United States or any state thereof, *provided*, that (i) such commercial bank, depository institution or trust company shall have a combined capital and surplus of at least \$500,000,000 and be subject to supervision and examination by federal and/or state banking authorities and (ii) at the time of such investment or contractual commitment providing for such investment such commercial bank, depository institution or trust company has the highest short and long-term unsecured debt rating issued by S&P (or, in the case of a company, such holding company has the highest short and long-term credit rating issued by S&P);

(iii) repurchase obligations with respect to and collateralized by (a) any security described in clause (i) above or (b) any other security issued or guaranteed by an agency or instrumentality of the United States, in each case entered into with a depository institution or trust company (acting as principal) of the type described in clause (ii) above, *provided* that such repurchasing party has a rating of A-1 by S&P or P-1 by Moody’s and *provided further* that the Agent has taken delivery of such security;

(iv) commercial paper (including both non-interest bearing discount obligations and interest-bearing obligations), payable on demand or on a specified date not later than the Business Day prior to the next subsequent Payment Date, having the highest short-term credit rating from S&P at the time of such investment; and

(v) shares with a constant net asset value in a mutual fund investing solely in short-term securities of the government of the United States and having the highest short-term credit rating from S&P, which shares are freely transferable by the holder on a daily basis.

“Equipment” or “Items of Equipment” means all of the those railcars as described in Schedule A hereto, and any railcars acquired at any time and from time to time by the Borrower, together with all accessories, equipment, parts, additions, improvements, accessions, attachments, repairs and appurtenances appertaining or attached to such railcars, whether now owned or hereafter acquired by Borrower, and all substitutions, replacements, accumulations or proceeds of any and all of said railcars.

“Exchange Account” means an account established pursuant to a 1031 Exchange Agreement.

“Expired Lease” an Equipment Lease that has expired or otherwise has terminated.

“Fair Market Value” means, with respect to any Item of Equipment, the value of such Item of Equipment (on an operating basis) which would be obtained in an arm’s-length transaction between an informed and willing buyer-user (other than a lessee currently in possession or a used equipment dealer) under no compulsion to buy, and an informed and willing seller under no compulsion to sell. Fair Market Value shall be determined from time to time as required by the Loan Documents in accordance with the most recent Appraisal delivered by the Borrower to the Agent, which Appraisal shall be conducted at the sole cost and expense of the Borrower.

“Loan Agreement” has the meaning specified in the initial paragraph of this Agreement.

“Lockbox Account” has the meaning specified in Section 3.1.

“Obligations” has the meaning specified in Section 2.1.

“Replacement Lease” means a lease of one or more Items of Equipment entered into by the Borrower that satisfies the following conditions: (i) such lease is entered into in an arms-length transaction that imposes no additional material obligations on the Borrower than those imposed by the Expired Lease or the Equipment Lease to which the original Item of Equipment being replaced was subject (such lease being the “Original Lease”), as the case may be, (ii) in the case of an Expired Lease, the discounted future lease payments contained in such lease are not less than the discounted future lease payments of the Original Lease, (iii) in the case of a replacement of Items of Equipment, such lease shall contain a fair market rental value (which shall include fair market rental escalation clauses), (iv) such lease is with a lessee that the Agent reasonably determines is comparable in creditworthiness to the lessee under the Expired Lease or the Original Lease, as applicable, (v) such lease is an Eligible Lease, (vi) such lease shall not permit the Equipment Lessee thereunder to make any prepayments of rent, (vii) such lease shall not expressly permit the transport or storage of any Hazardous Commodities on or in the related Equipment and (viii) such lease is expressly subject and subordinate to the Loan Documents and permits the Agent to take possession of the applicable Items of Equipment upon the occurrence of an Event of Default.

“Replacement Unit” means a replacement unit that (a) is an Eligible Item of Equipment, (b) is of similar make, model and age and having a Fair Market Value (based on a recent Appraisal conducted not more than thirty (30) days prior to the date of such determination), utility, condition and remaining useful life at least equal to the Item of Equipment it is intended to replace (assuming such Item of Equipment was in the condition required to be maintained by the terms of this Security Agreement and did not suffer a Casualty Loss), and (b) has been maintained in compliance with all the AAR’s mechanical regulations and industry commercial standards for revenue interchange loading.

“Security Agreement” means this Security Agreement, together with all Exhibits and Schedules attached hereto, as the same may be amended, supplemented or modified, from time to time.

“Tax Payment Amount” shall mean the amount required to pay all taxes, including, without limitation, any income, withholding, excise, sales, gross receipts, general corporation, tangible or intangible personal property, privilege, or license taxes due and owing by the Borrower with respect to the activities of the Borrower to any taxing authority in any jurisdiction.

“UCC” means the Uniform Commercial Code in effect in the State of Delaware, unless otherwise specified, as amended from time to time.

Section 1.2 Other Interpretive Provisions. (a) Except as otherwise specified herein, all references herein (i) to any Person shall be deemed to include such Person’s successors and permitted assigns, (ii) to any applicable law defined or referred to herein shall be deemed references to such applicable law or any successor applicable law as the same may have been or may be amended or supplemented from time to time and (iii) any agreement or document shall be deemed references to such agreement or document as amended, supplemented, restated or otherwise modified and in effect from time to time.

(b) When used in this Security Agreement, (i) the words “this Security Agreement”, “herein,” “hereof” and “hereunder” and words of similar import shall refer to this Security Agreement as a whole (together with all Schedules and Exhibits) and not to any provision of this Security Agreement unless otherwise specified, and (ii) the words “Article,” “Section,” “Schedule” and “Exhibit” shall refer to Articles and Sections of, and Schedules and Exhibits to, this Security Agreement unless otherwise specified.

(c) Whenever the context so requires, the neuter gender includes the masculine or feminine, the masculine gender includes the feminine, and the singular number includes the plural, and vice versa.

(d) Any item or list of items set forth following the word “including,” “include” or “includes” is set forth only for the purpose of indicating that, regardless of whatever other items are in the category in which such item or items are

“included,” such item or items are in such category, and shall not be construed as indicating that the items in the category in which such item or items are “included” are limited to such items or to items similar to such items.

(e) The table of contents and the captions to Articles and Sections and subsections of, and Schedules and Exhibits to, this Security Agreement are included for convenience of reference only and shall not constitute a part of this Security Agreement for any other purpose or in any way affect the meaning or construction of any provision of this Security Agreement.

(f) References to days shall refer to calendar days unless Business Days are expressly specified.

## ARTICLE II SECURITY

Section 2.1 Grant of Security. The Borrower hereby assigns and transfers to the Agent, and hereby grants to the Agent, for the ratable benefit of the Lenders, a security interest in, all of the following property now owned or at any time hereafter acquired by the Borrower or in which the Borrower now has or at any time in the future may acquire any right, title or interest (collectively, the “Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations:

(a) all Equipment, together with all the records, rents, mileage credits earned, issues, income, profits, avails and other proceeds (including insurance proceeds) therefrom;

(b) all Equipment Leases and other related Equipment Lease Documents, together with full power and authority with respect to any such lease to demand, receive, enforce, collect or give receipt for any of the foregoing rights or any property which is the subject of any of such leases, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which (in the opinion of the Agent) may be necessary or advisable in connection with any of the foregoing insofar, all records related to such leases and all Equipment Lease Proceeds;

(c) all Deposit Accounts (as defined in the UCC), including, without limitation, each of the Collection Account, the Cash Collateral Account and the Lockbox Account, including all amounts from time to time on deposit therein and all investments made with the proceeds thereof and all interest earned thereon, but shall not in any case include an Exchange Account;

(d) all of the Borrower’s rights under the Transfer Documents, the Servicing Agreement and the Management Agreement;

(e) all books and records pertaining to the Collateral; and

(f) to the extent not otherwise included, all “proceeds” (as defined in the Uniform Commercial Code as in effect from time to time in the State of New Jersey) and products of any and all of the foregoing.

Section 2.2 Borrower Remains Liable. It is expressly agreed that anything herein contained to the contrary notwithstanding, the Borrower shall remain liable under the Equipment Leases and all other Equipment Lease Documents to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and none of the Agent or the Lenders shall have any obligation or liability under the Equipment Leases by reason of or arising out of the assignment hereunder, and none of the Agent or the Lenders shall be required or obligated in any manner to perform or fulfill any obligations of the Borrower under or pursuant to the Equipment Leases or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.



ARTICLE III  
COLLATERAL ACCOUNTS

Section 3.1 Collection Account; Cash Collateral Account.

(a) On or before the Closing Date, the Borrower shall establish:

(i) a lockbox account with Fifth Third Bank and maintained by Fifth Third Bank in accordance with the Lockbox Agreement (the "Lockbox Account") in which Equipment Lease Proceeds shall be deposited by the Equipment Lessees;

(ii) a deposit account with Fifth Third Bank and maintained by Fifth Third Bank in accordance with the Collection Account Blocked Account Agreement (the "Collection Account") in which the Borrower or the Servicer (on behalf of the Borrower) shall deposit all amounts from time to time in the Lockbox Account and all other Equipment Lease Proceeds received by the Borrower (or the Servicer), in accordance with the terms of the Loan Agreement; and

(iii) a deposit account with Fifth Third Bank and maintained by Fifth Third Bank in accordance with the Cash Collateral Blocked Account Agreement (the "Cash Collateral Account") in which the Borrower or the Servicer (on behalf of the Borrower) shall deposit and maintain the Reserve Amount and deposit the aggregate Net Cash Proceeds of all Asset Sales and Recovery Events in accordance with Section 2.7 of the Loan Agreement.

(b) The Lockbox Account, the Collection Account and the Cash Collateral Account shall at all times be under the sole dominion and control of the Agent and the Borrower acknowledges and agrees that except as expressly provided in the Loan Documents (i) the Borrower will have no right of withdrawal from the Lockbox Account, the Collection Account or the Cash Collateral Account and (ii) the funds on deposit in such accounts shall at all time be collateral security for all of the Obligations.

(c) The Borrower shall from time to time execute and deliver one or more "blocked account agreements" or such other agreements in form and substance satisfactory to the Agent in order to ensure a continued a first priority perfected security interest in the Collection Account and the Cash Collateral Account.

(d) So long as no Default or Event of Default shall have occurred and be continuing, the funds on deposit in the Collateral Accounts may be invested and reinvested by the Agent in one or more Eligible Investments in the Agent's sole discretion, and interest earned on such Eligible Investments shall be deposited in such accounts as additional collateral for the payment and performance of the Obligations. The Agent shall not in any way be held liable by reason of any insufficiency in the Collateral Accounts resulting from losses on investments made in accordance with the provisions of this Section 3.1. The Agent shall not be liable for any investment made by it in accordance with this Section 3.1 on the grounds that it could have made a more favorable investment.

Section 3.2 Payments from Collateral Accounts.

(a) On each Payment Date on which no Event of Default shall have occurred and be continuing, funds on deposit in the Collection Account shall be applied by the Agent in the following order of priority (without duplication):

first, to the Manager, any Tax Payment Amount then due and payable by the Borrower;

second, to the Agent, any fees and expenses due and payable and any arrearages thereof;

third, to the Manager (but only if the Manager is not The Andersons or an Affiliate of The Andersons), the Manager Fee (as defined in the Management Agreement) payable on such Payment Date, together with all accrued Operating Expenses (as defined in the Management Agreement) payable on such Payment Date;

fourth, to the Servicer (but only if the Servicer is not The Andersons or an Affiliate of The Andersons), the Servicer Fee (as defined in the Servicing Agreement) payable on such Payment Date;

fifth, to each Lender, ratably, any accrued but unpaid interest on such Lender's Loan that is due and payable on such Payment Date;

sixth, to each Lender, ratably, all principal payments due and owing under the Loan Agreement on such Payment Date;

seventh, to the Agent and each Lender, any indemnification payments and any other amounts then due and payable by the Borrower pursuant to the Loan Agreement or any other Loan Document;

eighth, to the Agent, such amount necessary to ensure that an amount equal to the Reserve Account shall be on deposit in the Cash Collateral Account on such Payment Date;

ninth, to the Manager (if the Manager is an Affiliate of The Andersons), the Manager Fee payable on such Payment Date, together with all accrued Operating Expenses payable on such Payment Date;

tenth, to the Servicer (if the Servicer is an Affiliate of The Andersons), the Servicer Fee payable on such Payment Date;

eleventh, to the Manager, any expenses, indemnities and reimbursement payments owing thereto but not previously paid in accordance with the terms of the Management Agreement;

twelfth, to the Servicer, any expenses, indemnities and reimbursement payments owing thereto but not previously paid in accordance with the Servicing Agreement; and

thirteenth, to the Borrower or its designee, an amount equal to the excess of the remaining funds in the Collection Account on such Payment Date.

Notwithstanding the foregoing, the Agent shall only be required to make disbursements in accordance with this Section 3.2(a) if the Agent shall have received a written notice (other than for disbursements to the Agent or the Lenders) requesting such disbursements along with such documentation as the Agent may reasonably request to substantiate any disbursement request.

(b) On each Reinvestment Prepayment Date, the Agent shall apply funds on deposit in the Cash Collateral Account in an amount equal to the applicable Reinvestment Prepayment Amount as a prepayment of the Loans in accordance with Section 2.7 of the Loan Agreement.

(c) On the date on which all Obligations have been paid in full, the Agent shall withdraw all amounts then on deposit in the Collateral Accounts and deliver such amounts to the Borrower or its designee.

(d) Upon the occurrence and during the continuance of any Event of Default, all amounts in the Collateral Accounts shall be applied by the Agent as specified in Section 7.3.

### Section 3.3 Cash Collateral Account; Release of Proceeds.

(a) The Agent shall be entitled to retain all Net Cash Proceeds of Asset Sales and Recovery Events together with all other deposits by the Borrower into the Cash Collateral Account in accordance with the terms of the Loan Agreement, and to hold such amounts as additional Collateral hereunder.

(b) If on any Payment Date the funds on deposit in the Collection Account are insufficient to make the payments to the Agent and the Lenders as set forth in Section 3.2, the Agent may apply an amount of the funds on deposit in the Cash Collateral Account as may be necessary to make such payments in full to the Agent and the Lenders.

(c) Amounts on deposit in the Cash Collateral Account shall not be released to the Borrower except that, so long as no Event of Default or Default has occurred and is continuing or would occur as a result of taking such action, the Agent will release to the Borrower, upon no less than 2 Business Days prior written notice to the Agent, amounts on deposit in the Cash Collateral Account consisting of the Net Cash Proceeds of Asset Sales and Recovery Events to pay the purchase price for Replacement Units in accordance with Section 6.2; provided, however, that no such monies shall be released to the Borrower (i) prior to the delivery of such Replacement Unit to the Borrower and the perfection of the Lien hereof on such Replacement Unit and any related Replacement Lease that ensures that the Agent has a first priority Lien on such Replacement Unit and Replacement Lease and (ii) unless the Borrower has provided the Agent with copies of the invoices for such Replacement Unit or such other documents as the Agent may reasonably request.

#### ARTICLE IV COVENANTS AND WARRANTIES OF BORROWER

The Borrower covenants, warrants and agrees with the Agent that until the Obligations are paid in full:

##### Section 4.1 Maintenance of Equipment.

(a) The Borrower shall, and shall require and use its best efforts to cause, each Person in possession of any of the Equipment to, use the Equipment only in the manner for which they were designed and intended and so as to subject it only to ordinary wear and tear. The Equipment shall not be used in any manner which is in violation of applicable law or the insurance required to be maintained by the Borrower under Section 4.2.

(b) The Borrower shall maintain, service and repair each Item of Equipment or shall cause each Item of Equipment to be maintained, serviced and repaired (in either case, subject to scheduling in the ordinary course of business), so that each Item of Equipment and the component parts thereof (i) are in as good order and repair as when initially subjected to the Lien of this Security Agreement (ordinary wear and tear excepted), (ii) are in compliance with all applicable laws governing the use and maintenance thereof, (iii) are in compliance with the requirements of any insurance policies required pursuant to Section 4.2, and (iv) are in material compliance with manufacturer's maintenance recommendations and eligible under manufacturer's warranties. Without limiting the foregoing, the Borrower shall maintain and keep the Equipment (or shall cause the Equipment to be maintained and kept) suitable for the commercial use as originally designed and intended in interchange service, in accordance with and prudent industry practice. The Borrower shall also maintain or cause to be maintained all records, logs and other materials required by the AAR, the United States Department of Transportation and any other governmental entity having jurisdiction over the Equipment or the Borrower.

##### Section 4.2 Insurance.

(a) The Borrower shall maintain insurance or require each Equipment Lessee to maintain insurance at all times with insurers or re-insurers of recognized reputation and responsibility as follows:

(i) The Borrower will maintain "all risk" property insurance in respect of the Equipment in such amounts consistent with prudent Class I railroad industry standards with no limits on the maximum number of covered

occurrences (such that there are no limitations on the number of “occurrences” covered by such insurance during the term of any such insurance policy); and

(ii) The Borrower will maintain liability insurance with respect to third-party personal injury, death and property damage (including contractual liability insurance), Federal Employers Liability Act coverage and against risks as are customarily carried in the United States by owners or lessors of rolling stock similar to the Equipment (and, in any event, covering such risks as are covered by the Borrower’s liability insurance in effect on the Closing Date) in an amount not less than \$5,000,000 per occurrence with no limits on the maximum number of covered occurrences (such that there are no limitations on the number of “occurrences” covered by such insurance during the term of any such insurance policy).

(b) Notwithstanding the foregoing, the Borrower shall be permitted to self-insure in an amount up to \$250,000 with respect to its deductible for liability and property damage policies.

(c) The insurance policies carried by the Borrower shall (i) require 30 days’ prior notice to the additional insureds of cancellation for any reason or material change in the type or limits of coverage and provide that one or more of the additional insureds may renew such coverage; (ii) not require contributions from other policies held by the additional insureds; (iii) waive any right of subrogation of the insurers against the additional insureds; (iv) name the Agent as additional insureds, in the case of liability insurance, and as loss payee, in the case of property insurance; (v) continue to insure such additional insured regardless of any breach or violation of any warranty, declaration or condition contained in such policy by the Borrower or any Person; and (vi) waive any right to claim any premium or commissions against the additional insured.

(d) If the Borrower fails to maintain the insurance coverages specified in this Section 4.2, the Agent may, at its option, but shall not be required to (unless directed to do so by the Required Lenders), obtain such insurance, and in such event, the Borrower shall, upon demand from time to time, reimburse the Agent for the cost of such insurance which each Issuer shall have failed to maintain and which the Agent shall have obtained in accordance herewith, together with interest thereon at the Default Rate, from the date of payment thereof to but excluding the date of receipt of such reimbursement.

(e) The Borrower shall deliver to the Agent (i) on the Closing Date, evidence in form and substance satisfactory to the Agent of the insurance policies specified in this Section 4.2, and (ii) thereafter, thirty (30) days prior written notice before any cancellation, expiration, cessation, reduction in amount or change in coverage thereof shall become effective.

#### Section 4.3 Preservation of Collateral.

(a) The Borrower will warrant and defend the title to the Collateral against all claims and demands of all Persons other than Permitted Liens. The Borrower will not assign, sell, lease, transfer or otherwise dispose of, nor will the Borrower suffer or permit any of the same to occur with respect to, the Collateral, except as expressly provided in the Loan Documents. The Borrower will not create, assume or suffer to exist any Lien on the Collateral other than Permitted Liens, and the Borrower shall pay or discharge, at its own cost and expense, any and all claims, liens or charges other than Permitted Liens.

(b) The Borrower shall advise the Agent promptly, in reasonable detail, of any Lien (other than Permitted Liens), claim or demand made or asserted against any of the Collateral and of any event affecting the Agent’s security interest in the Collateral.

Section 4.4 Further Assurances. (a) The Borrower shall maintain the security interests created by this Security Agreement as first priority perfected security interests subject only to Permitted Liens, to the extent such Permitted Liens are expressly permitted by the Loan Documents to have priority, and shall defend such security interests against all claims and demands of all persons whomsoever (other than those pursuant to Permitted Liens).

(b) The Borrower will, at its own expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances reasonably requested by the Agent for the perfection and maintenance of the perfection and priority of the security interests in the Collateral (other than Permitted Liens), whether now owned or hereafter acquired, or for the purpose of obtaining or preserving the full benefits of this Security Agreement and of the rights and powers herein granted.

#### Section 4.5 Recordation and Filing.

(a) The Borrower will (i) cause this Security Agreement (or a memorandum of this Security Agreement in form and substance satisfactory to the Agent) and any supplements hereto at all times to be executed, recorded and filed, at the sole expense of the Borrower, with the STB and with the Registrar General, and all financing and continuation statements to be filed with the Secretary of State of the State of Delaware, and cause such documents and all similar notices required by applicable law to be filed in such other jurisdictions and with such other Federal, state, provincial or local government or agency thereof where the Agent deems it necessary or reasonably appropriate under the circumstances to perfect, protect, or preserve its lien on the Collateral, in order to fully preserve and protect the rights of the Agent hereunder; and (ii) at its own expense, furnish to the Agent promptly after the execution and delivery of any supplement to this Security Agreement, opinions of each of in-house counsel to the Borrower or its affiliates, of Alvord & Alvord, special STB counsel to the Borrower, and of McCarthy Tétrault LLP, special Canadian counsel to the Borrower, which opinions shall be in form and substance reasonably satisfactory to the Agent.

(b) The Borrower hereby authorizes the Agent to execute and file all such documents (including, without limitation, the filing of this Security Agreement or a memorandum thereof and any supplements thereto, and any Uniform Commercial Code Financing Statements or amendments thereto) which the Agent may deem necessary to perfect, protect, or preserve the liens and security interests created hereunder (including the priority thereof (other than Permitted Liens)) and the Borrower grants to the Agent a power of attorney to sign on behalf of the Borrower, execute and file any such documents.

#### Section 4.6 Power of Attorney.

(a) The Borrower does hereby irrevocably constitute and appoint the Agent its true and lawful attorney with full power of substitution for it and in its name, place and stead, to file UCC-1 financing statements and continuation statements, which appointment is irrevocable and coupled with an interest.

(b) The Borrower does hereby irrevocably constitute and appoint the Agent its true and lawful attorney with full power of substitution for it and in its name, place and stead, to ask, demand, collect, receive receipt for and sue for any and all Equipment Lease Proceeds hereof with full power to settle, adjust or compromise any claim thereunder as fully as the Borrower could itself do, and to endorse the name of the Borrower on all instruments or commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Borrower or otherwise, which the Agent may deem necessary or, in its reasonable discretion, appropriate under the circumstances, to perfect, protect and preserve the right, title and interest of the Agent in and to such Equipment Lease Proceeds and the liens and security interests intended to be afforded hereby (including the priority thereof (other than Permitted Liens)). The appointment of this power of attorney is irrevocable and coupled with an interest.

(c) The parties acknowledge that the powers conferred on the Agent hereunder are solely to protect its interest in the Collateral and that anything herein contained to the contrary notwithstanding, the Agent shall have no duty, obligation or liability by reason of or arising out of this Security Agreement to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time by virtue of this Security Agreement.

Section 4.7 Location. The Borrower's location (as such term is used in Section 9-307 of the UCC) is Delaware and the place where all its interest in, to and under the Security Agreement and its records concerning the

Equipment are kept, are located at 480 W. Dussel Drive, Suite S, Maumee, OH 43537, and it agrees to give the Agent at least 30 days' prior written notice of any change in the Borrower's location or place where said records are kept and, if applicable, of any change in its name or the Borrower's type of, or jurisdiction of, organization.

Section 4.8 Reports. The Borrower shall cause each of the Manager and the Servicer to timely furnish to the Agent all reports, certificates or other items required to be delivered to the Agent and the Borrower in accordance with the Management Agreement and the Servicing Agreement. The Borrower shall (or shall cause the Manager to) keep proper books and records with respect to the Equipment and each Equipment Lease and the other Collateral. The Agent shall have the right (but not any obligation) by its agents to inspect the Borrower's records with respect to the Items of Equipment (and the right to make extracts from and to receive from the Borrower true copies of such records relating to the Collateral other than the Equipment Leases except as otherwise provided herein) at such reasonable times as the Agent may request during the continuance of this Security Agreement.

Section 4.9 Marking of Equipment.

(a) The Borrower shall cause the placement of reporting marks or such other marks, legends, or placards on the Equipment as shall be appropriate or necessary to comply with any regulation imposed by the STB, the AAR or any equivalent authority. Immediately following the Closing Date, except with respect to the reporting marks which are the subject of the Car Mark Agreement, the Borrower covenants to (or cause the Manager to) take all necessary action to change the UMLER designation associated with the reporting marks relating to the Equipment so as to reflect the Borrower's ownership of said marks immediately following the Closing Date. The Borrower will cause each Item of Equipment owned to be kept numbered with the road number serial number as shall be set forth on Schedule A hereto (as amended from time to time). Except as otherwise contemplated in the Car Mark Agreement, the Borrower shall not allow the name of any other Person to be placed on any Item of Equipment as a designation that might be identified as a claim of any interest therein; provided, however, that nothing herein contained shall prohibit the Borrower or any Equipment Lessee from placing its name, trademarks, initials, customary colors and other insignia on, or from naming, any Item of Equipment.

(b) The Borrower shall not change the identification number of any Item of Equipment unless and until a statement of a new number or numbers to be substituted therefor shall have been delivered to the Agent and filed, recorded and deposited by the Borrower in all appropriate public offices, including the public offices where this Security Agreement (or a memorandum thereof) shall have been filed, recorded and deposited.

ARTICLE V  
SPECIAL PROVISIONS CONCERNING LEASES

Section 5.1 Borrower's Rights Under Equipment Leases. Until the occurrence and continuance of an Event of Default, but subject to the terms of this Security Agreement and the other Loan Documents, the Borrower may exercise all of the Borrower's rights, powers, privileges and remedies under the Equipment Leases.

Section 5.2 Delivery of Equipment Lease Documents.

(a) Except as set forth on Schedule B to the Loan Agreement, on or before the Closing Date, the Borrower shall deliver to the Agent with respect to each Equipment Lease (i) the chattel paper original of such Equipment Lease, other than the chattel paper original of any Equipment Lease not otherwise in the Borrower's possession which the Borrower shall (or shall cause the Manager to) deliver to the Agent as soon as practicable and (ii) certified copies of all other related Equipment Lease Documents.

(b) After the Closing Date, the Borrower shall (or shall cause the Manager to) deliver to the Agent (i) the chattel paper original of each Replacement Lease, (ii) certified copies of all other Equipment Lease Documents related to each Replacement Lease, (iii) the chattel paper original of each amendment, supplement or other modification to

any Equipment Lease or any Replacement Lease and (iv) certified copies of each amendment, supplement or other modification to any other Equipment Lease Document.

## ARTICLE VI COLLATERAL

Section 6.1 Possession of Collateral. So long as no Event of Default has occurred and is continuing, the Borrower and each Equipment Lessee party to an Equipment Lease shall be permitted to remain in full possession, enjoyment and control of the Equipment the rights under the Equipment Leases, and to manage, operate and use the Equipment and each part thereof with the rights and franchises pertaining to the Equipment; provided always that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of this Security Agreement and the other Loan Documents.

### Section 6.2 Replacement Units; Additions to Collateral.

(a) In the event that Items of Equipment have been the subject of a Recovery Event or a Disposition permitted under Section 5.1(m)(i) of the Loan Agreement and the Borrower in consequence thereof has deposited the Reinvestment Deferred Amount in respect thereof in the Cash Collateral Account pursuant to Section 2.7(b) of the Loan Agreement, the Borrower may, at any time prior to the applicable Reinvestment Prepayment Date, purchase and substitute Replacement Units. So long as (i) no Default or Event of Default has occurred and is continuing or would occur as a result of the purchase of Replacement Units and (ii) the addition of such Replacement Units and related Replacement Leases are in accordance with the terms of the Loan Documents, an amount equal to the lesser of (x) the purchase price of the Replacement Units and (y) the Reinvestment Deferred Amount related to such Asset Sale or Recovery Event, shall be withdrawn from the Cash Collateral Account by the Agent and paid by the Agent (on behalf of the Borrower) to the seller of such Replacement Units. In the event the Borrower elects to add a Replacement Unit pursuant to this Section 6.2(a), such Replacement Unit and the Replacement Lease covering such Replacement Unit shall become subject to the perfected Lien of this Security Agreement and the security interest of the Agent, all pursuant to a supplement to this Security Agreement in the form of Exhibit A, to be executed by the parties hereto and filed with the STB and the Registrar General. The Borrower shall deliver to the Agent such supplement, together with opinions of counsel reasonably acceptable to the Agent (and opinions of such counsel substantially in the form as delivered on the Closing Date shall be deemed acceptable) and addressed to the Agent on behalf of the Lenders confirming the Agent's perfected security interest therein under United States, Canada and Delaware law and all applicable UCC financing statements and certified copies of all other documents and instruments relied upon by such counsel in providing their opinions.

(b) So long as no Event of Default or Default has occurred and is continuing or would occur as a result of taking such action, the Borrower may, in accordance with the following provisions, add Eligible Items of Equipment and Eligible Leases to the Collateral ("Additional Collateral") subject to the Lien of this Security Agreement (i) pursuant to Section 2.7(a) or 5.1(m)(iii) of the Loan Agreement, (ii) in connection with any Asset Sale permitted by Section 5.1(m) of the Loan Agreement, (iii) to cure any Default or Event of Default under the Loan Agreement capable of being cured by adding Equipment and related Equipment Leases or (iv) to cure any breach of the Borrower's covenant contained in any Loan Document capable of being cured by adding such railcars and related leases; provided that any such Eligible Leases are in accordance with the definition of Replacement Lease. The Borrower shall effect such addition by subjecting any such railcars and related Leases to the Lien of this Security Agreement, pursuant to a supplement to this Security Agreement in the form of Exhibit A hereto, to be executed by the parties hereto and filed with the STB and the Registrar General. The Borrower shall deliver to the Agent such supplement, together with opinions of counsel reasonably acceptable to the Agent (and opinions of such counsel substantially in the form as delivered on the Closing Date shall be deemed acceptable) and addressed to the Agent on behalf of the Lenders confirming the Agent's perfected security interest therein under United States, Canada and Delaware law and all applicable UCC financing statements and certified copies of all other documents and instruments relied upon by such counsel in providing their opinions.

(c) Notwithstanding anything to the contrary herein or on the other Loan Documents, prior to the addition of any Additional Collateral to the Collateral, the Borrower shall provide the Agent with evidence in form and substance satisfactory to the Agent in its sole discretion that the credit quality of the Equipment Lessees under all the Equipment Leases, taken as a whole, shall be no less favorable than prior to the addition of such Additional Collateral.

(d) Schedule A hereto shall be supplemented from time to time to reflect each addition or substitution of any Items of Equipment or any Equipment Leases.

## ARTICLE VII AGENT' S RIGHTS

Section 7.1 Agent' s Rights. The Borrower agrees that when any Event of Default has occurred and is continuing, the Agent shall have the rights, options, duties and remedies of a secured party under applicable law and the rules of STB and under the UCC (regardless of whether such UCC or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted) as applicable, and the Agent shall have the following rights and remedies:

(a) The Agent shall have all the rights of a secured party under the rules of STB and under the UCC to enforce the security interests contained herein.

(b) The Agent personally or by agents or attorneys, shall have the right (subject to (i) compliance with any applicable mandatory legal requirements and (ii) the rights of the Equipment Lessees in the Equipment and under the Equipment Leases) to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Borrower, with or without notice, demand, process of law or legal procedure, if this can be done without breach of the peace, and search for, take possession of, remove, keep and store the Collateral, or use and operate or lease the Collateral until sold, and the Borrower shall deliver, or cause to be delivered, possession of the Equipment to the Agent or its agents where the same may be found or at such place or places as the Agent may reasonably require.

(c) The Agent shall have the right to deliver the Notice of Assignment to each of the Equipment Lessees.

(d) Any Collateral repossessed by the Agent under or pursuant to this Section 7.1 may be sold, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Agent may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Agent or after any overhaul or repair which the Agent shall determine to be commercially reasonable. Any such disposition which shall be a private sale or other private proceedings permitted by such requirements shall be made upon not less than 10 days' prior written notice to Borrower specifying the times at which such disposition is to be made and the intended sale price or other consideration therefor. Any such disposition which shall be a public sale permitted by such requirements shall be made upon not less than 10 days' prior written notice to Borrower specifying the time and place of such sale and, in the absence of applicable requirements of law, shall be by public auction after publication of notice of such auction not less than 10 days prior thereto in two newspapers in general circulation in the City of New York. To the extent permitted by any such requirement of law, the Agent may itself bid for and become the purchaser of the Collateral or any item thereof, offered for sale in accordance with this Section without accountability to Borrower (except to the extent of surplus money received as provided in Section 7.3). In the payment of the purchase price therefor, the Agent shall be entitled to have credit on account of the purchase price thereof of amounts owing to the Agent on account of the indebtedness hereby secured and the Agent may deliver the claims for interest on or principal of the Loan or other indebtedness hereby secured in lieu of cash up to the amount which would, upon distribution of the net proceeds of such sale, be payable thereon. If, under mandatory requirements of applicable law, the Agent shall be required to make disposition of the Collateral



within a period of time which does not permit the giving of notice to Borrower as hereinabove specified, the Agent need give Borrower only such notice of disposition as shall be reasonably practicable in view of such mandatory requirements of applicable law.

(e) The Agent may proceed to protect and enforce this Security Agreement by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other legal or equitable remedy available under applicable law.

Section 7.2 Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Borrower in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Borrower, its successors and assigns, and against any and all persons claiming the property sold, or any part thereof under, by or through the Borrower, its successors or assigns.

Section 7.3 Application of Sale Proceeds. The proceeds of any sale of the Collateral, or any part thereof, and the proceeds of any remedy hereunder shall be paid to and applied as follows:

(a) first, to the payment of all costs and expenses including those of foreclosure or suit, if any, and of such sale, and of all reasonable expenses, liability and advances, including legal expenses and reasonable attorneys' fees, incurred or made hereunder, under the Notes, or under the Loan Agreement or the other Loan Documents, by the Agent and the Lenders;

(b) second, to the Manager (but only if the Manager is not The Andersons or an Affiliate of The Andersons), for all amounts then owing or unpaid in respect of the Management Agreement;

(c) third, to the Servicer (but only if the Servicer is not The Andersons or an Affiliate of The Andersons), for all amounts then owing or unpaid in respect of the Servicing Agreement;

(d) fourth, to the payment of the amounts then owing or unpaid in respect of the Loans ratably to the Lenders and any other amounts owed to the Agent and the Lenders in accordance with the provisions of the Loan Documents;

(e) fifth, to the Manager (if the Manager is The Andersons or an Affiliate of The Andersons), for all amounts then owing or unpaid in respect of the Management Agreement;

(f) sixth, to the Servicer (if the Servicer is The Andersons or an Affiliate of The Andersons), for all amounts then owing or unpaid in respect of the Servicing Agreement;

(g) seventh, to the payment of the surplus, if any, to the Borrower, its successors and assigns, or to whosoever may be lawfully entitled to receive the same.

Section 7.4 Discontinuance of Remedies. In case the Agent shall have proceeded to enforce any right under this Security Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Borrower and the Agent shall be restored to their former respective positions and rights hereunder with respect to the property subject to the security interest created under this Security Agreement.

Section 7.5 Cumulative Remedies. No delay or omission of the Agent to exercise any right or power arising from any default on the part of the Borrower, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Agent of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting there from except

as may be otherwise provided herein. The Agent may exercise any one or more or all of the remedies hereunder and no remedy is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing now or hereafter at law or in equity; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Security Agreement operate to prejudice, waive or affect the security of this Security Agreement or any rights, powers or remedies hereunder, nor shall the Agent be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

Section 7.6 Indemnity. The Borrower agrees to indemnify, protect and hold harmless the Agent, and its assigns, directors, officers, employees, agents or representatives in accordance with and pursuant to Section 8.8 of the Loan Agreement as if such Person were an Indemnified Person named therein.

Section 7.7 Costs and Expenses. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Agent or the Lenders in connection with the filing or recording of this Security Agreement or any memorandum thereof, financing statements and other documents (including all taxes in connection with the filing and recording of such documents) in public offices, the payment or discharge of any taxes relating to the Collateral or imposed upon the Borrower, insurance premiums, encumbrances or otherwise protecting, maintaining or preserving the Collateral, or the enforcing, foreclosing, retaking, holding, storing, processing, selling or otherwise realizing upon the Collateral and the Agent' s security interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions or proceedings arising out of or related to the transaction to which this Security Agreement relates, shall be borne and paid by the Borrower on demand by the Agent, and until so paid shall be added to the principal amount of the Loan and shall bear interest at the Default Rate prescribed in the Loan Agreement.

## ARTICLE VIII MISCELLANEOUS

Section 8.1 Successors and Assigns. All the covenants, promises and agreements in this Security Agreement contained by or on behalf of the Borrower or by or on behalf of the Agent shall bind and inure to the benefit of the successors and assigns of such parties whether so expressed or not, except the Borrower shall not be permitted to assign its obligations hereunder without the consent of all of the Lenders under the Loan Agreement.

Section 8.2 Entire Agreement. This Security Agreement, together with the Loan Documents and other agreements referred to herein, constitute the entire understanding between the parties with respect to the subject matter hereof. All prior agreements, understandings, representations, warranties and negotiations, if any, are merged into this Security Agreement, and this Security Agreement is the entire agreement relating to the subject matter hereof. This Security Agreement cannot be changed or terminated orally.

Section 8.3 Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Security Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 8.4 Notices. All notices and communications provided for herein shall be given to such parties, at such addresses and in such manner as is provided in the Loan Agreement.

Section 8.5 Termination. This Security Agreement and the security interest granted hereby shall terminate when the Obligations have been indefeasibly fully and finally paid or discharged, at which time the Agent shall, at the Borrower' s sole expense, execute and deliver to the Borrower all Uniform Commercial Code termination statements and such similar documents or proper instrument or instruments which the Borrower shall reasonably request to evidence such termination and the release of Collateral.

Section 8.6 Governing Law. THIS SECURITY AGREEMENT, INCLUDING THE VALIDITY HEREOF, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW JERSEY.

Section 8.7 Consent to Jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE BORROWER ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY, MAY BE INSTITUTED IN ANY FEDERAL, STATE OR LOCAL COURT IN THE COUNTY OF MIDDLESEX, STATE OF NEW JERSEY AND THE BORROWER HEREBY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND, SOLELY FOR THE PURPOSES OF ENFORCING THE LOAN DOCUMENTS, THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING.

Section 8.8 Counterparts. This Security Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one agreement.

Section 8.9 Waiver of Jury Trial. **THE BORROWER AND, BY ACCEPTANCE OF THE BENEFITS HEREOF, THE AGENT AND EACH LENDER, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.**

Section 8.10 Waiver. The Borrower hereby waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding in connection with this Agreement any special, exemplary, punitive or consequential damages.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Borrower has executed this Security Agreement as of the day and year first above written.

THE ANDERSONS RAIL OPERATING I LLC

By: /s/ Richard R. George  
Name: Richard R. George  
Title: Manager

Exhibit A  
to the Security Agreement

SUPPLEMENT NO. \_\_\_\_  
TO  
SECURITY AGREEMENT

SUPPLEMENT No. \_\_\_\_ (this "Supplement") dated as of \_\_\_, 200\_\_ to the Security Agreement, dated as of December 29, 2005 (as amended, supplemented or modified from time to time, the "Security Agreement"), made by THE ANDERSONS RAIL OPERATING I LLC in favor of SIEMENS FINANCIAL SERVICES, INC., as Agent (in such capacity, the "Agent") and the several banks and other financial institutions or entities (the "Lenders") from time to time parties to the Term Loan Agreement, dated as of December 29, 2005 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), among the Borrower, the Lenders and the Agent.

WHEREAS, the Security Agreement was recorded on \_\_\_, 2005 with the Surface Transportation Board, Recordation No. \_\_\_, and with the Registrar General of Canada, Recordation No. \_\_\_.

1. Definitions. Except as otherwise defined in this Supplement, terms defined in the Security Agreement or by reference therein are used herein as defined therein.

2. Supplements. The Security Agreement shall be amended and supplemented as follows:

(a) Schedule A to the Security Agreement shall be amended and supplemented by Schedule A-1 hereto to include the Equipment and the Equipment Leases (relating to the Equipment but to and only to the extent relating to the Equipment) more fully described on Schedule A-1 hereto and Schedule A-1 hereto shall be deemed to be an addition to and part of Schedule A to the Security Agreement. The Borrower hereby assigns, mortgages, pledges, hypothecates, transfers and sets over to the Secured Party and grants the Secured Party a first priority lien on and security interest in all of the Borrower's right, title and interest in and to such Equipment and Equipment Leases (relating to the Equipment but to and only to the extent relating to the Equipment) and agrees that such Equipment and Equipment Leases shall constitute Collateral subject to the grant of security by the Borrower set forth in Section 2.1 of the Security Agreement. Each reference to Schedule A in the Security Agreement, and each reference to Schedule A to the Security Agreement in any other Loan Documents, shall be deemed to be a reference to Schedule A as amended and supplemented by Schedule A-1 hereto. In connection herewith, the Borrower represents that it delivered to the Agent a supplemental schedule to Schedule A to the Loan Agreement, identifying the names of the Equipment Lessees under the Equipment Leases which are referenced on Schedule A-1 hereto.

[(b) Schedule A to the Security Agreement shall be amended further by deleting therefrom the Equipment and the Equipment Leases (relating to the Equipment but to and only to the extent relating to the Equipment) described on Schedule A-2 hereto and the Secured Party hereby agrees that such Equipment and Equipment Leases shall no longer be included in the Collateral, and hereby releases and terminates its lien on and security interest in, and all of its rights, title and interest, in and to, such Equipment and Equipment Leases. Schedule A-2 hereto shall be deemed to be a deletion from, and the Equipment and the Equipment Leases described thereon shall cease to be a part of, Schedule A to the Security Agreement. Each reference to Schedule A in the Security Agreement, and each reference to Schedule A to the Security Agreement in any other Loan Documents, shall be deemed to be a reference to Schedule A as amended by Schedule A-2 hereto, and each reference to Equipment or Equipment Leases in any other Loan Documents shall no longer include a reference to the equipment and the equipment leases described on Schedule A-2 hereto.]<sup>1</sup>

(c) It is hereby agreed that each reference to "this Security Agreement" in the Security Agreement, "hereunder", "hereof" or words of like import referring to the Security Agreement, and each reference to the Security Agreement in each of the other Loan Documents, shall be deemed to be a reference to the Security Agreement as amended and supplemented by this Supplement.

[3. Release. The Secured Party hereby releases, and terminates its security interest in, and all of its right, title and interest in and to all of the Equipment and Equipment Leases listed on Schedule A-2 hereto.]<sup>2</sup>

4. Ratification. Except as expressly amended and supplemented hereby, the Security Agreement is and shall remain in full force and effect and is hereby ratified, approved and confirmed in all respects, and no amendment or supplement in respect of any term or condition of the Security Agreement shall be deemed to be an amendment or supplement in respect of any other term or condition contained in the Security Agreement or any other Loan Document.

5. Counterparts. This Supplement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Supplement by signing any such counterpart.

6. Governing Law; Binding Effect. THIS SUPPLEMENT, INCLUDING THE VALIDITY THEREOF, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW JERSEY WITHOUT REGARD TO ITS OTHER CONFLICT OF LAWS PRINCIPLES. This Supplement shall be binding on the undersigned and its successors and permitted assigns and shall inure to the benefit of each of the Agent, the Lenders and the Borrower and their respective successors and assigns.

[signature page follows]

<sup>1</sup> If applicable.

<sup>2</sup> If applicable.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Supplement in one or more counterparts as of the date first set forth above.

THE ANDERSONS RAIL OPERATING I LLC

By:  
Name:  
Title:

SIEMENS FINANCIAL SERVICES, INC.,

as Agent

By:  
Name:  
Title:

[Signature Page to Supplement No. \_\_]

THE ANDERSONS RAIL OPERATING I LLC,

and

THE ANDERSONS, INC.,

as the Manager

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Management Agreement

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Dated as of December 29, 2005

Management Agreement, dated as of December 29, 2005 (this “*Agreement*”), by and between THE ANDERSONS RAIL OPERATING I LLC, a Delaware limited liability company (“*Company*”), and THE ANDERSONS, INC. (“*The Andersons*”), an Ohio corporation, as the manager (the “*Manager*”), for the benefit of the Agent and the Lenders (as defined herein).

**Preliminary Statement**

The Company is entering into a Term Loan Agreement, dated as of December 29, 2005 (as amended or supplemented from time to time, the “*Loan Agreement*”), among the Company, the financial institutions or entities from time to time parties thereto (the “*Lenders*”) and Siemens Financial Services, Inc, as agent for the Lenders (the “*Agent*”). The obligations of the Company under the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement) will be secured by the Collateral described in the Security Agreement, dated as of December 29, 2005 (the “*Security Agreement*”) made by the Company in favor of the Agent and the Lenders.

It is a condition precedent to the Loan Agreement that, on or prior to the Closing Date (as defined in the Loan Agreement), the Company enter into this Agreement with the Manager and to provide for the management of the Railcars (as defined herein). In order to further secure Company’s obligations under the Loan Agreement and the other Loan Documents (as defined herein, Company is granting to the Agent and the Lenders a security interest in, among other things, the Company’s rights derived under this Agreement, and the Manager agrees that all covenants and agreements made by the Manager herein with respect to the Railcars and Leases (as defined herein) shall also be for the benefit and security of the Agent and the Lenders. For its services hereunder, the Manager will receive the Manager Fee as set forth in Section 2.05.

On the date hereof, the Company and The Andersons (the “*Servicer*”) are entering into a servicing agreement (the “*Servicing Agreement*”) for the purpose of engaging the Servicer to receive and apply, as required under the Loan Documents, all collections received with respect to the Railcars and Leases and to perform Equipment Lessee (as defined herein) monitoring, collection and enforcement activities, to perform record keeping and to prepare servicer reports, among other things, all as described in the Servicing Agreement.

The Manager is engaged in the business of owning, leasing, managing and servicing railcars for itself and for others, and the Company desires to retain the Manager, on the terms and conditions set forth in this Agreement, to perform operating, maintenance, insurance and remarketing services on behalf of the Company in respect of the Railcars and the Leases.

## Article I

### Definitions

*Section 1.01. Defined Terms.* Subject to Section 1.02, except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Agreement, and the definitions of such terms are equally applicable both to the singular and plural forms of such terms and to the masculine, feminine and neuter genders of such terms:

“*AAR*” shall have the meaning set forth in the Loan Agreement.

“*Action*” shall mean any action, claim, suit, litigation, arbitration or governmental investigation.

“*Advance Rate*” shall mean 85% of the Fair Market Value of any Railcar.

“*Affiliate*” shall have the meaning set forth in the Loan Agreement.

“*Agent*” shall have the meaning set forth in the preamble to this Agreement

“*Agreement*” shall mean this Management Agreement, as amended, restated or supplemented from time to time as permitted hereby.

“*Board of Directors*” shall mean the Board of Directors of the Manager or any duly authorized committee of such Board.

“*Business Day*” shall have the meaning set forth in the Loan Agreement.

“*Canadian Registry*” shall mean the Office of the Registrar General of Canada, which maintains the database pursuant to Section 105 of the *Canada Transportation Act*.

“*Car Mark Agreement*” shall mean the Car Mark Agreement, dated December 29, 2005, between The Andersons and the Company.

“*Casualty Loss*” shall have the meaning set forth in the Loan Agreement.

“*Change of Control*” shall mean (a) any Person or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of 50% or more of the outstanding shares of voting stock of The Andersons or (ii) the stock of The Andersons shall cease to be publicly traded.

“*Closing Date*” shall have the meaning set forth in the Loan Agreement.

“*Collateral*” shall have the meaning set forth in the Security Agreement.

“*Collection Account*” shall have the meaning set forth in the Security Agreement.

“*Company*” shall have the meaning set forth in the preamble to this Agreement.

“*Concentration Limits*” shall have the meaning set forth in the Loan Agreement.

“*Continued Errors*” shall have the meaning set forth in Section 6.05(d).

“*DOT*” shall mean the United States Department of Transportation or any successor thereof.

“*Eligible Railcar*” shall have the meaning set forth in the Loan Agreement.

“*Environmental Law*” shall have the meaning set forth in the Loan Agreement.

“*Equipment Lease Proceeds*” shall have the meaning set forth in the Loan Agreement.

“*Equipment Lessee*” shall have the meaning set forth in the Loan Agreement.

“*ERISA*” shall have the meaning set forth in the Loan Agreement.

“*Errors*” shall have the meaning set forth in Section 6.05(d).

“*Event of Default*” shall have the meaning set forth in the Loan Agreement.

“*Fair Market Value*” shall have the meaning set forth in the Security Agreement.

“*FRA*” shall mean the Federal Railroad Administration or any successor thereto.

“*GAAP*” shall have the meaning set forth in the Loan Agreement.

“*Governmental Authority*” shall have the meaning set forth in the Loan Agreement.

“*Hazardous Commodities*” shall have the meaning set forth in the Loan Agreement.

“*Indemnified Parties*” shall have the meaning set forth in Section 5.04.

“*Initial Manager*” shall mean The Andersons.

“*Interchange Rules*” shall mean the Interchange Rules or supplements thereto of the Mechanical Division of the AAR as the same may be in effect from time to time.

“*Knowledge of the Manager*” shall mean the actual knowledge, after due inquiry, of the officers of the Manager or any Affiliate of the Manager responsible for matters relating to the Manager’s performance of its obligations hereunder.

“*Law*” shall mean any law, statute, ordinance, rule, regulation, judgment, injunction, order, decree or code adopted, enacted or promulgated by any Governmental Authority or the requirements of the AAR, any self-regulatory agency or any entity of a nature similar to that of any of the foregoing.

“*Lease*” shall mean an “*Equipment Lease*” as defined in the Loan Agreement.

“*Lease File*” and “*Lease Files*” shall have the meanings set forth in the Servicing Agreement.

“*Lease and Railcar Schedule*” shall be in substantially the same form as Schedule A to the Security Agreement, as such schedule is amended, supplemented or otherwise modified from time to time in accordance with this Agreement and/or the Security Agreement.

“*Lenders*” shall have the meaning set forth in the Preliminary Statement of this Agreement.

“*Lessor*” shall mean the lessor under each related Lease, or a successor or assignee of such lessor.



*“Liens”* shall have the meaning set forth in the Loan Agreement.

*“Loans”* shall have the meaning set forth in the Loan Agreement.

*“Loan Documents”* shall have the meaning set forth in the Loan Agreement.

*“Lockbox Account”* shall have the meaning set forth in the Servicing Agreement.

*“Lockbox Agreement”* shall have the meaning set forth in the Loan Agreement.

*“Loan Agreement”* shall have the meaning set forth in the Preliminary Statement of this Agreement.

*“Maintenance Expense Reimbursement Request”* shall have the meaning set forth in Section 2.06(b).

*“Manager”* shall have the meaning set forth in the preamble to this Agreement, or any Successor Manager appointed pursuant to Section 6.01.

*“Manager Events of Termination”* shall mean each of the occurrences or circumstances enumerated in Section 6.01.

*“Manager Fee”* shall mean a monthly fee equal to \$37.50 per railcar per month (whether or not such Railcar is then subject to a Lease).

*“Manager Standard”* shall have the meaning set forth in Section 2.01(b).

*“Manager Termination Notice”* shall have the meaning set forth in Section 6.01(b).

*“Material Adverse Effect”* shall have the meaning set forth in the Loan Agreement.

*“Monthly Operating Expense Report”* shall have the meaning set forth in Section 3.01.

*“Note”* shall have the meaning set forth in the Loan Agreement.

*“Officer’s Certificate”* shall mean a certificate signed by the Chairman of the Board, the Vice Chairman of the Board, the President, a Vice President, the Treasurer or the Secretary of the Manager.

*“Operating Expenses”* shall have the meaning set forth in Section 2.06(a).

*“Opinion of Counsel”* shall mean a written opinion of counsel who, unless otherwise specified, may be in-house counsel employed full time by the Person (or an affiliate of such Person) required to deliver the opinion.

*“Optional Modification”* shall have the meaning set forth in Section 2.04(b).

*“Payment Date”* shall have the meaning set forth in the Loan Agreement.

*“Permitted Liens”* shall have the meaning set forth in the Loan Agreement.

*“Person”* shall have the meaning set forth in the Loan Agreement.

*“Predecessor Manager Work Product”* shall have the meaning set forth in Section 6.05(d).

*“Prime Rate”* shall have the meaning set forth in the Loan Agreement.

*“Purchase”* shall mean a purchase by the Manager of a Railcar and any related Lease pursuant to Section 4.04.

*“Purchase Price”* shall have the meaning set forth in Section 4.04(c).

*“Quarterly Manager Report”* shall have the meaning set forth in Section 3.01.

*“Railcar”* or *“Railcars”* shall mean “Equipment” or “Items of Equipment” as defined in the Security Agreement.

*“Replacement Lease”* shall have the meaning set forth in the Security Agreement.

*“Replacement Unit”* shall have the meaning set forth in the Security Agreement.

*“Reported Company”* shall mean The Andersons, if the Manager is The Andersons, or for any Successor Manager appointed pursuant to this Agreement, such Successor Manager and its parent and its Affiliates on a consolidated basis.

*“Reported Company’s Financial Statements”* shall mean the Reported Company’ audited, consolidated financial statements (including consolidated balance sheets, statements of earnings, retained earnings and cash flows) including all notes to the audited financial statements and auditors opinion regarding the audited financial statements, all prepared in accordance with generally accepted accounting principles.

*“Required Lenders”* shall have the meaning set forth in the Loan Agreement.

*“Required Modification”* shall have the meaning set forth in Section 2.04(a).

*“Responsible Officer”* shall have the meaning set forth in the Loan Agreement.

*“Sale Agreement”* shall mean the Sale Agreement, dated as of December 29, 2005, between The Andersons, as seller, and the Company, as buyer.

*“Seller”* shall mean The Andersons.

*“Security Agreement”* shall have the meaning set forth in the preamble to this Agreement.

*“Servicer”* shall have the meaning set forth in the preamble to the Servicing Agreement, or any Successor Servicer appointed pursuant to Section 6.01 of the Servicing Agreement.

*“Servicing Agreement”* shall have the meaning set forth in the Preliminary Statement of this Agreement.

*“Servicer Event of Termination”* shall have the meaning set forth in the Servicing Agreement.

*“Solvent”* shall have the meaning set forth in the Loan Agreement.

*“STB”* shall have the meaning set forth in the Loan Agreement.

*“Successor Manager”* shall have the meaning set forth in Section 6.01(b).

*“Tangible Net Worth”* shall mean with respect to any Person as of any particular date, (a) consolidated net worth, (b) minus the consolidated book value of intangible assets, (c) plus the consolidated book amount of long term deferred income.

*“The Andersons”* shall mean The Andersons, Inc., an Ohio corporation.

“UCC” shall mean Article 9 of the Uniform Commercial Code as in effect in an applicable jurisdiction within the United States.

“UMLER” shall have the meaning set forth in the Loan Agreement.

*Section 1.02. Terms Defined in the Loan Agreement or Servicing Agreement.* For the purposes of this Agreement, capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Loan Agreement or, if not defined therein, in the Servicing Agreement, as applicable.

## Article II

### Management of Railcars

*Section 2.01. The Manager to Act as Manager; Standard of Care; Covenants Concerning Railcars and Leases.*

(a) The Company hereby retains The Andersons as Manager hereunder, as an independent contractor for the purpose of undertaking and performing the services described in this Agreement, and The Andersons hereby agrees to act as Manager on the terms and conditions set forth herein.

(b) All of the functions, services, duties and obligations of the Manager under this Agreement shall be performed by the Manager at a level of care and diligence consistent with customary commercial practices as would be used by a prudent Person in the railcar leasing and management industry and the level of care and diligence utilized by the Manager in its business and in the management of the Manager’s own fleet of railcars, if any, in order for the Company to be able to perform its obligations under the Leases and the other applicable Transaction Documents (the “*Manager Standard*”). The Manager agrees that management of the Railcars shall be carried out in accordance with the Manager Standard.

(c) The Manager shall not be required to threaten or commence any legal or other proceedings before any court or Governmental Authority or nongovernmental organization in connection with its performance or actions hereunder if, in the Manager’s reasonable judgment consistent with the Manager Standard, the potential expense or risk associated with such exercise or action is such that the Manager would not undertake such exercise or action with respect to other railcars owned, leased or managed by the Manager.

(d) The Manager shall not create or permit to exist any Lien on any Railcar or Lease other than a Permitted Lien.

(e) The Manager shall, in connection with the performance of the services provided for herein, comply in all material respects with all Laws applicable to the Manager, the Company, the Railcars and the Leases.

(f) The duties and obligations of the Manager will be limited to those expressly set forth in this Agreement, and the Manager will not have any fiduciary or other implied duties or obligations, except as provided herein.

(g) The Manager shall not take any action, without the consent of the Agent which would release any Person from any of its covenants or obligations under any of the Leases or under any other instrument included in the Collateral, which action or release would materially and adversely affect the interests of the Agent in any such Lease or which would result in the amendment, hypothecation, subordination, termination, set off or discharge of, or impair the validity or effectiveness of, any of the Leases or any such instrument, except as expressly provided herein and therein.

(h) The parties hereto acknowledge that the Company shall retain title to, and ownership and exclusive control of Collateral (subject to those liens which arise pursuant to the Loan Agreement). Except as expressly permitted hereunder, the Manager will not acquire any title to, security interest in, or other rights of any kind in or to the Railcars or the Leases. The Manager agrees not to file any Lien, exercise any right of setoff against, or attach or assert any claim in, any of the Railcars or the Leases, unless authorized pursuant to a judicial or administrative proceeding or a court order or on behalf of the Company or the Agent in accordance with this Agreement or the Loan Agreement.

(i) The Manager shall maintain, at its own expense, an insurance policy, with coverage appropriate and customary in the industry with responsible companies on all officers or employees of the Manager, or other persons authorized by the Manager to act in any capacity with regard to the Railcars and the Leases to handle funds, money, documents and papers relating to the Railcars and the Leases. Any such insurance policy shall protect and insure the Manager against losses, including forgery, theft, embezzlement, and fraudulent acts of such persons and shall be maintained in a form and amount that would meet the requirements of a prudent institutional Manager. The requirement to maintain such insurance policy shall not diminish or relieve the Manager from its duties and obligations as set forth in this Agreement. Any such insurance policy shall not be cancelled or modified in a materially adverse manner without ten days' prior written notice to the Agent. The Manager shall promptly, but in any event within five Business Days after receipt, notify the Agent upon receipt from the surety of any termination or cancellation notice or any other notice of a material change to the terms of such insurance policy.

(j) The Successor Manager may perform any duties hereunder either directly or through agents or attorneys, and the Successor Manager shall not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent or attorney appointed by it with due care hereunder.

(k) Notwithstanding anything to the contrary in the Loan Documents, the Manager shall in its leasing efforts use reasonable efforts, in compliance with the Manager Standard, to maintain compliance by the portfolio of Railcars and associated Leases with the Concentration Limits (such as, all other factors being equal, giving precedence to a Replacement Lease that would maintain compliance with the Concentration Limits over a Replacement Lease that would not maintain compliance with the Concentration Limits).

*Section 2.02. Authority of Manager; Delegation of Management.* (a) Until the termination of this Agreement in accordance with Section 6.01, the Manager, on behalf of the Company, shall have full authority and power to manage the Railcars and the Leases in all respects, including, but not limited to, the following authority and powers, in accordance with the Manager Standard:

(i) To contract for the maintenance, storage and release of the Railcars and to authorize any repairs or maintenance service which, in the exercise of the Manager's business judgment, are necessary or appropriate.

(ii) To enter into Replacement Leases in the name of the Company.

(iii) To settle any claim pertaining to the Railcars or the deployment or use thereof.

(iv) To do any and all other things necessary or appropriate to fulfill the duties set forth in Section 2.03 below.

(b) Notwithstanding the foregoing, the authority granted to the Manager under this Section 2.02 shall not cover any matters (i) which the Company, as owner of the Railcars in question, shall not be entitled to perform under the Loan Documents or any other agreement to which the Company shall be bound, or (ii) as to which the Servicer shall have been granted authority under the Servicing Agreement.

(c) The Manager may enter into management agreements with one or more submanagers, with prior written notice to the Company and the Agent, to perform all or a portion of the management functions on behalf of the Manager; *provided, however*, that the Manager will remain obligated and be liable to the Agent and the Company for managing the Railcars in accordance with the provisions of this Agreement, without diminution of such obligation and liability by virtue of the appointment of such submanager, to the same extent and under the same terms and conditions as if the Manager alone were managing the Railcars. The fees and expenses of the submanager (if any) will be as agreed between the Manager and its submanager and shall be the liability of the Manager exclusively, and neither the Agent nor the Company will have any responsibility therefor; *provided, however*, to the extent agreed to between the Manager and submanager, expenses of the submanager may be reimbursed by the Manager and treated for all purposes

hereof as expenses incurred by the Manager (which, subject to the terms of the Loan Agreement and the limitations contained in Section 2.06(b), be reimbursable to the extent provided herein and in the Loan Agreement). All actions of a submanager taken pursuant to such a submanager agreement will be taken as an agent of the Manager with the same force and effect as though performed by the Manager. For the avoidance of doubt, any maintenance shop which routinely services or repairs railroad rolling stock, including any of the Railcars, or does running repairs shall not, solely based upon such custom (and not a written agreement), be deemed a submanager.

*Section 2.03. Duties of Manager.* In consideration of the compensation to be paid to the Manager pursuant to Section 2.05, and, if applicable, Section 6.02(a), and subject to the provisions of Section 2.02 above, the Manager shall provide and perform the services on behalf of the Company set forth below until this Agreement is terminated in accordance with Section 6.01:

(a) To contract for the maintenance, storage and release of the Railcars and to authorize any repairs or maintenance service which, in the exercise of the Manager's business judgment, are necessary or appropriate.

(b) For any Railcar not subject to a Lease, to take possession of such Railcar, as agent for the Company, for the purpose of managing and operating such Railcar as herein provided, subject to the Lien of the Security Agreement.

(c) To exercise the authority granted in Section 2.02 above and to use its best efforts in accordance with the Manager Standard to keep the Railcars under lease for the term of this Agreement, subject to the following conditions:

(i) the Manager shall only enter into a Replacement Lease if each of the representations and warranties set forth in Section 4.03 hereof with respect to such Replacement Lease are true and correct as of the date of the origination of such Replacement Lease and the Concentration Limits are satisfied;

(ii) the Manager (A) shall have delivered to the Agent an updated Lease and Railcar Schedule reflecting the addition of such Replacement Lease and (B) shall maintain a complete and current copy of such Lease and Railcar Schedule in its records for inspection in accordance with the terms hereof; and

(iii) the Manager shall have delivered any items to be included in the Lease File in respect of such Replacement Lease to the Servicer to be held on behalf of the Agent (except that any originals of the Lease not in the possession of the Equipment Lessee under such Lease shall be delivered to the Agent).

(d) To enter into or accept assignment of, on behalf of the Company, lease agreements providing for the lease of the Railcars to railroads, shippers or other financially responsible parties for that purpose on terms and conditions which are customary in its own practice in the industry (including, without limitation, exercising its right to cause a railroad to put the Railcars on such railroad's line bearing such railroad's reporting marks, if such arrangement appears, in the Manager's business judgment, to be either the most effective method of remarketing the Railcars or the most effective short-term use of the Railcars pending long-term remarketing), taking such steps as may be required to ensure that all obligations and duties arising under such agreements are performed or complied with in an orderly and timely fashion and causing all original copies of the Leases constituting chattel paper not in the possession of the Equipment Lessee under such Lease to be delivered to the Agent.

(e) Cause to be taken all steps which may be necessary to have the Railcars registered and accepted by all hauling carriers under the AAR as required by the terms of any Lease or otherwise.

(f) Maintain, or to enforce the Equipment Lessees' obligations to maintain, the Railcars in good condition equal to or greater than the highest of (i) any standard required or set forth for the Railcars or railcars of a similar class by the AAR, STB, or DOT, (ii) any standard set by a Equipment Lessee, whether by terms of a Lease or by other understanding or agreement between such Equipment Lessee and the Manager, on behalf of the Company, (iii) any standard set by any insurance policy under which the Railcars shall from time to time be insured, (iv) in good working order and in accordance with the Interchange Rules, (v) any standard recommended by the manufacturer, and (vi) the standards used by the Manager in respect of railcars owned, leased or managed by the Manager and its Affiliates similar in type to the Railcars.

(g) Place and maintain, or enforce the Equipment Lessees' obligations to maintain, such insurance with respect to the Railcars as shall be necessary to comply with the provisions of Section 4.2 of the Security Agreement. During the month of December in each year, beginning December, 2006, the Manager shall deliver to the Company, and the Agent an Officer's Certificate confirming the renewal of all insurance policies.

(h) Within 10 days after the Closing Date with respect to the initial Collateral and as necessary from time to time thereafter with respect to any Railcars and the Leases (except for Leases which have terms of less than one year, including, but not limited to, month-to-month Leases) which shall become part of the Collateral, the Manager shall make, at the expense of the Company, such filings, deposits, registers or recordations, in the manner required by and in accordance with applicable law, necessary to perfect and protect the Lien of the Security Agreement, including filings with the STB pursuant to 49 U.S.C. 11301(a) (and in conformity with 49 C.F.R. 1177) and with the Canadian Registry and the filing of UCC and PPSA financing statements in all applicable filing offices. From time to time thereafter, the Manager shall take or cause to be taken such actions and execute such documents as are necessary to perfect and, at the expense of the Company, to preserve and protect the Company's, the Agent's and the Lenders', interests, as such interests may appear, in the Collateral against all other Persons, including the filing of financing statements, amendments thereto and continuation statements, the execution of transfer instruments and the making of notations on or taking possession of all records or documents of title.

(i) Maintain books and records reflecting transactions arising from the operation of the Railcars, including records relating to maintenance, repair and service contracts and all authorized expenses relating thereto. Such books and records shall be available to the Company, and the Agent upon the Company's or the Agent's reasonable prior request for examination during the normal business hours of the Manager.

(j) Monitor movement of the Railcars, including (i) keeping records pertaining to the movement of the Railcars, railcar mileage credits and other compensation earned and received with respect to such Railcars as well as charges from railroads as a result of mileage adjustments; (ii) subject to all rules and tariffs of the railroad, crediting such railcar mileage credits and other compensation as provided for in the related Lease; and (iii) such other matters as may be reasonably related thereto.

(k) Using reporting marks pursuant to the Car Mark Agreement, place reporting marks or such other marks, legends, or placards on the Railcars as shall be appropriate or necessary to comply with any regulation imposed by the STB, the AAR or any equivalent authority, or as shall be required under the Loan Documents. The Manager will cause each Railcar owned by the Company to be kept numbered with the road number serial number as shall be set forth on the Lease and Railcar Schedule. Other than as permitted by the Car Mark Agreement, the Manager shall not allow the name of any other Person, other than the Company, to be placed on any Railcar as a designation that might be identified as a claim of any interest therein; *provided*, however, that nothing herein contained shall prohibit the Manager or the Company or its permitted Equipment Lessees from placing its name, trademarks, initials, customary colors and other insignia on any Railcar or from naming any Railcar. Except with respect to those Railcars for which new identification numbers have been set forth on the Lease and Railcar Schedule as of the Closing Date, the Manager shall not

change the identification number of any Railcar unless and until a statement of a new number or numbers to be substituted therefor shall have been delivered to the Agent and filed, recorded and deposited by the Manager in all appropriate public offices, including the public offices where the Security Agreement (or a memorandum thereof) shall have been filed, recorded and deposited.

(l) Furnish factual information reasonably requested by the Company in connection with any federal, state, or local tax returns.

(m) Prepare or cause to be prepared the necessary returns or other filings for all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Railcars or the Company of whatever kind or nature and, where it deems appropriate (or as otherwise directed by the Company), protest the application of such taxes or the rate or amount of assessment thereunder. The Manager shall pay, or enforce the Equipment Lessees' obligations to pay, such taxes on behalf of the Company. In the Manager's discretion (or as otherwise directed by the Company), the Manager shall contest or defend against any taxes imposed upon or against the Railcars and seek revision or appeal from any such taxes deemed improper, all such actions to be in the name of the Company or the Manager on behalf of the Company. Notwithstanding the foregoing, the consent of the Agent shall be required prior to any protest, contest, defense or appeal in respect of any taxes, rate or amount hereinabove referred to in the event that the aggregate liability at issue at any one time shall exceed \$100,000.

(n) If any Railcar suffers a Casualty Loss, the Manager shall, promptly after learning of such Casualty Loss, (i) investigate the facts and circumstances giving rise to such Casualty Loss and provide such notices and Officer's Certificates with respect thereto on behalf of the Company as may be required under the applicable Lease, (ii) collect or arrange for appropriate payment of compensation from the relevant railroad, Equipment Lessee, third party or other source, or combination thereof, and take such other steps, including field inspection and investigation, as deemed appropriate by the Manager, and (iii) take all steps and actions, including the hiring of attorneys and consultants, required with respect to such Casualty Loss under the applicable Lease. Following such investigation and consideration of such other facts and circumstances as the Manager feels are necessary or appropriate, the Manager shall terminate such Lease (as to such Railcar) and arrange for deposit of the related Equipment Lessee's payments, railroad payments or insurance proceeds into the Collection Account. With respect to any Railcar suffering an Casualty Loss, the Manager is hereby granted full power and authority, subject to the terms and conditions of the Leases, to sell (or dispose as scrap) on the Company's behalf any such Railcar which has been settled for under the rules of the AAR or settled with Equipment Lessees or any insurer and, upon direction of the Company, the Manager will effect such sale or disposition in accordance with the Manager Standard, for no additional fee or other compensation. The Manager shall transfer to the Lockbox Account, for deposit into the Collection Account, any amounts the Manager receives in respect of such Casualty Loss from such sources. The Company hereby agrees to execute all necessary powers of attorney and other documents evidencing such power and authority in favor of the Manager. Anything herein to the contrary notwithstanding, in the event of damage to a Railcar to which Rule 107 of the Interchange Rules applies, the Manager shall not, without the prior written consent of the Agent, (i) accept any settlement offer if the offered Settlement Value (set forth in the related "Settlement Value Statement" (as such term is used in Rule 107)) is less than the Advance Rate times the Fair Market Value of such Railcar nor (ii) reject any such settlement offer if the offered Settlement Value equals or exceeds the Advance Rate times the Fair Market Value of such Railcar.

(o) Upon the expiration of any Lease (or upon the acquisition by the Company of any Railcar not then subject to a Lease), the Manager shall, (i) until the related Railcars have been leased or re-leased in accordance with this Agreement and the Loan Agreement, transport and store, or arrange for the transportation and storage of, such Railcars on tracks designated by the Manager (whether such tracks are owned by the Manager or otherwise), (ii) negotiate appropriate renewals thereof or remarket the related Railcars on terms and conditions which are in compliance with the terms and provisions of the Loan

Documents, as to which each of the representations and warranties contained in Section 4.03 shall be correct and which otherwise are customary at such time and with adequate regard as to credit quality in accordance with the Manager Standard; (iii) inspect, clean (to the extent not done by the applicable Equipment Lessee) and refurbish any Railcar which is to be remarketed in a manner consistent with the Manager Standard; and (iv) take such steps as may be required to see that all obligations and duties arising under the Loan Agreement with respect to the remarketed Railcars are performed or complied with to the extent required thereunder.

(p) Terminate any Lease (if permitted by, and in accordance with the terms of, such Lease) with respect to any Railcar which the Manager believes is obsolete or surplus to the Company's requirements under the terms of such Lease and provide such notices with respect thereto as may be required under such Lease to effect such a termination; if such election is made, take the necessary action on behalf of the Company to arrange for the sale of such Railcar and the termination of the Lease of such Railcar.

(q) Cause compliance with the Lessor's obligations, if any, under the return provisions of any Lease with respect to any Railcar which is being returned to the Company thereunder.

(r) Enforce, on behalf of the Company, the warranties with respect to all repairs, maintenance and modifications made with respect to the Railcars at facilities not owned by the Manager or an Affiliate of the Manager.

(s) In the event that any Railcar shall become economically obsolete or damaged beyond repair, sell such Railcar in compliance with the requirements of the Loan Agreement.

(t) In the event that the Company shall so direct in accordance with the terms of the Loan Agreement, sell such Railcar to such purchaser as the Company shall designate to the Manager.

(u) Enforce the Equipment Lessee's obligations to ensure compliance of the Railcars and the Leases with applicable governing regulations and rules, including regulations and rules promulgated by AAR, DOT, STB and the FRA, including, but not limited to, maintaining the STB registration of the Leases and, in the event that any Equipment Lessee is a United States Governmental Authority, cause the Company to comply with the Assignment of Claims Act.

(v) Notify the Agent and the Company of any breaches of warranties, misrepresentations or defaults under the Sale Agreement.

(w) Enforce all covenants and obligations of the seller contained in the Sale Agreement on behalf of the Company and deposit any amounts recovered into the Collection Account, and take such actions as may be reasonably requested from time to time by the Company or the Agent on behalf of such Company) in connection with such enforcement, and deliver to such Company (with a copy to the Agent) all consents, approvals, directions, notices, waivers and take other actions under the Sale Agreement.

(x) Perform on behalf of the Company all maintenance obligations thereof (as Lessor) set forth in any Leases. .

(y) Without limiting the foregoing, to perform all obligations of the Company under the Loan Agreement with respect to the Railcars and the Leases; provided, however, that the Manager shall have no liability with respect to (i) principal or interest on any Loan or Note or (ii) any diminution in the value of the Railcars and Leases other than as a result of a breach by the Manager of its obligations hereunder.

(z) Perform for the Company such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the leasing, operation and day-to-day management of the Railcars.



(y) As soon as available and in any event within 90 days after the end of each of the first three quarters of each fiscal year of the Company, commencing June 30, 2006, and within 120 days after the end of each fiscal year of the Company, the Manager shall deliver to the Agent (i) an Officer's Certificate identifying any changes in car marks related to a Railcar made during the three-month period ending on the last day of the immediately preceding calendar month and (ii) in the event that any such changes shall have been so made, an Opinion of Counsel (which shall be an outside counsel) in form and substance reasonably satisfactory to the Agent to the effect that all such changes have been so filed, recorded and deposited with the STB pursuant to 49 U.S.C. 11301(a) (and in conformity with 49 C.F.R. 1177) and with the Canadian Registry as to protect the Agent's and the Lenders' security interest (on behalf of the Secured Parties) in the Railcars located in the United States and Canada, and that no other filing, recordation, deposit or giving of notice to any Governmental Authority is necessary to protect such interests.

*Section 2.04. Required Modifications and Optional Modifications.* (a) *Required Modifications.* In the event the AAR, DOT or any other Governmental Authority having jurisdiction over the Railcars or any other applicable Law requires as a condition of continued use or operation of any such Railcar that such Railcar be altered or modified (a "Required Modification"), the Manager agrees to make or have made such Required Modification in accordance with the applicable Lease, on behalf of the Company, in a timely manner; *provided, however,* that the Manager may, on behalf of the Company, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such Law, regulation, requirement or rule in any reasonable manner which does not materially interfere with the use, possession, operation or return of any Railcar or materially adversely affect the rights or interests of the Company, the Agent or the Lenders in the Railcar or subject the Company, or the Agent or the Lenders to criminal or material financial sanctions or relieve the Equipment Lessee of the obligation to return the Railcar in compliance with the provisions of such Lease or other related Transaction Documents (or the obligations of the Manager hereunder in respect of such return). Promptly after the Manager becomes aware of the requirement to make a Required Modification, the Manager shall notify the Company and the Agent thereof, which notice shall also set forth the time period for the making of such Required Modification and the Manager's reasonable estimate of the cost thereof. If the Manager, on a non-discriminatory basis, reasonably believes in good faith that any Required Modification to a Railcar would be economically impractical, it shall so advise the Company and, if directed by the Company, in lieu of making the Required Modifications as provided above, the Manager shall provide written notice to the Company that such Required Modification is economically impractical, and shall treat such Railcar as if an Casualty Loss had occurred as of the date of such written notice with respect to such Railcar. In such event, the provisions of the related Lease and this Agreement with respect to a Casualty Loss shall apply with respect to such Railcar. In reaching any decision as to whether a Required Modification is economically impractical, the Manager shall assess the cost and timing of the Required Modification, the anticipated revenues and other sources of funds which would be available to fund such costs, the requirements of the applicable Lease and such other factors as the Manager considers necessary or appropriate and shall provide a report to the Company, with copies to the Agent regarding such assessment.

(b) *Optional Modifications.* The Manager is authorized at any time to modify, alter or improve any Railcar in a manner which is not a Required Modification, including any Railcar not then under a Lease (an "Optional Modification"), if the Manager concludes in good faith that the proposed Optional Modification is likely to enhance the marketability of the Railcar by more than the cost of such modification (or such Optional Modification is requested by a Equipment Lessee) and that such Optional Modification meets the standards set forth in the applicable Lease, if any.

*Section 2.05. Manager Fee and Supplemental Manager Fee.* As compensation to the Manager for the performance of services hereunder, the Manager will receive the Manager Fee, which shall be paid to the Manager on each Payment Date in accordance with, and subject to the priority of payment provisions of, Section 3.1 or Section 7.3, as applicable, of the Security Agreement. In the event that a Successor Manager is appointed as Manager hereunder, the Successor Manager will be entitled to receive the Manager Fee.

*Section 2.06. Manager Expenses.* (a) In addition to the Manager Fee and the Supplemental Manager Fee, the Manager shall be entitled to reimbursement of the following out-of-pocket expenses (collectively, “*Operating Expenses*”) incurred by the Manager, in the manner and to the extent provided for in Section 2.06(b), in connection with the satisfaction of its responsibilities under this Agreement (it being expressly understood and agreed that the Manager shall not be entitled to separate reimbursement for any salaries or benefits of employees of the Manager, overtime wages or any other “overhead” costs or expenses of the Manager):

(i) repositioning charges;

(ii) repair and maintenance charges;

(iii) fees and expenses incurred in connection with the occurrence of any Casualty Loss or with enforcing Lease rights or repossessing any Railcars;

(iv) insurance premiums and charges with respect to the Insurance Policies;

(v) fees and expenses incurred in connection with calculation and payment of ad valorem taxes, and in connection with any protest, contest, defense or appeal referenced in, and permitted under, Section 2.03(m);

(vi) taxes for which the Lessor is responsible under any Lease;

(vii) fees and expenses incurred in connection with inspections of Railcars;

(viii) fees and expenses of outside counsel in connection with the management of the Railcars;

(ix) fees of third-party advisors, consultants and brokers relating to the re-letting of any Railcar;

(x) storage and car mark charges;

(xi) charges incurred in connection with tracing and registering Railcars;

(xii) reimbursements for prefunded or advance payments;

(xiii) painting and re-stenciling the car mark and number for Railcars;

(xiv) making any Required Modifications or Optional Modifications to any Railcar;

(xv) making any regulatory filings with respect to the Leases or the Railcars;

(xvi) ensuring the maintenance of the security interest of the Agent and the Lenders in the Leases and the Railcars;

(xvii) payment for uninsured losses and for bodily injury or property damage caused by any Railcars which are not covered by Insurance Policies or which exceed the amount of deductible(s) under any Insurance Policy; and

(xviii) all other out-of-pocket expenses properly chargeable to the management, operation, leasing or disposition of the Railcars in the manner provided herein.

(b) On each Payment Date immediately succeeding the delivery of a Monthly Operating Expense Report to the Agent in accordance with Section 3.01, the Manager shall be entitled to be reimbursed, upon request, for any Operating Expenses that it has incurred in the previous calendar quarter and such amounts shall be paid to the

Manager in accordance with, and subject to the priority of payment provisions of, Section 3.2 or Section 7.3, as applicable, of the Security Agreement.

*Section 2.07. Responsibility for Loss of, Distribution of, or Damage to Railcars.* The responsibilities of the Company and the Manager for loss of, destruction of, or damage to any Railcar are apportioned as follows:

(a) The Manager shall not be liable for damage to or destruction of any Railcar under any circumstances unless such damage or destruction is the direct result of the Manager's negligence or willful misconduct.

(b) The Manager shall obtain insurance to the extent required by Section 2.01(i) and Section 2.03(g).

(c) If any Railcar is damaged, but is not destroyed or damaged beyond repair, the Manager shall use its best efforts, in accordance with the Manager Standard, to obtain reimbursement of repair expenses for the Company in accordance with AAR rules. If any Railcar is damaged beyond repair or destroyed, the Manager shall use its best efforts, in accordance with the Manager Standard, to obtain the value of such Railcar in accordance with appropriate AAR rules and, if applicable, in accordance with provisions in the Leases relating to Events of Loss.

*Section 2.08. Denial or Refusal of Insurance.* (a) If an insurer under an insurance policy covering the Collateral shall deny coverage (in any such case prior to termination thereof as a result of the payment by such insurer of an aggregate amount equal to its maximum liability under such insurance policy), or shall refuse to honor a claim under any such insurance policy with respect to any Railcar, and if such denial or refusal resulted solely from the Manager's failure to comply with the requirements of such insurance policy or the requirements of such insurer, or if the Manager shall have failed to maintain the coverage required by the terms of the Security Agreement, then the Manager, on behalf of the Company, shall cause the amount of any resulting unpaid claim to be deposited into the related Collection Account as a recovery on such Railcar with respect to which such denial or refusal arose. The Manager shall not be entitled to seek reimbursement under Section 2.06 for amounts deposited into the Collection Account pursuant to this Section 2.08(a).

(b) The Manager shall promptly, but in any event within five days, notify the Company, and the Agent of the occurrence of any event described in Section 2.08(a) or the cancellation or termination of any Insurance Policy.

*Section 2.09. Conflicts of Interest.* It is expressly understood and agreed that nothing herein shall be construed to prevent or prohibit the Manager from providing the same or similar services to any Person or organization not a party to this Agreement. In particular, the Manager shall be entitled to own and operate for its own account railroad cars and equipment identical to the Railcars managed hereunder and/or to manage such railroad cars or equipment under a similar management agreement with another owner; *provided, however*, that if other railroad cars similar to or competitive with the Railcars owned or managed by the Manager are available for leasing at the same time that any Railcar is so available, the Manager or its agent or submanager shall give no preference or priority to either the leasing of such other railroad cars or the Railcars, subject to the needs of prospective deployers and all applicable regulations of the AAR, STB and DOT.

*Section 2.10. Separate Corporate Existence Covenants.* The Manager recognizes that the Agent and the Lenders have entered into the Loan Agreement and the other Loan Documents on the understanding that the Company is an entity intended to have its own separate existence independent from that of the Manager. In connection therewith, the Manager will (i) maintain separate bank accounts and books of account from the Company, (ii) not hold itself out to third parties as liable or responsible for the debts of the Company (except for performance of such obligations which are assumed by it as Manager hereunder) and not holding the Company out to third parties as being liable or responsible for the debts of the Manager, (iii) not conduct business in the name of the Company except when acting in the name of the Company in its capacity as Manager and it identifies itself as such, (iv) not hold itself out as the owner of the Railcars or the Leases and take reasonable steps to ensure that Equipment Lessees and other parties dealing with the Railcars or the Leases are aware of the Company's interests therein and (v) take such other actions on its part as

may be required for the Company to be in compliance with the Loan Agreement and the Loan Documents on the Closing Date. In the event that the Manager's consolidated financial statements are required under GAAP to include the Company, the Manager will include footnotes therein that disclose the separate corporate existence of the Company and its assets from the Manager and the Manager's Assets.

### Article III

#### Accountings, Statements and Reports

##### *Section 3.01. Manager Reports.*

(a) As soon as available and in any event within 90 days after the end of each of the first three quarters of each fiscal year of the Company, commencing June 30, 2006, and within 120 days after the end of each fiscal year of the Company, the Manager will provide to the Agent a Quarterly Manager Report (a "*Quarterly Manager Report*") substantially in the form of Exhibit A hereto with each of the items specified on such form completed as the case may be.

(b) No later than one Business Day prior to each Payment Date, the Manager will provide to the Agent a Monthly Operating Expense Report (a "*Monthly Operating Expense Report*"), in form and substance satisfactory to the Agent, which shall include the amount of Operating Expenses incurred by the Manager in respect of the Railcars owned by the Company in such immediately preceding calendar month and which are to be paid pursuant to the priorities set forth in Section 3.2 and 7.3 of the Security Agreement, as applicable.

*Section 3.02. Financial Statements; Certification as to Compliance; Notice of Default.* The Manager will deliver to the Agent, except as provided in subsection (h):

(a) within 120 days after the end of each fiscal year of the Company, a copy of the Company's Financial Statements for such fiscal year certified in a manner acceptable to the Agent by the senior financial officer of the Manager or such other person as may be acceptable to the Agent, it being understood that delivery to the Agent of the Manager's report on Form 10-K filed with the Securities and Exchange Commission shall satisfy the requirements of this Section 3.02(a);

(b) with each set of the Company's Financial Statements delivered pursuant to subsection (a) above and (d) below, a certificate of an officer of the Manager demonstrating compliance with all financial covenants or tests calculated by reference to such financial statements and containing an additional certification to the effect that a review of the activities of the Manager during the period covered by the Company's Financial Statements, and of its performance under this Agreement has been made under the supervision of the officer executing such Officer's Certificate with a view to determining whether during such period the Manager had performed and observed all of its obligations under this Agreement, and either (i) stating that based on such review no default by the Manager under this Agreement has occurred and is continuing, or (ii) if such a default has occurred and is continuing, specifying such default, the nature and status thereof and what steps, if any, the Manager is planning to do or has done to cure such default;

(c) promptly upon becoming aware of the existence of any condition or event which constitutes a Manager Event of Termination, a written notice describing its nature and period of existence and what action the Manager is taking or proposes to take with respect thereto;

(d) quarterly, unaudited versions of the Company's consolidated balance sheet, year-to-date income statement, retained earnings and cash flows within 45 days after the end of each quarter (other than the quarter at the end of each fiscal year), it being understood that delivery to the Agent of the Manager's report on Form 10-Q filed with the Securities and Exchange Commission shall satisfy the requirements of this Section 3.02(d);

(e) copies of any reports filed by the Manager with the SEC concerning the Manager;

(f) in the case of the Initial Manager, copies of any certificates required to be furnished by the Initial Manager under any credit agreement to which the Initial Manager is a party and which addresses compliance by the Initial Manager with the requirements of such credit agreement and the absence or existence of defaults thereunder; and

(g) such other information regarding the Railcars or the Leases, the Manager or the transactions contemplated hereby, as the Agent may reasonably request.

*Section 3.03. Annual Manager's Reports.* On or before 120 days after the end of each fiscal year of the Manager, the Manager shall deliver to the Company and the Agent, a report of the Manager, certified by the Chief Executive Officer or Chief Financial Officer of the Manager, to the effect that the Manager has examined certain documents and records relating to the management of the Railcars and the Leases under this Agreement and that, on the basis of such examination conducted substantially in compliance with generally accepted audit standards, nothing came to its attention which caused it to believe that the Manager has accounted for matters regarding the Railcars and the Leases, including deposits in, and requested withdrawals from, the Collection Account, otherwise than in accordance with this Agreement, except for such immaterial exceptions or errors on records that, in the opinion of such the Manager, it is not required to report.

*Section 3.04. Delivery of Accountings, Statements and Reports.* To the extent that the Manager and the Servicer are the same Person, it may, in its sole discretion and to the extent practicable, fulfill its obligations under this Article III and Article III of the Servicing Agreement with the delivery of one quarterly report, one set of financial statements, a single Officer's Certificate (executed in its capacities as both Manager and Servicer) or a single annual report, as the case may be.

## **Article IV**

### **Representations and Warranties**

*Section 4.01. Initial Manager Representations and Warranties.* The Initial Manager hereby represents and warrants to the Company, the Agent and the Lenders as follows:

(a) *Corporate Existence and Power.* The Manager has been duly organized and is validly existing and in good standing as a corporation under the laws of the state of Ohio, with all requisite power and authority to own its properties and to transact the business in which it is now engaged, and the Manager is duly qualified to do business and is in good standing in each state where the nature of its business requires it to be so qualified except where failure to so qualify would not have a Material Adverse Effect. The Manager has all requisite power and authority and has taken all action necessary to enter into this Agreement and the other Transaction Documents to which it is a party, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by the Manager of this Agreement are within the Manager's powers, have been duly authorized by all necessary action and do not contravene any applicable Law, the Manager's organizational documents or any contractual or other obligation binding on or affecting the Manager or any of its assets. The Manager has delivered to the Company and the Agent a true and correct copy of its articles of incorporation, its code of regulations and other organizational documents.

(b) *No Conflict.* The performance of the Manager's obligations under this Agreement and each other Transaction Document to which it is a party will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than as contemplated by this Agreement and other than Permitted Liens) upon any of the property or assets of the Manager pursuant to the terms of any loan agreement, mortgage, deed of trust, or other agreement or

instrument to which it is a party or by which it is bound or to which any of its property or assets is subject, nor will such action result in any violation of the provisions of any charter document of the Manager or any statute or any order, rule or regulation of any court or Governmental Authority having jurisdiction over it or any of its properties; and no consent, approval, authorization, order, registration or qualification of or with any court, or any such Governmental Authority is required for the consummation of the other transactions contemplated by this Agreement or any other Transaction Document to which it is a party except such consents, approvals and authorizations which have been obtained or such registrations or qualifications which have been made.

(c) *Due Authorization, Execution and Delivery.* Each Transaction Document to which the Manager is a party has been duly authorized, executed and delivered by the Manager and each such Transaction Document is a valid and legally binding agreement of the Manager, enforceable against the Manager in accordance with its terms, subject as to enforceability to applicable bankruptcy, insolvency, reorganization and other similar bylaws of general applicability relating to or affecting creditors' rights generally and to general principles of equity regardless of whether enforcement is sought in a court of law or equity.

(d) *Solvency.* Both before and after giving effect to the transactions contemplated by this Agreement, the Manager is Solvent.

(e) *Accuracy of Information.* All information heretofore furnished (including, but not limited to, the Company's Financial Statements) by the Manager to the Company, the Agent and the Lenders for purposes of or in connection with this Agreement, the other Transaction Documents, or any transaction contemplated hereby or thereby is, and all such information hereafter furnished by it hereunder will be, true, complete and correct in every material respect, on the date such information is stated or certified, and no such item contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading.

(f) *Tax Status.* It has (i) timely filed all federal, state and local tax returns or permitted extensions thereof in the United States and all other tax returns or permitted extensions thereof in foreign jurisdictions required to be filed and (ii) paid or made adequate provision in accordance with GAAP for the payment of all taxes, assessments and other governmental charges.

(g) *Employee Benefits.* With respect to employees that primarily work in connection with the Railcars and the Leases:

(i) Except as set forth on Schedule I, with respect to current or former employees of the Manager, the Manager does not maintain, participate in or contribute to any (A) deferred compensation or retirement plans or arrangements, (B) tax-qualified or nonqualified defined contribution or defined benefit plans or arrangements which are employee pension benefit plans (as defined in Section 3(2) of ERISA), (C) employee welfare benefit plans (as defined in Section 3(1) of ERISA), (D) phantom stock appreciation right, stock option, stock purchase or other stock based plans, or (E) any fringe benefit plans or programs. The Manager does not maintain or contribute to any employee welfare benefit plan that provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA or other applicable Law.

(ii) The employee pension benefit plans and employee welfare benefit plans (and related trusts and insurance contracts) of the Manager, which plans are described on Schedule I, have been administered in compliance with the requirements of applicable Laws, except where failure thereof would not result in a Material Adverse Effect on the Collateral. Each employee pension benefit

plan which is intended to be a “qualified plan” has received an opinion letter from the Internal Revenue Service as to the qualification under the Code of such plan.

(iii) With respect to each of the plans listed on Schedule I, the Manager has made available to the Company true and complete copies of (A) the plan documents, summary plan descriptions and summaries of material modifications and other material employee communications about such plan, (B) the opinion letter received from the Internal Revenue Service, (C) the Form 5500 Annual Report (including all schedules and other attachments) for the most recent plan year, (D) all related trust agreements, insurance contracts or other funding agreements which implement such plans and (E) all contracts relating to each such plan, including, without limitation, service provider agreements, insurance contracts, investment management agreements and record keeping agreements.

(iv) All contributions and other payments required to have been made by the Manager with respect to any plan described on Schedule I have been or will be made when due.

To the Knowledge of the Manager, no plan described on Schedule I is subject to any ongoing audit, investigation or other administrative proceeding of any Governmental Authority nor has any Action been commenced against any such plan (other than for benefits in the ordinary course), in which the adverse result thereof would result in a Material Adverse Effect on the Railcars and the Leases, or on the Company after the Closing Date.

(h) *Employment Matters.* The Manager is not party to, bound by, or negotiating in respect of any collective bargaining agreement or any other agreement with any labor union, association or other employee group in connection with its railcar leasing business, nor, to the Knowledge of the Manager, is any employee that primarily works in connection with its railcar leasing business represented by any labor union or similar association. No labor union or employee organization has been certified or recognized as the collective bargaining representative of any employee of the Manager that primarily works in connection with its railcar leasing business. To the Knowledge of the Manager, there are no formal union organizing campaigns or representation proceedings in process or formally threatened with respect to any employee of the Manager that primarily work in connection with its railcar leasing business, nor are there any existing or, to the Knowledge of the Manager, threatened at large labor strikes, work stoppages, organized slowdowns, unfair labor practice charges, or labor arbitration proceedings affecting employees of the Manager that primarily work in connection with its railcar leasing business.

(i) *Environmental Matters.* Except to the extent such matters would not have a Material Adverse Effect:

(i) to the Knowledge of the Manager, the Manager is in compliance with all applicable Environmental Laws related to the Collateral. Except for matters that have been fully resolved, the Manager has not received any written communication from any person or Governmental Authority that alleges that its operations in connection with the Railcars or the Leases are not in compliance with applicable Environmental Laws;

(ii) to the Knowledge of the Manager, the Manager has obtained all environmental, health and safety permits and governmental authorizations (collectively, the “*Environmental Permits*”) necessary for the conduct of its railcar leasing business, and all such permits are in good standing or, where applicable, a renewal application has been timely filed and is pending agency approval, and to the Knowledge of the Manager, the Manager is in compliance with all terms and conditions of the Environmental Permits; and

(iii) there is no Environmental Claim pending or, to the Knowledge of the Manager, threatened against or concerning the Railcars or the Leases.

To the Knowledge of the Manager, no release of any Hazardous Commodities has occurred on or from any of the Railcars or the Leases, which requires investigation, assessment, monitoring, remediation or cleanup under Environmental Laws.

(j) *No Default.* To the Knowledge of the Manager, there has been no default under the Purchase Agreement or any other Transaction Document.

*Section 4.02. Company Representations and Warranties.* The Company hereby represents and warrants to the Manager, the Agent and the Lenders as follows:

(a) The Company has been duly organized and is validly existing and in good standing under the laws of the jurisdiction of its organization, with all requisite power and authority to own its properties and to transact the business in which it is now engaged, and the Company is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business requires it to be so qualified except where failure to so qualify would not have a Material Adverse Effect. The Company has all requisite power and authority and has taken all action necessary to enter into this Agreement and the other Transaction Documents to which it is a party, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents are within the Company's powers, have been duly authorized by all necessary action and do not contravene any applicable Law, the Company's organizational documents or any contractual or other obligation binding on or affecting the Company or any of its assets.

(b) The performance of the Company's obligations under this Agreement and each other Transaction Document to which it is a party will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than as contemplated by this Agreement and other than Permitted Liens) upon any of the property or assets of the Company pursuant to the terms of any loan agreement, mortgage, deed of trust, or other agreement (including the Leases) or instrument to which it is a party or by which it is bound or to which any of its property or assets is subject, nor will such action result in any violation of the provisions of any charter document of the Company or any statute or any order, rule or regulation of any court or Governmental Authority having jurisdiction over it or any of its properties; and no consent, approval, authorization, order, registration or qualification of or with any court, or any such Governmental Authority is required for the consummation of the other transactions contemplated by this Agreement or any other Transaction Document to which it is a party except such consents, approvals and authorizations which have been obtained or such registrations or qualifications which have been made.

(c) Each Transaction Document to which the Company is a party has been duly authorized, executed and delivered by the Company and each such Transaction Document is a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, subject as to enforceability to applicable bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting creditors' rights generally and to general principles of equity regardless of whether enforcement is sought in a court of law or equity.

(d) The Company has delivered to the Manager a true, complete and correct copy of the Loan Agreement.

*Section 4.03. Manager Representations and Warranties with Respect to Replacement Leases and Replacement Units.* In consideration of the Manager Fee, and as a result of its conducting due diligence with respect to Replacement Leases and Replacement Units, the Manager hereby represents and warrants with respect to any Replacement Lease or Replacement Unit, as of the date any such Replacement Lease or Replacement Unit is consummated or acquired, to each of the Company, the Agent and the Lenders as follows:



(a) The updated Lease and Railcar Schedule delivered to the Agent in accordance with Section 2.03(c) contains a true, correct and complete list of all such Replacement Leases originated in accordance with Section 2.03(c), including, in each case, the name of the lessee, deal number (if applicable), type of lease (full service, modified, triple net, etc.), lease rate, number of lease payments remaining (if applicable), final payment due date under lease, number of Railcars under lease and commencement date of lease.

(c) The updated Lease and Railcar Schedule delivered to the Agent in accordance with Section 2.03(c) sets forth a true, correct and complete list of all such Replacement Units transferred to the Company on such date, including, as to each such Replacement Unit, the month and year built (and, if applicable, rebuilt), car type (by AAR equipment code), car mark and number assigned to such Replacement Unit in UMLER, if applicable, volume capacity as expressed in cubic feet if a railcar, or in horsepower if a locomotive (in each case, if known and if applicable), total (gross) weight on rail, the AAR determination of extended life (if applicable), whether such Replacement Unit is subject to a Lease (and, if so, the lease or deal number, as applicable), and, if applicable, storage location (including description, city and state).

(d) The Manager has not received any notice of the occurrence of any Casualty Loss, or any event which, with the passage of time would constitute a Casualty Loss, with respect to any such Replacement Unit.

(e) Each such Replacement Lease (i) is evidenced by a writing, (ii) constitutes the legal, valid and binding obligation of the Lessee thereunder, (iii) has not been satisfied other than in the ordinary course, subordinated, rescinded, or, adjusted, (iv) remains in full force and effect and (v) is enforceable against such Lessee in accordance with its terms (except to the extent that enforcement may be affected by applicable bankruptcy, reorganization, insolvency and other Laws affecting creditors' rights and remedies generally and by general principles of equity, regardless of whether enforcement is sought at law or in equity).

(f) Except as set forth on the updated Lease and Railcar Schedule delivered to the Agent in accordance with Section 2.03(c) (i) no Lessee under any such Replacement Lease is currently in bankruptcy under the bankruptcy laws of the United States, (ii) unless consented to by the Company, no provision of any such Replacement Lease has been waived, amended, or modified in any material respect, except by instruments or documents copies of which have been delivered to the Company and the Agent and reflected on the Lease and Railcar Schedule and, in any event, no such Replacement Lease has been waived, amended or modified since its origination to cure a payment default or delinquency, (iii) no delinquency or default by the Lessee under any such Replacement Lease has occurred and is continuing and (iv) the Lessee is in compliance with the terms of such Replacement Lease in all material respects.

(g) No Action is pending or, to the Knowledge of the Seller, has been threatened asserting the invalidity of any such Replacement Lease, or seeking any determination or ruling that might adversely and materially affect the validity or enforceability of any such Replacement Lease or the value of any such Replacement Unit.

(h) Each such Replacement Lease is "chattel paper" (as defined in Section 9-102(a)(11) of the UCC). All original, executed copies of such "chattel paper" are in the possession of the Agent.

(i) No such Replacement Lease has been originated in or is subject to the laws of any jurisdiction whose laws would make the assignment and transfer thereof pursuant to the terms hereof (or any subsequent assignment by the Company) unlawful.

(j) Each such Replacement Unit is marked with the railroad equipment number (also known as the running number) as noted on the updated Lease and Railcar Schedule delivered to the Agent in accordance with Section 2.03(c).

(k) To the Knowledge of the Seller, the Lessees have complied with all applicable Laws in respect of each such Replacement Lease in all material respects and each such Replacement Lease complies with all applicable Laws of the jurisdiction in which it was originated in all material respects.

(l) The Lessee under each such Replacement Lease is a (i) a United States common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such common carrier, or (ii) a United States corporation, limited partnership, limited liability company or other entity,

(m) Any guarantees on behalf of an applicable Lessee required at the time of origination of such Replacement Lease remain in full force and effect.

(n) The lease origination practices used by the Manager with respect to each such Replacement Lease have been legal in all material respects.

(o) Each Lessee under each such Replacement Lease has accepted the related Railcar or Railcars and after reasonable opportunity to inspect and test, has not notified the Manager of any defects therein.

(p) For those Replacement Units described on the updated Lease and Railcar Schedule delivered to the Agent in accordance with Section 2.03(c) or as having an extended life determined by AAR as a result of having been refurbished, modified or substantially rebuilt, there is in the Lease Files, and there has been filed, the proper documentation with AAR to qualify such Railcars for extended life along with updating UMLER records.

(q) No correspondence has been received by the Manager from the AAR or FRA regarding any outstanding general or specific recalls for such Replacement Units or any required modifications, nor, to the Knowledge of the Manager, do there exist any such outstanding general or specific recalls for any such Replacement Units or any required modifications.

(r) Each such Replacement Unit is in good working order and is suitable for the use for which it is presently engaged. None of the Replacement Leases or Replacement Units is subject to any restrictions with respect to the transferability thereof.

(s) Each such Replacement Lease is denominated in and provides for payment solely in United States dollars.

(t) All such Replacement Units are located in the United States other than those Replacement Units that are located in Canada or Mexico in connection with the incidental use of such Replacement Units in those countries.

(u) No Replacement Lease expressly allows the transport or storage of any Hazardous Commodities on the related Railcars.

(v) Except as set forth on the Lease and Railcar Schedule, rental payments under each Replacement Lease are billed and payable monthly.

(w) Except as set forth on the Lease and Railcar Schedule, no Lessee is an Affiliate of the Manager.

(x) There are no split schedules for any such Replacement Leases.

(y) No such Replacement Leases expressly release the Lessee from liability for all of its obligations under such Replacement Leases (including with respect to the related Railcars) in connection with any

sublease and, to the Knowledge of the Seller, no Lessee has subleased any of the related Railcars under such Replacement Lease unless such Lessee remains so liable and all other terms set forth in Section 2.01(j) of the Servicing Agreement have been satisfied.

(z) To the extent such matters are governed by the laws of the United States or any state thereof, or Canada or any province thereof, the Agent has a first priority, perfected security interest in the Replacement Units and the Replacement Leases.

(aa) The Lease File for each such Replacement Lease is complete in all respects and Manager, as Servicer will continue to maintain control of the Lease files on behalf of Company (except for any original chattel paper copies of such Replacement Leases which are in the possession of the Agent).

(bb) Each such Replacement Lease other than a full service lease contains provisions requiring the Lessee to pay all sales, use, excise, rental, property or similar taxes imposed on or with respect to the related Railcar and to assume all risk of loss, damage, or destruction of the related Railcar, and each such Replacement Lease requires the Lessee to maintain the Railcars which are subject thereto in good and workable order.

(cc) No such Replacement Lease provides for the replacement, addition or exchange of any Railcar subject to such Replacement Lease which would result in any reduction, or change the timing of, payments due, or modification of, the Lessee' s obligations under such Replacement Lease.

(dd) No such Replacement Lease is a "consumer lease", as defined in Article 2A of the UCC.

(ee) The obligation of the Lessee under each such Replacement Lease to make lease payments and other amounts is absolute and unconditional and not dependent on the future appropriation of funds, and no Lessee is entitled to invoke sovereign immunity with respect to any such Replacement Lease and its obligations thereunder.

(ff) The Manager has the right under each such Replacement Lease to exercise appropriate remedies with respect to the related Railcars without obtaining the consent of any third parties.

(gg) No selection criteria were used in connection with the acquisition by the Company of such Replacement Units and/or Replacement Leases that identified the Replacement Units or Replacement Leases as being less desirable or valuable than other comparable railcars, leases or other assets owned by the Company or the Manager.

(hh) Each such Replacement Lease either (i) provides for the return of the related Railcars upon default, or (ii) does not prohibit the Lessor from demanding return of the related Railcars and repossessing said Railcars after default under, or termination of, such Lease.

(ii) For each such Replacement Lease where the Lessee is not a railroad, each such Replacement Lease requires that in the event of a Casualty Loss that the Lessee must take one of the following actions:

(a) restore or repair the affected Railcar to good repair, condition and working order, (b) replace the Railcar with a like Railcar of the same or later model in good repair, condition and working order, or (c) pay the Lessor thereunder the "stated value" (as defined in such Lease) of such Railcar. For each such Replacement Lease where the Lessee is a railroad, (i) if damage to a Railcar occurs while on the Lessee' s railroad line, such Replacement Lease requires the Lessee to pay the Lessor the "stated value" (as defined in such Lease), and (ii) if damage to a Railcar occurs while on the lines of another railroad, Interchange Rules apply.

(jj) No Lessee under any such Replacement Lease has made a cash deposit to secure its obligation to make future lease payments.

(kk) Such Replacement Units conform, to the Knowledge of the Manager, to (i) any applicable standards or requirements of any Governmental Authority and (ii) any applicable standards required by each national and international standards organization which regulates railcars in any relevant jurisdiction.

(ll) No set-offs exist under any such Replacement Lease.

(mm) On such date, after giving effect to such Replacement Leases acquired or originated, the Company was in compliance with the Concentration limits.

*Section 4.04. Purchase or Substitution Required upon Breach of Certain Representations and Warranties.* (a) The representations, warranties and agreements of the Manager set forth in Section 4.03 with respect to each Replacement Unit and Replacement Lease shall survive so long as such Railcar or Lease remains subject to the Lien of the Security Agreement. Upon discovery by the Manager or the Company that any of such representations or warranties was incorrect as of the time made, the party making such discovery shall give prompt notice to the others, to the Lenders and to the Agent. In the event that the failure of any such representation or warranty (other than the representation and warranty set forth in Section 4.03(mm)) to be correct at the time as of which it was made materially and adversely affects the interests of the Agent or the Lenders in any Replacement Unit or Replacement Lease which is the subject of such representation or warranty, the Manager shall eliminate or cure such circumstance or condition within 45 days of having actual knowledge of, or receiving notice of, such breach, or the Manager shall take such steps as are necessary to (a) if a Replacement Lease is the subject of such representation or warranty, Purchase all of the Railcars covered by such Lease (and the related Lease relating solely to such Railcars) at the Purchase Price in accordance with this Section 4.04, (b) if a Replacement Unit is the subject of such representation or warranty, purchase such Replacement Unit at the Purchase Price in accordance with this Section 4.04 or (c) if a Replacement Unit is the subject of such representation or warranty, provide a Replacement Unit meeting all of the requirements of Section 4.03, complying with the Concentration Limits and having a Fair Market Value which, when aggregated with the Fair Market Value of all other Replacement Units then being substituted, shall be no less than the aggregate Fair Market Value of all Railcars then being replaced, so that the representations and warranties with respect to such Replacement Units or Replacement Lease, as applicable, are correct. In the event of any breach of the representation or warranty set forth in Section 4.03(mm), the obligation of the Manager to Purchase or provide Replacement Units shall apply to the extent required to cure such breach. For the avoidance of doubt, this Section 4.04 shall not apply to any Successor Manager.

(b) Any Purchase of a Railcar (and any related Lease) or other payment required of the Manager pursuant to this Section 4.04 shall be made by the Manager by deposit of the Purchase Price required by Section 4.04(c) into the Collection Account, and any substitution of a Railcar made in lieu of any such purchase shall be made, in either case, on or prior to the Payment Date next following the calendar month in which the Manager's obligation to Purchase such Railcar (and any related Lease) arose.

(c) Any Railcar (and any related Lease) to be Purchased by the Manager under this Section 4.04, shall be Purchased by the Manager at a purchase price (the "*Purchase Price*") equal to the Fair Market Value (as of the last Appraisal (as defined in the Loan Agreement) delivered to Agent) of such Railcar on the date on which the obligation to Purchase first arose, plus accrued interest (calculated at the Prime Rate) thereon from such date to the date of the Purchase by the Manager. All Purchases shall be accomplished at the times required in Section 4.04(b).

(d) Upon the substitution of any Replacement Unit, the Manager hereby agrees that such Replacement Unit will be subject to all of the terms and conditions of this Agreement and the other Transaction Documents just as if such Replacement Unit has been one of the original Railcars acquired on the Closing Date.

## **Article V**

### **Manager Covenants**

*Section 5.01. Corporate Existence; Status as Manager; Merger.* (a) The Initial Manager shall keep in full effect its existence and good standing as

a corporation in its state of incorporation and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to enable the Initial Manager to perform its duties under this Agreement, except where the failure to so qualify would not have a Material Adverse Effect on the Initial Manager or its ability to perform its duties hereunder; *provided, however*, that the Initial Manager may reincorporate in another state, if to do so would be in the best interest of the Initial Manager and would not have a Material Adverse Effect upon the Company, or the Agent and the Initial Manager has complied with the requirements set forth in Section 5.01(b).

(b) The Initial Manager shall not consolidate with or merge into any other Person or convey, transfer or lease substantially all of its assets as an entirety to any Person, unless (i) the entity formed by such consolidation or into which the Initial Manager has merged or the Person which acquires by conveyance, transfer or lease substantially all the assets of the Initial Manager as an entirety, executes and delivers to the Company and the Agent an agreement, in form and substance reasonably satisfactory to the Company and the Required Lenders, which contains an assumption by such successor entity of the due and punctual performance and observance of each covenant and condition to be performed or observed by the Initial Manager under this Agreement, (ii) such Person at the time of the execution of such agreement has at least the same Tangible Net Worth as the Initial Manager at the time of such consolidation, merger or transfer, but in any event a Tangible Net Worth of at least \$75,000,000 (iii) after giving effect to such merger or consolidation, no Manager Event of Termination shall have occurred and be continuing, (iv) such Person shall meet the criteria required of and applicable to a Successor Manager set forth in Section 6.01(b) and (v) the Manager shall have received the prior written consent of the Agent and the Required Lenders.

*Section 5.02. The Manager Not to Resign; No Assignment.* (a) The Manager shall not resign from the duties and obligations hereby imposed on it except (i) upon a determination by its Board of Directors that by reason of a change in applicable legal requirements the continued performance by the Manager of its duties under this Agreement would cause it to be in violation of such legal requirements, said determination to be evidenced by a resolution of its Board of Directors to such effect accompanied by an Opinion of Counsel reasonably satisfactory to the Agent, to such effect, (ii) upon appointment of a Successor Manager by the Company, with the approval of the Agent and the Required Lenders, and (iii) the entering into of amendments to this Agreement to effect such succession in form reasonably acceptable to the Company, the Agent and the Required Lenders.

(b) The Manager may not assign this Agreement or delegate any of its rights, powers, duties or obligations hereunder; *provided, however*, that the Manager may submanage its duties and obligations hereunder in accordance with Section 2.02(c) and assign this Agreement in connection with a consolidation, merger, conveyance, transfer or lease made in compliance with Section 5.01(b).

(c) Except as provided in Sections 5.02(a) and 6.01, the duties and obligations of the Manager under this Agreement shall continue until this Agreement shall have been terminated as provided in Section 6.01, and shall survive the exercise by the Company, the Agent or the Lenders of any right or remedy under this Agreement, or the enforcement by the Company, the Agent or the Lenders of any provision of the Loan Agreement, the other Loan Documents or this Agreement.

*Section 5.03. Car Mark Agreement.* The Manager shall abide by the terms of the Car Mark Agreement and shall provide the benefits thereof to the Company.

*Section 5.04. Manager Indemnification.* The Manager shall indemnify and hold harmless the Company, the Agent, the Lenders, and each of their respective Affiliates and the directors, officers, employees and agents of each thereof (the "*Indemnified Parties*"), from and against:

(a) any breach of or any inaccuracy in any representation or warranty (other than any representation or warranty contained in Section 4.03 which has been fully remedied in accordance with Section 4.04) made by the Manager in this Agreement or in any certificate delivered pursuant thereto;

(b) any breach of or failure by the Manager to perform any covenant or obligation of the Manager set out or contemplated in this Agreement;

(c) the negligence, recklessness or willful misconduct of the Manager;

(d) any dispute or claim of any third party related to or in connection with the existence of more than one originally executed counterpart of a Lease which constitutes “chattel paper” under Article 9 of the UCC;

(e) any dispute, counterclaim, defense, loss, liability, expense, damage or injury suffered or sustained by reason of any acts, omissions or alleged acts or omissions arising out of any act or failure to act on the part of the Manager with respect to its obligations under this Agreement, including but not limited to any judgment, award, settlement, reasonable attorneys’ fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim;

(f) any failure by the Manager to comply with any applicable Law with respect to any Railcar or Lease;

(g) the commingling by the Manager of Equipment Lease Proceeds at any time with any other funds;

(h) any inability to obtain any judgment in or utilize the court or other adjudication system of, any jurisdiction in which a Equipment Lessee may be located as a result of the failure of the Manager to qualify to do business or file any notice of business activity report or any similar report;

*provided, however,* that the Manager shall not indemnify the Indemnified Parties if such acts, omissions or alleged acts or omissions constitute fraud, gross negligence, or willful misconduct by such Indemnified Party; and *provided, further,* that the Manager shall not indemnify the Indemnified Parties for any liability, cost or expense of the Collateral with respect to any federal, state or local income or franchise taxes (or any interest or penalties with respect thereto) required to be paid by the Agent or the Lenders in connection herewith to any taxing authority; and *provided, further,* that in the event that a Successor Manager shall succeed to the duties of the Manager, the provisions of this Section 5.04 shall not apply to such Successor Manager unless expressly agreed to thereby. The provisions of this Section 5.04 shall survive any expiration or termination of this Agreement. Any indemnification owed to the Indemnified Parties under this Section 5.04 shall be due and payable within 30 days of the applicable Indemnified Party’ s demand therefor.

*Section 5.05. Expense Reimbursement.* The Manager shall not request reimbursement for any expenses incurred on its behalf by an Affiliate of the Manager unless such expenses are no more than the arm’ s-length, fair-market-value costs of the services provided by such Affiliate.

*Section 5.06. Agreements with respect to the Car Mark Agreement.* The Manager hereby agrees (i) to comply with the representations, warranties, covenants and agreements of the “Buyer” under the Car Mark Agreement and (ii) not to consent or agree to any amendment, restatement, supplement or other modification to the Car Mark Agreement without the prior written consent of the Agent.

## Article VI

### Manager Termination

*Section 6.01. Manager Events of Termination.* (a) If any of the following acts or occurrences (each, a “*Manager Event of Termination*”) shall occur and be continuing:

(i) any failure by the Manager to submit a Quarterly Manager Report pursuant to Section 3.01 that continues unremedied for a period of two Business Days or a Monthly Operating Expense Report that continues unremedied for a period of five Business Days, in each case, after the earliest of the date upon which (A) the Agent provides written notification to the Manager of such failure, or (B) the date on which an Responsible Officer obtains actual knowledge of such failure; or

(ii) any representation or warranty made by the Manager in this Agreement (other than any representation or warranty contained in Section 4.03 which has been fully remedied in accordance with Section 4.04), any other Transaction Document to which it is a party or in any certificate delivered by the Manager hereunder proves to have been untrue or incorrect in any material respect when made and such untruth or incorrectness shall continue to be material and unremedied; *provided, however*, solely if such untruth or incorrectness is capable of being remedied, no such untruth or incorrectness shall constitute cause for termination hereunder for a period of 30 days after the earlier of (A) the date on which an Responsible Officer obtains actual knowledge of such failure or (B) the Manager's receipt of notice from the Company or the Agent so long as the Manager is diligently proceeding to remedy such untruth or incorrectness and shall in fact remedy such untruth or incorrectness within such period; *provided, however*, such untrue or incorrect representation or warranty shall be deemed to be remediable or remedied only after all adverse consequences thereof, if any, can be and have been remedied as applicable; or

(iii) any failure on the part of the Manager duly to observe or to perform in any material respect any covenant or agreement of the Manager set forth in this Agreement or any other Transaction Document to which it is a party (including if the Manager is also acting as the Servicer, of its duties as the Servicer), which failure, if such failure is curable, continues unremedied for a period of 30 days after the earlier to occur of (A) the date on which written notice of such failure or breach, requiring the situation giving rise to such failure or breach to be remedied, shall have been given to the Manager by the Agent or the Company; or (B) the date on which an Responsible Officer of the Manager obtains actual knowledge of such failure; or

(iv) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Manager in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or (B) a decree or order adjudging the Manager bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Manager under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Manager or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any of the foregoing unstayed and in effect for a period of 45 consecutive days; or

(v) the commencement by the Manager of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Manager in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Manager or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Manager in furtherance of any such action; or

(vi) any assignment by the Manager to a delegate of its duties or rights hereunder, except as specifically permitted hereunder, or any attempt to make such an assignment; or

(vii) a final nonappealable judgment of a court of competent jurisdiction for more than \$1,000,000 shall be entered against the Manager and shall not be stayed, vacated, bonded, paid or discharged within 45 days; or

(viii) the Manager shall cease to be engaged in the railcar management or maintenance business; or

(ix) the failure of the Manager to maintain a ratio of long term debt minus the non-recourse portion of long term debt to Tangible Net Worth of not more than 1.25 to 1; or

(x) the Manager shall fail to pay, when and as the same shall become due and payable (after giving effect to any applicable grace period), any principal or interest, regardless of amount, due in respect of any indebtedness of the Manager in a principal amount in excess of \$5,000,000 or any event shall occur with respect to any such indebtedness, the effect of which is to cause, or allow the holder thereof to cause, such indebtedness to become due before its stated maturity; or

(xi) so long as the Initial Manager is the Manager, the occurrence of a Change of Control; or

(xii) so long as the Manager or any Affiliate thereof is acting as Servicer, the occurrence of a Servicer Event of Termination pursuant to Section 6.01 of the Servicing Agreement;

then, and in each and every case, so long as a Manager Event of Termination shall not have been remedied within any applicable period set forth above, the Agent may, and shall at the direction of the Required Lenders, by notice (the "*Manager Termination Notice*") then given in writing to the Manager, terminate all, but not less than all, of the rights (other than any rights to receive, subject to the priority of payments set forth in Sections 3.2 and 7.3 of the Security Agreement, as applicable, all amounts owed to the Manager, including but not limited to the Manager Fee and any Operating Expenses in accordance with Section 2.06, accrued up to the effective date specified by the Manager Termination Notice) and obligations of the Manager under this Agreement, which termination shall be effective as of the date of such Manager Termination Notice or such later date as such Manager Termination Notice may specify.

(b) The Manager may not be terminated in whole or in part, unless (i) a successor Manager (the "*Successor Manager*") has been appointed by the Agent (acting at the direction of the Required Lenders) and (ii) such Successor Manager has accepted such appointment. Any Successor Manager shall be located in the United States and be acceptable to the Agent. Any Successor Manager, however appointed, shall execute and deliver to the Agent, the Company and to the predecessor Manager an instrument accepting such appointment, including customary confidentiality provisions in favor of the predecessor Manager and Company, and thereupon such Successor Manager, without further act, shall become vested with all the rights, powers, duties and trusts of the predecessor Manager hereunder with like effect as if originally named the Manager herein.

(c) On and after the time the Manager receives a Manager Termination Notice pursuant to this Section 6.01, all authority and power of the Manager under this Agreement shall pass to the Successor Manager appointed pursuant to Section 6.02, and, without limitation, such Successor Manager is hereby authorized and empowered to execute and deliver, as Manager and on behalf of the Company, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Manager Termination Notice.

(d) The terminated Manager shall cooperate with the Agent and the Successor Manager in effecting the termination of the responsibilities and rights of the terminated Manager hereunder and the transition of the management to the Successor Manager, including, without limitation, (i) by transferring, at its own expense, its electronic records relating to the Railcars to the Successor Manager in such electronic form as the Successor Manager may reasonably request, (ii) by transferring the current Lease and Railcar Schedule and all other records, correspondence and documents relating to the Leases or Railcars that it may possess to the Successor Manager in the manner and at such times as the



Successor Manager shall reasonably request and (iii) by responding to all reasonable requests of the Successor Manager.

*Section 6.02. Appointment of Successor Manager.* (a) Subject to Section 6.01, on and after the time the Manager receives a Manager Termination Notice pursuant to Section 6.01 hereof and a Successor Manager shall be appointed by the Agent acting at the direction of the Required Lenders), such Successor Manager shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Manager by the terms and provisions hereof; *provided, however,* that any Successor Manager shall not (i) be liable for any acts or omissions of the outgoing Manager or for any breach by the outgoing Manager of any of its representations and warranties contained herein or in any related document or agreement, (ii) be responsible to perform any duties under Section 2.03(u) in respect of the United States Assignment of Claims Act, Section 2.03(v). Subject to the consent of the Required Lenders, the Successor Manager may subcontract with another firm to act as submanager so long as the Successor Manager remains fully responsible and accountable for performance of all obligations of the Manager.

(b) The Manager, the Agent and such Successor Manager shall take such action, consistent with this Agreement, as shall be necessary to effectuate any such succession. The Successor Manager and the Agent shall be reimbursed for their respective expenses, if any, incurred in connection with the assumption of responsibilities of the Successor Manager as provided for in Sections 3.2 and 7.3 of the Security Agreement.

(c) If the Manager is also acting as Servicer under the Servicing Agreement, upon any resignation of the Servicer, the Manager will also be required to resign as Manager. The Manager and Servicer shall at all times be the same Person.

*Section 6.03. Effects of Termination of Manager.* (a) After the delivery of a Manager Termination Notice and appointment of a Successor Manager, the former Manager shall have no further obligations with respect to the management of the Railcars or the performance of maintenance, insurance, remarketing or any other services with regard to the Railcars, and the Successor Manager shall have all of such obligations except as otherwise set forth herein. The former Manager's indemnification obligations pursuant to Section 5.04 will survive the termination of the Manager hereunder but will not extend to any acts or omissions of a Successor Manager.

(b) A Manager Event of Termination shall not affect the rights and duties of the parties hereunder (including, but not limited to, the obligations and indemnities of the Manager pursuant to Section 5.04) other than those relating to the management, insuring and remarketing of the Railcars.

(c) The predecessor Manager shall defend, indemnify and hold the Successor Manager and any officers, directors, employees or agents of the Successor Manager harmless against any and all claims, losses, penalties, fines, forfeitures, legal fees and related costs, judgments and any other costs, fees, and expenses that the Successor Manager may sustain in connection with the claims asserted at any time by third parties against the Successor Manager which result from (i) any willful or negligent act taken or omission by the predecessor Manager or (ii) a breach by the predecessor Manager of an express obligation of the Manager hereunder. The indemnification provided by this Section 6.03(c) shall survive the termination of this Agreement.

(d) The Successor Manager will not be responsible for delays attributable to the predecessor Manager's failure to deliver information, defects in the information supplied by the terminated Manager or other circumstances beyond the control of the Successor Manager.

The Successor Manager shall have no responsibility and shall not be in default hereunder nor incur any liability for any failure, error, malfunction or any delay in carrying out any of its duties under this Agreement if any such failure or delay results from the Successor Manager acting reasonably and in accordance with information prepared or supplied by a Person other than the Successor Manager or the failure of any such Person to prepare or provide such information. The Successor Manager shall have no responsibility, shall not be in default and shall incur no liability (i) for any act or failure to act by any third party, including the terminated Manager, or for any inaccuracy or omission

in a notice or communication received by the Successor Manager from any third party or (ii) which is due to or results from the invalidity or unenforceability of any Lease under applicable law or the breach or the inaccuracy of any representation or warranty made by the terminated Manager. The Successor Manager shall not be liable for any acts or omissions of the Manager occurring prior to such Manager transfer or for any breach by the Manager of any of its representations and warranties contained herein or in any related document or agreement.

Notwithstanding anything contained in this Agreement to the contrary, the Successor Manager is authorized to accept and rely on all of the accounting, records (including computer records) and work of the terminated Manager relating to the Leases and the Railcars (collectively, the *Predecessor Manager Work Product*) without any audit or other examination thereof, and the Successor Manager shall have no duty, responsibility, obligation or liability for the acts and omissions of the prior Manager. If any error, inaccuracy, omission or incorrect or non-standard practice or procedure (collectively, the *Errors*) exist in any Predecessor Manager Work Product and such Errors make it materially more difficult to service or should cause or materially contribute to the Successor Manager making or continuing any Errors (collectively, the *Continued Errors*), the Successor Manager shall have no duty, responsibility, obligation or liability for such Continued Errors; *provided, however*, that the Successor Manager agrees to use its best efforts, consistent with the Manager Standard, to prevent further Continued Errors. In the event that the Successor Manager becomes aware of Errors or Continued Errors, the Successor Manager shall, with the prior consent of the Agent, use its best efforts, consistent with the Manager Standard, to reconstruct and reconcile such data as is commercially reasonable to correct such Errors and Continued Errors and to prevent future Continued Errors. The Successor Manager shall be entitled to recover its costs thereby expended in accordance with the Section 3.2 and 7.3, as applicable, of the Security Agreement.

*Section 6.04. Rights Cumulative.* All rights and remedies from time to time enforced upon or reserved to the Company, the Agent or the Lenders or to any or all of the foregoing are cumulative, and none is intended to be exclusive of another. No delay or omission in insisting upon the strict observance or performance of any provision of this Agreement, or in exercising any right or remedy, shall be construed as a waiver or relinquishment of such provision, nor shall it impair such right or remedy. Every right and remedy of the Company, the Agent or the Lenders may be exercised from time to time and as often as deemed expedient.

## Article VII

### Miscellaneous Provisions

*Section 7.01. Termination of Agreement.* (a) Except where otherwise expressly noted herein, the respective duties and obligations of the Manager, the Company, and the Agent created by this Agreement shall terminate upon the termination of the Loan Agreement and the Security Agreement in accordance with their terms.

(b) This Agreement shall not be automatically terminated as a result of an Event of Default under the Loan Agreement or any action taken by the Agent or the Lenders thereafter with respect thereto, and any liquidation or preservation of any property held as contemplated in the Loan Agreement or the other Loan Documents by the Agent and the Lenders thereafter shall be subject to the rights of the Manager to manage the Railcars as provided hereunder. In the event of any sale of Collateral to a third party following an Event of Default, however, this Agreement shall not be deemed assigned to such third party.

*Section 7.02. Amendments.* This Agreement may be amended from time to time by the parties hereto with the prior written consent of the Agent and the Required Lenders for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Agent or the Lenders hereunder.

*Section 7.03. Governing Law.* **THIS AGREEMENT, INCLUDING THE VALIDITY HEREOF, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW JERSEY.**

*Section 7.04. Notices.* All demands, notices and communications hereunder shall be in writing and shall be delivered or mailed by registered or certified United States mail, postage prepaid, or by telephonic facsimile transmission and overnight delivery service, postage prepaid, and addressed, in each case as follows: (a) if to the Company, at 480 W. Dussel Drive, Suite S, Maumee, Ohio 43537, Attention: Betsy Hall, Esq. (facsimile: (419) 491-6695) (b) if to the Manager, at The Andersons Inc., 480 W. Dussel Drive, Maumee, Ohio 43537, Attention: Betsy Hall, Esq. (facsimile: (419) 491-6695); (c) if to the Agent or the Lenders, at their address for notices specified in the Loan Agreement. Any of the Persons in subclauses (a) through (c) above may change the address for notices hereunder by giving notice of such change to other Persons. All notices and demands shall be deemed to have been given either at the time of the delivery thereof to any officer of the Person entitled to receive such notices and demands at the address of such Person for notices hereunder.

*Section 7.05. Severability of Provisions.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected.

*Section 7.06. Inspection and Examination Rights.* The Manager agrees that, on reasonable prior notice, it will permit any representative of the Agent or the Company, during the Manager's normal business hours, to examine all the books of account, records, reports and other papers of the Manager relating to the Railcars and the Leases, to make copies and extracts therefrom, to cause such books to be examined by independent certified public accountants selected by the Agent, or the Company, as the case may be, and to discuss its affairs, finances and accounts relating to the Railcars and the Leases with its officers, employees and independent public accountants (and by this provision the Manager hereby authorizes said accountants to discuss with such representatives such affairs, finances and accounts), all at such reasonable times and as often as may be reasonably requested. Any expense incident to the exercise by Agent or the Company of any right under this Section 7.06 shall be borne by the Initial Manager, except that only the first examination in any year by the Agent will be at the Initial Manager's expense (unless there has occurred and is continuing a Manager Event of Termination, a Servicer Event of Termination (if the Manager is also the Servicer) (or any event which, with the giving of notice or passage of time, would constitute any such event), in each of which cases each such examination shall be at the expense of the Manager), or, if a Successor Manager other than an Affiliate of the Initial Manager is then acting as Manager, such expense shall be borne by the party exercising such right of inspection; *provided, however*, that in no event shall the Agent, or the Company be entitled to any expenses hereunder for which it has been previously reimbursed pursuant to Section 7.06 of the Servicing Agreement.

*Section 7.07. Binding Effect.* All provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

*Section 7.08. Article Headings.* The article headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

*Section 7.09. Legal Holidays.* In the case where the date on which any action required to be taken, document required to be delivered or payment required to be made is not a Business Day, such action, delivery or payment need not be made on such date, but may be made on the next succeeding Business Day.

*Section 7.10. Assignment for Security.* The Manager understands that the Company will assign to, and grant to the Agent and the Lenders under the Security Agreement a security interest in, all of its right, title and interest to this Agreement. The Manager consents to such assignment and grant and further agrees that all representations, warranties, covenants, and agreements of the Manager made herein shall also be for the benefit of and inure to the Agent and the Lenders.

*Section 7.11. No Bankruptcy Petition.* The Manager hereby covenants and agrees for the benefit of the Agent and the Lenders, prior to the date which is one year and one day after the payment in full of all obligations of the

Company, it will not institute against the Company, or join any other Person in instituting against the Company, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings under the laws of the United States, any state of the United States or any foreign jurisdiction. This Section 7.11 shall survive the termination of this Agreement.

*Section 7.13. Third-Party Beneficiaries.* The Agent, the Lenders and their successors and assigns shall be third-party beneficiaries to the provisions of this Agreement, and shall be entitled to rely upon and directly enforce such provisions of this Agreement. Nothing in this Agreement, express or implied, shall give to any Person, other than the Agent, the parties hereto and their successors hereunder and permitted assigns, any benefit or any legal or equitable right, remedy or claim under this Agreement.

*Section 7.14. Entire Agreement.* This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. All prior agreements, understandings, representations, warranties and negotiations, if any, are merged into this Agreement, and this Agreement is the entire agreement between the parties hereto relating to the subject matter hereto.

*Section 7.15. Survival of Representations and Warranties.* All representations and warranties made herein or in connection herewith shall survive the execution and delivery of this Agreement.

*Section 7.16. Survival of Indemnities.* All the indemnity and expense provisions set forth in this Agreement shall survive the execution and delivery of this Agreement.

In Witness Whereof, the Company and the Manager have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the date and year first above written.

THE ANDERSONS RAIL OPERATING I LLC

By: /s/ Richard R. George  
Name: Richard R. George  
Title: manager

THE ANDERSONS, INC.

By: /s/ Gary Smith  
Name: Gary Smith  
Title: Vice President, Finance & Treasurer

## **Schedule I**

### **Manager Employee Benefits**

The Andersons, Inc. Defined Benefit Pension Plan  
The Andersons, Inc. Retirement Savings Investment Plan  
The Andersons, Inc. Employee Share Purchase Plan  
The Andersons, Inc. Deferred Compensation Plan  
The Andersons, Inc. Supplemental Retirement Plan

## **Exhibit A**

### **Form of Quarterly Manager Report**

THE ANDERSONS RAIL OPERATING I LLC,

as the Company

and

THE ANDERSONS, INC.,

as the Servicer

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Servicing Agreement

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Dated as of December 29, 2005

Servicing Agreement, dated as of December 29, 2005 (this "*Agreement*"), by and between The Andersons Rail Operating I LLC a Delaware limited liability company, (the "*Company*"), and The Andersons, Inc., an Ohio corporation, as the servicer (the "*Servicer*"), for the benefit of the Agent and the Lenders (as defined herein).

**Preliminary Statement**

The Company is entering into a Term Loan Agreement, dated as of December 29, 2005 (as amended, supplemented or otherwise modified from time to time, the "*Loan Agreement*"), among the Company, the financial institutions or entities from time to time parties thereto (the "*Lenders*") and Siemens Financial Services, Inc, as agent for the Lenders (the "*Agent*"). The obligations of the Company under the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement) will be secured by the Collateral described in the Security Agreement, dated as of December 29, 2005 (the "*Security Agreement*"), made by the Company in favor of the Agent and the Lenders.

It is a condition precedent to the Loan Agreement that, on or prior to the Closing Date (as defined in the Loan Agreement), the Company enter into this Agreement with the Servicer to provide for the servicing of the Leases (as defined herein). In order to further secure the Company's obligations under the Loan Agreement and the other Loan Documents (as defined herein), the Company is granting to Agent and the Lenders a security interest in, among other things, the Company's rights derived under this Agreement, and the Servicer agrees that all covenants and agreements made by the Servicer herein with respect to the Leases and Railcars (as defined herein) shall also be for the benefit and security of the Agent and the Lenders. For its services hereunder, the Servicer will receive the Servicer Fee (as defined herein) as set forth in Section 2.09.

On the date hereof, the Company and the Servicer are entering into a Management Agreement, dated as of December 29, 2005, (the "*Management Agreement*"), for the purpose of engaging the Servicer to also act as Manager, on behalf of the Company, to cause the Company's Railcars to be maintained, insured and marketed in accordance with industry standards, perform all of the Company's obligations under the Leases with its Equipment Lessees and other agreements and perform other functions, in each case, as set forth therein.

The Servicer is engaged in the business of owning, leasing, managing and servicing railcars for itself and for others, and the Company desires to retain the Servicer, on the terms and conditions set forth in this Agreement, to

receive and apply as required under the Loan Agreement all collections received with respect to the Leases and the Railcars on behalf of the Company.

## Article I

### Definitions

*Section 1.01. Defined Terms.* Subject to Section 1.02 and except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Agreement, and the definitions of such terms are equally applicable both to the singular and plural forms of such terms and to the masculine, feminine and neuter genders of such terms:

“*Action*” shall mean any action, claim, suit, litigation, arbitration or governmental investigation.

“*Affiliate*” shall have the meaning set forth in the Loan Agreement.

“*Agent*” shall have the meaning set forth in the preamble of this Agreement.

“*Agreement*” shall mean this Servicing Agreement as amended, restated or supplemented from time to time as permitted hereby.

“*Authorized Officer*” means any one of the President, the Chief Financial Officer, the Treasurer, the Assistant Treasurer, the Secretary or the Assistant Secretary.

“*Board of Directors*” shall mean the Board of Directors of the Servicer or any duly authorized committee of such Board.

“*Business Day*” shall have the meaning set forth in the Loan Agreement.

“*Change of Control*” shall have the meaning set forth in the Management Agreement.

“*Closing Date*” shall have the meaning set forth in the Loan Agreement.

“*Collateral*” shall have the meaning set forth in the Security Agreement.

“*Collection Account*” shall have the meaning set forth in the Security Agreement.

“*Company*” shall have the meaning set forth in the preamble of this Agreement.

“*Concentration Limits*” shall have the meaning set forth in the Loan Agreement.

“*Continued Errors*” shall have the meaning set forth in Section 6.05(e).

“*Defaulted Lease*” shall mean any Lease that comes into and continues in default for 90 days.

“*Determination Date*” shall mean the date that occurs twenty days prior to the applicable Payment Date.

“*Environmental Law*” shall have the meaning set forth in the Loan Agreement.

“*Equipment Lease Proceeds*” shall have the meaning set forth in the Loan Agreement.

“*Equipment Lessee*” shall have the meaning set forth in the Loan Agreement.

“ERISA” shall have the meaning set forth in the Loan Agreement.

“Errors” shall have the meaning set forth in Section 6.05(e).

“Event of Default” shall have the meaning set forth in the Loan Agreement.

“Existing Leases” shall have the meaning set forth in the Loan Agreement.

“Fair Market Value” shall have the meaning set forth in the Security Agreement.

“GAAP” shall have the meaning set forth in the Loan Agreement.

“Governmental Authority” shall have the meaning set forth in the Loan Agreement.

“Hazardous Commodities” shall have the meaning set forth in the Loan Agreement.

“Indemnified Parties” shall have the meaning set forth in Section 5.03.

“Initial Manager” shall have the meaning set forth in the Management Agreement.

“Initial Servicer” shall mean The Andersons.

“Knowledge of the Servicer” shall mean the actual knowledge, after due inquiry, of the officers of the Servicer or its Affiliate responsible for matters relating to the Servicer’s performance of its obligations hereunder.

“Law” shall mean any law, statute, ordinance, rule, regulation, judgment, injunction, order, decree or code adopted, enacted or promulgated by any Governmental Authority or the requirements of the AAR, any self-regulatory agency or any entity of a nature similar to that of any of the foregoing.

“Lease” shall mean an “Equipment Lease” as defined in the Loan Agreement.

“Lease File” shall mean, with respect to each Lease, (i) a certified copy of the Lease, (ii) each executed original counterpart of the Lease that constitutes “chattel paper” or an “instrument” for purposes of Sections 9-102(a)(11) and (47) of the Uniform Commercial Code, (iii) a guaranty, if any, (iv) documents evidencing or related to any insurance policy, (v) copies of all statements, memorandums, UCC financing statements and other documents filed with respect to the Lease in accordance with the filing requirements of this Agreement, (vi) copies of any additional Lease documents evidencing any waivers, amendments or modifications of the Lease by the Servicer in accordance with the terms of this Agreement, and (vii) any other documents relating thereto.

“Liens” shall have the meaning set forth in the Loan Agreement.

“Lenders” shall have the meaning set forth in the preamble of this Agreement.

“Loan Agreement” shall have the meaning set forth in the preamble of this Agreement.

“Lockbox Account” shall have the meaning set forth in the Loan Agreement.

“Lockbox Agreement” shall have the meaning set forth in the Loan Agreement.

“Lockbox Bank” shall mean Fifth Third Bank or any other bank or financial institution reasonably acceptable to the Agent.

*“Manager”* shall have the meaning set forth in the Management Agreement.

*“Management Agreement”* shall have the meaning set forth in the preamble of this Agreement.

*“Material Adverse Effect”* shall have the meaning set forth in the Loan Agreement.

*“Quarterly Servicer Report”* shall have the meaning set forth in Section 3.01.

*“Note”* shall have the meaning set forth in the Loan Agreement.

*“Officer’s Certificate”* shall mean a certificate signed by the Chairman of the Board, the Vice Chairman of the Board, the President, a Vice President, the Treasurer or the Secretary of the Servicer.

*“Opinion of Counsel”* shall have the meaning set forth in the Management Agreement.

*“Permitted Liens”* shall have the meaning set forth in the Loan Agreement.

*“Person”* shall have the meaning set forth in the Loan Agreement.

*“Predecessor Servicer Work Product”* shall have the meaning set forth in Section 6.03(e).

*“Purchase”* shall have the meaning set forth in the Management Agreement.

*“Purchase Price”* shall have the meaning set forth in the Management Agreement.

*“Railcar”* or *“Railcars”* shall mean “Equipment” or “Items of Equipment” as defined in the Security Agreement.

*“Required Lenders”* shall have the meaning set forth in the Loan Agreement.

*“Rent”* as the context may require, with respect to all Leases or with respect to each Lease, 100% of the periodic lease payments for the Railcars leased thereunder.

*“Sale Agreement”* shall have the meaning set forth in the Loan Agreement.

*“Security Agreement”* shall have the meaning set forth in the preamble of this Agreement.

*“Seller”* shall have the meaning set forth in the Loan Agreement.

*“Separate Person”* shall have the meaning set forth in Section 2.11.

*“Servicer”* shall have the meaning set forth in the preamble of this Agreement, or any Successor Servicer appointed pursuant to Section 6.01.

*“Servicer Event of Termination”* shall mean each of the occurrences or circumstances enumerated in Section 6.01.

*“Servicer Fee”* shall mean the amounts due to the Servicer pursuant to Section 2.09.

*“Servicer Termination Notice”* shall have the meaning set forth in Section 6.01(a).

*“Servicing Standard”* shall have the meaning set forth in Section 2.01(c).

*“Solvent”* shall have the meaning set forth in the Loan Agreement.



“*Successor Servicer*” shall have the meaning set forth in Section 6.01(b).

“*Tangible Net Worth*” shall have the meaning set forth in the Management Agreement.

“*The Andersons*” shall mean The Andersons, Inc., an Ohio corporation, and its permitted successors and assigns.

“*Transaction Documents*” shall have the meaning set forth in the Loan Agreement.

“*UCC*” shall have the meaning set forth in the Management Agreement.

*Section 1.02. Terms Defined in the Loan Agreement, Sale Agreement or Management Agreement.* For the purposes of this Agreement, capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Loan Agreement or, if not defined therein, in the Sale Agreement or the Management Agreement, as applicable.

## Article II

### Administration and Servicing of Lease Receivables

*Section 2.01. The Servicer to Act as Servicer; Standard of Care; Covenants Concerning Leases.* (a) The Company hereby retains The Andersons as Servicer hereunder, as an independent contractor for the purpose of undertaking and performing the services described in this Agreement, and The Andersons hereby agrees to act as Servicer on the terms and conditions set forth herein.

(b) The Servicer shall administer the Leases, and maintain and administer the Lease Files, on behalf of the Company in accordance with the terms of this Agreement and, subject to the Loan Documents, the Servicer shall have the requisite power and authority to do any and all things in connection with such servicing and administration which it may deem necessary or desirable in accordance with the standard of care set forth below; *provided, however*, that such actions do not infringe upon the duties of the Manager as set forth in the Management Agreement. Without limiting the generality of the foregoing, subject to Sections 2.01(f) and 2.01(l), the Servicer is hereby authorized and empowered by the Company to execute and deliver, on behalf of the Company, any and all consents, instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments, with respect to the Leases (except any consent to be given by the Company pursuant to this Section 2.01).

(c) All of the functions, services, duties and obligations of the Servicer under this Agreement shall be performed by the Servicer at a level of care and diligence consistent with customary commercial practices as would be used by a prudent Person in the railcar leasing and servicing industry and the level of care and diligence utilized by the Servicer in its business and in the servicing of the Servicer’s own fleet of railcars, if any, in order for the Company to be able to perform its obligations under the Leases and the other applicable Transaction Documents (the “*Servicing Standard*”). The Servicer agrees that servicing of the Leases shall be carried out in accordance with the Servicing Standard.

(d) Promptly after the execution and delivery of this Agreement, the Servicer shall deliver to the Company and the Agent the titles for two employees of the Servicer (which employees shall have experience and expertise in the railcar leasing industry sufficient to perform the duties and obligations of the Servicer under this Agreement in accordance with the Servicing Standard) which shall be involved in, or responsible for, the administration and servicing of the Leases, which list shall from time to time be updated by the Servicer, upon reasonable notice to, and upon the written consent of an Authorized Officer of the Company.

(e) The parties hereto acknowledge that the Company shall retain title to, and ownership and exclusive control of, the Collateral (subject to the Lien of the Security Agreement). Except as expressly permitted hereunder, the Servicer will not acquire any title to, security interest in, or other rights of any kind in or to the Railcars and the Leases. The Servicer agrees not to file any Lien, exercise any right of setoff against, or attach or assert any claim in, any of the

Leases and the Railcars, unless authorized pursuant to a judicial or administrative proceeding or a court order or on behalf of the Company or the Agent in accordance with this Agreement or the Loan Agreement.

(f) In performing its obligations hereunder, the Servicer may, acting in the name of the Company and without the necessity of obtaining the prior consent of the Company or the Agent, enter into and grant modifications, waivers and amendments to the terms of any Lease as it may deem reasonably necessary or advisable to maximize Equipment Lease Proceeds, except for modifications, waivers or amendments that (i) are inconsistent with the Servicing Standard, (ii) after giving effect thereto, would cause such Lease to cease to comply with any of the representations and warranties of the Seller in Section \_\_\_ of the Sale Agreement or any of the representations and warranties of the Manager in Section 4.03 of the Management Agreement, as applicable (iii) after giving effect thereto, would permit the Equipment Lessee thereunder to take action with respect to the Railcars which are subject to such Lease which would cause the Company to be in default of its obligations under any of the Transaction Documents to which it is a party, or (iv) otherwise could reasonably be expected to materially adversely affect, individually or in the aggregate, the interests of the Company, the Agent or the Lenders or would otherwise conflict with Section 2.01(l).

(g) Unless otherwise directed by the Company, the Servicer shall not be required on the Company's behalf to threaten or commence any legal or other proceedings before any court or Governmental Authority or nongovernmental organization in connection with its performance or actions hereunder if, in the Servicer's reasonable judgment consistent with the Servicing Standard, the potential expense or risk associated with such exercise or action is such that the Servicer would not undertake such exercise or action with respect to other railcars owned, managed or serviced by the Servicer. If the Servicer, in accordance with this Agreement, commences a legal proceeding to enforce a Defaulted Lease or commences or participates in a legal proceeding relating to or involving a Lease, the Company will be deemed to have automatically assigned such Lease to the Servicer solely for purposes of commencing or participating in any such proceeding as a party or claimant, and the Servicer is authorized and empowered by the Company, pursuant to this Section 2.01, to execute and deliver, on behalf of itself and the Company, any and all instruments of satisfaction or cancellation, or partial or full release or discharge, and all other notices, demands, claims, complaints, responses, affidavits or other documents or instruments, without recourse to the Company, in connection with any such proceedings. If in any enforcement suit or legal proceeding it is held that the Servicer may not enforce a Lease on the ground that it is not a real party in interest or a holder entitled to enforce the Lease, then the Company will, at the Servicer's expense and direction, take steps to enforce the Lease, including bringing suit in the Company's name.

(h) In the event of any modification, waiver or amendment of any Lease in accordance with this Section 2.01 or any assignment of any Lease or sublease of any Railcars, the Servicer will (i) duly note such modification, waiver, amendment, assignment or sublease in the next succeeding Quarterly Servicer Report (and certify therein that such modification, waiver or amendment is not prohibited by the provisions of this Section 2.01), (ii) promptly furnish the Agent with a copy of such modification, waiver, amendment, assignment or sublease (except the Servicer shall promptly deliver to the Agent original copies of any sublease as provided in Section 2.01(j)), and (iii) shall take such other action, if any, as is necessary to preserve and maintain the perfection and priority of the Lien of the Security Agreement with respect to such Lease as so modified or amended (including, if necessary, promptly delivering all originals thereof not in the possession of the Equipment Lessee under the related Lease to the Agent).

(i) At the request of a Equipment Lessee, the Servicer may, in its sole discretion, consent to the assignment of any Lease (or Equipment Lessee's leasehold interest in Railcars leased thereunder); *provided, however*, that (i) such Equipment Lessee will remain liable for all of its obligations under such Lease prior to such assignment, (ii) such assignee satisfies the credit criteria set forth in the Servicer's credit policies and procedures, (iii) after giving effect thereto, the Company will be in compliance with the Concentration Limits, and (iv) such assignment will not cause the relevant Leases or Railcars to cease to comply with any of the representations and warranties of the Manager contained in Section 4.03 of the Management Agreement.

(j) At the request of a Equipment Lessee, the Servicer may, in its sole discretion, consent to the sublease of any Railcars under a Lease; *provided, however*, that unless each Equipment Lessee will remain liable for all of its obligations under such Lease (including with respect to the related Railcars) and such sublease shall be subject and subordinate to the Equipment Lessee's obligations under such Lease, then (i) such sublessee satisfies the credit criteria set forth in the Servicer's credit policies and procedures and (ii) the original copies of such sublease which constitute chattel paper are delivered to the Agent, and the Servicer instructs that all payments thereunder are to be sent directly to the Lockbox Bank for deposit into the Lockbox Account.

(k) The Servicer may enter into servicing agreements with one or more subservicers, with prior written notice to the Company and the Agent, to perform all or a portion of the servicing functions on behalf of the Servicer; *provided, however*, that the Servicer will remain obligated and be liable to the Agent, and the Company for servicing and administering the Leases in accordance with the provisions of this Agreement, without diminution of such obligation and liability by virtue of the appointment of such subservicer, to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Leases. The fees and expenses of the subservicer (if any) will be as agreed between the Servicer and its subservicer and shall be the liability of the Servicer exclusively, and neither the Agent, the Lenders nor the Company will have any responsibility therefor; *provided, however*, to the extent agreed to between the Servicer and subservicer, expenses of the subservicer may be reimbursed by the Servicer and treated for all purposes hereof as expenses incurred by the Servicer (which shall be reimbursable by the Company if and to the extent provided herein and subject to the availability of funds therefor under the Loan Agreement). All actions of a subservicer taken pursuant to such a subservicer agreement will be taken as an agent of the Servicer with the same force and effect as though performed by the Servicer. The Successor Servicer may in the course of performing its duties hereunder employ agents or attorneys, and the Successor Servicer shall not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent or attorney appointed by it with due care hereunder.

(l) The Servicer shall not take any action, without the consent of the Company and the Required Lenders which would release any Person from any of its covenants or obligations under any of the Leases or under any other instrument included in the Collateral, which action or release would materially and adversely affect the interests of the Agent and the Lenders in any such Lease or which would result in the amendment, hypothecation, subordination, termination, set off or discharge of, or impair the validity or effectiveness of, any of the Leases or any such instrument, except as expressly provided herein and therein.

*Section 2.02. Credit Monitoring; Collection of Lease Receivables and Remittances; the Lockbox Account.* (a) The Servicer shall monitor the creditworthiness and performance of the Equipment Lessees and use its best efforts consistent with the Servicing Standard to collect all payments of Rents and all other amounts required under the terms and provisions of the Leases to be paid as and when the same shall become due, and shall use collection procedures consistent with the Servicing Standard.

(b) In addition, the Servicer shall use its best efforts consistent with the Servicing Standard to collect all amounts due and owing, and to enforce all of the Company's rights to collect such amounts, from any and all other Persons and sources (other than Equipment Lessees to the extent provided elsewhere in this Section 2.02) with respect to the Leases or the Railcars, including any insurance proceeds, warranty payments, and overpayments and refunds with respect to taxes, maintenance or other services provided to or for the benefit of the Company or the Leases or the Railcars and hourly fees and railroad mileage credits.

(c) The Company will establish the Lockbox Account. The Servicer shall not create or permit to exist any Lien, charge or encumbrance on the Lockbox Account.

(d) The Servicer will bill each Equipment Lessee (at least monthly, quarterly, semi-annually or annually, as applicable for Rent payable under such Lease) as agent for the Company, in invoices, separate from invoices for any leases or railcars not owned by the Company, for the amount of rent or other amounts (including the Rent) owed with

respect to the Railcars by the Equipment Lessee. Each invoice will provide a detailed listing of such Railcars, and the applicable amounts due and owing (including the Rent) with respect to each such Railcar, to which the invoice relates. For certain Equipment Lessees, invoices may be sent electronically. The Railcars will be sufficiently identified in the detail of the invoice, by serial or other identification number, to allow the parties to specifically identify the amounts which are due to the Company. All invoices will instruct the obligor thereunder to make payment of such invoice directly to the Lockbox Bank for deposit into the Lockbox Account.

(e) The Servicer shall arrange with the Lockbox Bank that by 1:00 p.m. on each Business Day (or as soon thereafter as practicable), the Lockbox Bank will make available to the Servicer a computer file of customer checks and related documentation containing information with respect to all payments received in such Lockbox Account from 12:00 noon of the previous Business Day through 12:00 noon of such Business Day.

(f) If the payment information made available by Lockbox Bank to the Servicer under Section 2.01(e) is insufficient to determine the proper allocation of a payment (or any portion thereof) between The Andersons and the Company, the Servicer will use such other information as is available and conduct such procedures as are appropriate to determine the proper allocation of such payment, including a review of original Lease and invoice information and contacting Equipment Lessees, to the extent necessary.

(g) By the close of business on each Business Day, the Servicer will cause all funds held in the Lockbox Account to be transferred to the Collection Account.

(h) If, notwithstanding the payment instructions given by the Servicer in its invoices under Section 2.01(d), Lease payments or other amounts in respect of the Railcars are received directly by the Servicer, the Servicer agrees to hold any such Lease payments or other amounts in trust for the benefit of the Agent and the Lenders and forthwith, promptly and in any event with the time set forth in Section 2.01(g), to transmit and deliver to the Lockbox Bank (for transfer pursuant to Section 2.01(g) to the Collection Account), in the form received, all cash, checks and other instruments or writings for the payment of money so received by the Servicer.

(i) The Lockbox Account will be titled in the name of the Company for the benefit of the Agent and the Lenders. As to the Company's billings following the appointment of a Successor Servicer, the Successor Servicer shall recaption the invoices to refer to the Successor Servicer, as agent for the Company. In instances where a customer of both The Andersons and the Company pays with a single check that is not in the full amount owed to all such parties, unless it is manifestly clear that the deduction is allocable to the Company, the Successor Servicer will be instructed to assume that the deduction is allocable to The Andersons and to the extent that such deduction exceeds the amount due to The Andersons, any such excess shall be allocated pro-rata (based upon reported billings) to the Company and Andersons.

(j) The Servicer may not allow an offset of the amount of any security deposit against any payment under any Lease.

*Section 2.03. Records Held as Bailee.* With respect to Leases serviced by the Servicer, the Servicer shall retain all data and records relating directly to, or maintained in connection with, the servicing of such Leases at the offices of the Servicer, and shall give the Company and the Agent, or such other Person as the Agent shall direct, access to all such data and records at all reasonable times, and, while a Servicer Event of Termination shall be continuing, the Servicer shall, on demand of the Agent, deliver to or at the direction of the Agent all data and records necessary for the servicing of the Equipment Leases. If the rights of the Servicer shall have been terminated pursuant to Section 6.01, the Servicer shall, in accordance with Section 6.01(e), deliver to the Agent or the Successor Servicer all data and records necessary for the servicing of such Leases and shall otherwise cooperate with the Agent and the Successor Servicer as set forth in Section 6.01(e).

*Section 2.04. Withdrawals from the Collection Account.* The Servicer is entitled to make requests to the Agent for withdrawals from the Collection Account, and the Agent shall pay to the Servicer from the Collection Account, to the

extent there are available funds in the Collection Account and in accordance with Sections 3.2 or 7.3 of the Security Agreement, as applicable, at the Servicer's written direction:

(i) any amounts received from the Equipment Lessees or other parties which the Servicer has reasonably identified as amounts not constituting payments made with respect to the Leases or the Railcars;

(ii) all amounts received in respect of Leases and Railcars that relate to the period prior to the Closing Date; and

(iii) all amounts received in respect of Leases following the Purchase thereof by the Manager or the Servicer;

*provided, however,* that the Servicer shall hold any amounts under this Section 2.04 in trust for the relevant appropriate person and payable to such appropriate person (except with respect to amounts received in respect of Leases or Railcars following the Purchase thereof by the Manager, in which case in trust for the Manager and payable to the Manager) upon receipt by the Servicer.

*Section 2.05. No Offset.* The obligations of the Servicer under this Agreement shall not be subject to any defense, counterclaim or right of offset which the Servicer has or may have against the Company or the Agent whether in respect of this Agreement, any Lease or Railcar or otherwise.

*Section 2.06. Custody of Lease Files.* (a) Pursuant to the Security Agreement, the Company has pledged the Collateral to the Agent and the Lenders and the Agent will hold such Collateral, including, without limitation, the Lease Files, for the benefit of Agent and the Lenders subject to the terms and provisions thereof.

(b) The Servicer, as agent of the Agent and the Company, shall hold and hereby acknowledges that it shall hold the Lease Files (exclusive of any original counterpart of any Lease constituting chattel paper held by the Agent or in the possession of the Equipment Lessee under such Lease) and any other Collateral that it may from time to time receive hereunder as custodian for the Agent, in accordance with the Servicing Standard as such Servicing Standard applies to servicers acting as custodial agents. As custodian, the Servicer shall have and perform the following powers and duties:

(i) hold the Lease Files (exclusive of any original counterpart of any Lease constituting chattel paper held by the Agent or in the possession of the Equipment Lessee under such Lease) that it may from time to time receive hereunder on behalf of the Agent and the Lenders, maintain accurate records pertaining to each Lease to enable it to comply with the terms and conditions of this Agreement and the Transaction Documents, and maintain a current inventory thereof;

(ii) with respect to the handling and custody of such Lease Files, implement policies and procedures in accordance with the Servicing Standard so that the integrity and physical possession of such Lease Files will be maintained; and

(iii) attend to all details in connection with maintaining custody of such Lease Files on behalf of the Agent.

(c) In so acting as custodian of such Lease Files, the Servicer agrees further that it does not and will not have or assert any beneficial ownership interest in the Leases or the Railcars. Promptly upon the Company's acquisition thereof, the Servicer, on behalf of the Agent, shall note in its computer records relating to the Leases and the Railcars that the Company has acquired the Leases and the related Railcars and all right and title thereto and interest therein and that the Company has pledged the Railcars and the Leases to the Agent as part of the Collateral.

(d) The Servicer agrees to maintain any Lease Files that it may from time to time receive on behalf of the Agent at the Servicer's office located in Maumee, Ohio or to such other offices of the Servicer as shall from time to time be identified by prior written notice to the Agent. Subject to the foregoing, the Servicer may temporarily move individual Lease Files (up to an aggregate number of 10 Lease Files at any given time) or any portion thereof without notice as necessary to conduct collection and other servicing activities in accordance with the Servicing Standard; *provided, however*, that the Servicer will take all action necessary to maintain the perfection of the Agent's security interest in the Lease Files and the proceeds thereof. It is intended that by the Servicer's agreement pursuant to this Section 2.06, the Agent shall be deemed to have possession of the Lease Files (to the extent not already held by the Agent pursuant to the Loan Agreement) for purposes of Section 9-305 of the Uniform Commercial Code of the state in which the Lease Files are located.

(e) If, in order to conduct collection and other servicing activities in accordance with the Servicing Standard, it is necessary for the Servicer to possess the original counterpart of any Lease which is held by the Agent, the Servicer will submit a request for release to the Agent substantially in the form attached as Exhibit B. Upon receipt of such request for release, the Agent shall release to the Servicer the original counterpart of such Lease within 7 days; *provided, however*, that without the written consent of the Agent shall not have released more than 10 Lease Files to the Servicer that have not been returned. The Servicer shall immediately return all such original counterparts to the Agent when the Servicer's need therefor no longer exists.

*Section 2.07. Defaulted Leases.* (a) The Servicer shall use its best efforts consistent with the Servicing Standard to terminate any Lease that it has reasonably determined should be terminated following a default thereunder, and at the Company's expense, to repossess the Railcars subject to such Lease, to accelerate any deferred payments thereunder and to enforce all rights of the Company with respect thereto. The Servicer shall follow such practices and procedures as are consistent with the Servicing Standard and otherwise as it shall deem necessary or advisable and as shall be customary and usual in its servicing of railcar leases and other actions by the Servicer in order to realize upon such a Lease, which may include its best efforts consistent with the Servicing Standard to enforce any recourse obligations of Equipment Lessees. If in any enforcement suit or legal proceeding it shall be held that the Servicer may not enforce a Lease on the ground that it shall not be a real party in interest or a holder entitled to enforce the Lease, Company shall, at the Servicer's direction and at the Company's expense, take steps to enforce the Lease.

(b) Notwithstanding the foregoing, the Servicer shall take action to terminate any Lease, and use its best efforts, at the Company's expense, to repossess the Railcars under such Lease, immediately after such Lease becomes a Defaulted Lease and shall, in accordance with its credit policies and procedures, bring an action against the Equipment Lessee for all amounts due under such Lease and institute proceedings to repossess the Railcars leased thereunder; *provided, however*, that the Servicer may delay, for a period not to exceed 180 days, taking any such action with respect to Railcars comprising not more than 5% of the aggregate Fair Market Value of all Railcars at any one time under all Defaulted Leases, if it determines, in its reasonable judgment and in accordance with the Servicing Standard, that such delay is advisable.

*Section 2.08. Claims Under Insurance Policies; Insurance Policy.* (a) In connection with its activities as Servicer, the Servicer agrees to present to, on behalf of itself, the Agent, the Lenders and the Company, any claims to the Insurer under the applicable insurance policy (but in no event to settle, adjust or compromise such claims without such insured's prior written consent).

(b) The Servicer shall maintain, at its own expense, an insurance policy, with coverage in accordance with Section 4.2 of the Security agreement and, appropriate and customary in the industry with responsible companies on all officers or employees of the Servicer, or other persons authorized by the Servicer to act in any capacity with regard to the Collateral to handle funds, money, documents and papers relating to the Leases, and shall deliver to the Agent evidence of such insurance policy by the Closing Date and once every twelve months thereafter. Any such insurance policy shall protect and insure the Servicer against losses, including forgery, theft, embezzlement, and fraudulent acts of such persons and shall be maintained in a form and amount that would meet the requirements of a prudent

institutional servicer. No provision of this Section 2.08 requiring such insurance policy shall diminish or relieve the Servicer from its duties and obligations as set forth in this Agreement. Any such insurance policy shall not be cancelled or modified without ten days' prior written notice to the Agent. The Servicer shall promptly, but in any event within five days after receipt, notify the Agent, upon receipt from the surety of any termination, cancellation notice or any other notice of a material change to the terms of such insurance policy.

*Section 2.09. Servicing Compensation.* As compensation to the Servicer for the performance of services hereunder, the Servicer shall be entitled to receive a monthly fee equal to 0.1% per annum of the outstanding principal amount of the aggregate loans under the Loan Agreement as of the related Payment Date (the "*Servicer Fee*"), which shall be paid to the Servicer on each Payment Date in accordance with, and subject to the priority of payment provisions of Section 3.2 and 7.3 of the Security Agreement.

*Section 2.10. Conflicts of Interest.* It is expressly understood and agreed that nothing herein shall be construed to prevent or prohibit the Servicer from providing the same or similar services to any Person or organization not a party to this Agreement. In particular, the Servicer shall be entitled to own, lease and operate for its own account railroad cars and equipment identical to the Railcars serviced hereunder and/or to service such railroad cars or equipment, and any leases thereof, under a similar servicing agreement with another owner.

*Section 2.11. Separate Corporate Existence Covenants.* The Servicer recognizes that the Agent and the Lenders have entered into the Loan Documents on the understanding that the Company is an entity intended to have its own separate existence independent from that of the Servicer. In connection therewith, the Servicer will (i) maintain separate bank accounts and books of account from the Company, (ii) not hold itself out to third parties as liable or responsible for the debts of the Company (except for performance of such obligations which are assumed by it as Servicer hereunder) and not hold the Company out to third parties as being liable or responsible for the debts of the Servicer, (iii) not conduct business in the name of the Company except when acting in the name of the Company in its capacity as Servicer and it identifies itself as such, (iv) not hold itself out as the owner of any Lease or any Railcars and take reasonable steps to ensure that Equipment Lessees and other parties dealing with the Railcars are aware of the Company's interests therein and (v) take such other actions on its part as may be required for the Company to be in compliance with the Loan Agreement on the Closing Date. In the event that the Servicer's consolidated financial statements are required under GAAP to include the Company, the Servicer will include footnotes therein that disclose the separate existence of the Company and its assets from the Servicer and the Servicer's assets.

## **Article III**

### **Accountings, Statements and Reports**

*Section 3.01. Quarterly Servicer Report.* As soon as available and in any event within 90 days after the end of each of the first three quarters of each fiscal year of the Company, commencing June 30, 2006, and within 120 days after the end of each fiscal year of the Company, the Servicer will provide to the Company, a Quarterly Servicer Report (a "*Quarterly Servicer Report*"), substantially in the form of Exhibit A hereto with each of the items specified on such form completed as the case may be.

*Section 3.02. Financial Statements; Certification as to Compliance; Notice of Default.* The Servicer will deliver to the Agent, except as provided in subsection (h):

(a) within 120 days after the end of each fiscal year of the Company, a copy of the Company's financial statements for such fiscal year certified in a manner acceptable to the Agent by the senior financial officer of the Servicer or such other person as may be acceptable to the Agent, it being understood that delivery to the Agent of the Servicer's report on Form 10-K filed with the Securities and Exchange Commission shall satisfy the requirements of this Section 3.02(a);

(b) with each set of the Company's financial statements delivered pursuant to subsection (a) above and (d) below, the Servicer will deliver an Officer's Certificate demonstrating compliance with all financial covenants or tests calculated by reference to such financial statements and containing an additional certification to the effect that a review of the activities of the Servicer during the period covered by the Company's financial statements, and of its performance under this Agreement has been made under the supervision of the officer executing such Officer's Certificate with a view to determining whether during such period the Servicer had performed and observed all of its obligations under this Agreement, and either (i) stating that based on such review no default by the Servicer under this Agreement has occurred and is continuing, or (ii) if such a default has occurred and is continuing, specifying such default, the nature and status thereof and what steps, if any, the Servicer is planning to do or has done to cure such default;

(c) promptly upon becoming aware of the existence of any condition or event which constitutes a Servicer Event of Termination, a written notice describing its nature and period of existence and what action the Servicer is taking or proposes to take with respect thereto;

(d) quarterly, unaudited versions of the Company's consolidated balance sheet, year-to-date income statement, retained earnings and cash flows within 45 days after the end of each quarter (other than the quarter at the end of each fiscal year), it being understood that delivery to the Agent of Servicer's report on Form 10-Q filed with the Securities and Exchange Commission shall satisfy the requirements of this Section 3.02(d);

(e) copies of any reports filed by the Servicer with the SEC concerning the Servicer;

(f) in the case of the Initial Servicer, copies of any certificates required to be furnished by the Initial Servicer under any credit agreement to which the Initial Servicer shall be a party and which address compliance by the Initial Servicer with the requirements of such credit agreement and the absence or existence of defaults thereunder;

(g) such other information regarding the Railcars or the Leases, the Servicer or the transactions contemplated hereby as the Agent may reasonably request.

*Section 3.03. Annual Reports.* On or before 120 days after the end of each fiscal year of the Servicer, the Servicer shall deliver to the Company and the Agent, a report of the Servicer, certified by the Chief Executive Officer or Chief Financial Officer of the Servicer, to the effect that such firm has examined certain documents and records relating to the servicing of the Railcars and the Leases under this Agreement and that, on the basis of such examination conducted substantially in compliance with generally accepted audit standards, nothing came to its attention which caused it to believe that the Servicer has accounted for matters regarding the Railcars and the Leases including deposits in, and requested withdrawals from, the Collection Account, otherwise than in accordance with this Agreement, except for such immaterial exceptions or errors on records that, in the opinion of the Servicer it is not required to report.

*Section 3.04. Delivery of Accountings, Statements and Reports.* To the extent that the Servicer and the Manager are the same Person, it may, in its sole discretion and to the extent practicable, fulfill its obligations under this Article III and Article III of the Management Agreement with the delivery of one quarterly report, one set of financial statements, a single Officer's Certificate (executed in its capacities as both Servicer and Manager) or a single annual report, as the case may be.

*Section 3.05. Data Downloads.* The Initial Servicer shall provide to the Agent from time to time, at the reasonable request of the Agent, data downloads in a format reasonably acceptable to the Agent.

## Article IV



## Representations and Warranties

*Section 4.01. Initial Servicer Representations and Warranties.* The Initial Servicer hereby represents and warrants to the Company, the Agent and the Lenders as follows:

(a) *Corporate Existence and Power.* The Servicer has been duly organized and is validly existing and in good standing as a corporation under the laws of the state of Ohio, with all requisite power and authority to own its properties and to transact the business in which it is now engaged, and the Servicer is duly qualified to do business and is in good standing in each state where the nature of its business requires it to be so qualified except where failure to so qualify would not have a Material Adverse Effect. The Servicer has all requisite power and authority and has taken all action necessary to enter into this Agreement and the other Transaction Documents to which it is a party, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by the Servicer of this Agreement are within the Servicer's powers, have been duly authorized by all necessary action and do not contravene any applicable Law, the Servicer's organizational documents or any contractual or other obligation binding on or affecting the Servicer or any of its assets. The Servicer has delivered to the Company and the Agent a true and correct copy of its articles of incorporation, its code of regulations and other organizational documents.

(b) *No Conflict.* The performance of the Servicer's obligations under this Agreement and each other Transaction Document to which it is a party will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than as contemplated by this Agreement and the other Transaction Documents, and other than Permitted Liens) upon any of the property or assets of the Servicer pursuant to the terms of any loan agreement, mortgage, deed of trust, or other agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets is subject, nor will such action result in any violation of the provisions of any charter document of the Servicer or any statute or any order, rule or regulation of any court or Governmental Authority having jurisdiction over it or any of its properties; and no consent, approval, authorization, order, registration or qualification of or with any court, or any such Governmental Authority is required for the consummation of the other transactions contemplated by this Agreement or any other Transaction Document to which it is a party except such consents, approvals and authorizations which have been obtained or such registrations or qualifications which have been made.

(c) *Due Authorization, Execution and Delivery.* Each Transaction Document to which the Servicer is a party has been duly authorized, executed and delivered by the Servicer and each such Transaction Document is a valid and legally binding agreement of the Servicer, enforceable against the Servicer in accordance with its terms, subject as to enforceability to applicable bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting creditors' rights generally and to general principles of equity regardless of whether enforcement is sought in a court of law or equity.

(d) *Solvency.* Both before and after giving effect to the transactions contemplated by this Agreement, the Servicer is Solvent.

(e) *Accuracy of Information.* All information heretofore furnished (including, but not limited to, the Company's financial statements) by the Servicer to the Company, the Agent and the Lenders, for purposes of or in connection with this Agreement, the other Transaction Documents, or any transaction contemplated hereby or thereby is, and all such information hereafter furnished by it hereunder will be, true, complete and correct in every material respect, on the date such information is stated or certified, and no such item contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading.

(f) *Tax Status*. It has (i) timely filed all federal, state and local tax returns or permitted extensions thereof in the United States and all other tax returns or permitted extensions thereof in foreign jurisdictions required to be filed and (ii) paid or made adequate provision in accordance with GAAP for the payment of all taxes, assessments and other governmental charges.

(g) *Employee Benefits*. With respect to employees that primarily work in connection with the Railcars and the Leases:

(i) Except as set forth on Schedule I, with respect to current or former employees of the Servicer, the Servicer does not maintain, participate in or contribute to any (A) deferred compensation or retirement plans or arrangements, (B) tax-qualified or nonqualified defined contribution or defined benefit plans or arrangements which are employee pension benefit plans (as defined in Section 3(2) of ERISA), (C) employee welfare benefit plans (as defined in Section 3(1) of ERISA), (D) phantom stock appreciation right, stock option, stock purchase or other stock based plans, or (E) any fringe benefit plans or programs. The Servicer does not maintain or contribute to any employee welfare benefit plan that provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA or other applicable Law.

(ii) The employee pension benefit plans and employee welfare benefit plans (and related trusts and insurance contracts) of the Servicer, which plans are described on Schedule I, have been administered in compliance with the requirements of applicable Laws, except where failure thereof would not result in a Material Adverse Effect on the Collateral. Each employee pension benefit plan which is intended to be a “qualified plan” has received an opinion letter from the Internal Revenue Service as to the qualification under the Code of such plan.

(iii) With respect to each of the plans listed on Schedule I, the Servicer has made available to the Company true and complete copies of (A) the plan documents, summary plan descriptions and summaries of material modifications and other material employee communications about such plan, (B) the opinion letter received from the Internal Revenue Service, (C) the Form 5500 Annual Report (including all schedules and other attachments) for the most recent plan year, (D) all related trust agreements, insurance contracts or other funding agreements which implement such plans and (E) all contracts relating to each such plan, including, without limitation, service provider agreements, insurance contracts, investment management agreements and record keeping agreements.

(iv) All contributions and other payments required to have been made by the Servicer with respect to any plan described on Schedule I have been or will be made when due.

To the Knowledge of the Servicer, no plan described on Schedule I is subject to any ongoing audit, investigation or other administrative proceeding of any Governmental Authority nor has any Action been commenced against any such plan (other than for benefits in the ordinary course), in which the adverse result thereof would result in a Material Adverse Effect on the Railcars or the Leases, or on the Company after the Closing Date.

(h) *Employment Matters*. The Servicer is not party to, bound by, or negotiating in respect of any collective bargaining agreement or any other agreement with any labor union, association or other employee group in connection with its railcar leasing business, nor, to the Knowledge of the Servicer, is any employee that primarily works in connection with its railcar leasing business represented by any labor union or similar association. No labor union or employee organization has been certified or recognized as the collective bargaining representative of any employee of the Servicer that primarily works in connection with its railcar

leasing business. To the Knowledge of the Servicer, there are no formal union organizing campaigns or representation proceedings in process or formally threatened with respect to any employee of the Servicer that primarily work in connection with its railcar leasing business, nor are there any existing or, to the Knowledge of the Servicer, threatened at large labor strikes, work stoppages, organized slowdowns, unfair labor practice charges, or labor arbitration proceedings affecting employees of the Servicer that primarily work in connection with its railcar leasing business.

(i) *Environmental Matters*. Except to the extent such matters would not have a Material Adverse Effect:

(i) to the Knowledge of the Servicer, the Servicer is in compliance with all applicable Environmental Laws related to the Collateral. Except for matters that have been fully resolved, the Servicer has not received any written communication from any person or Governmental Authority that alleges that its operations in connection with the Railcars are not in compliance with applicable Environmental Laws;

(ii) to the Knowledge of the Servicer, the Servicer has obtained all environmental, health and safety permits and governmental authorizations (collectively, the “Environmental Permits”) necessary for the conduct of its railcar leasing business, and all such permits are in good standing or, where applicable, a renewal application has been timely filed and is pending agency approval, and to the Knowledge of the Servicer, the Servicer is in compliance with all terms and conditions of the Environmental Permits; and

(iii) there is no Environmental Claim pending or, to the Knowledge of the Servicer, threatened against or concerning the Railcars or the Leases.

To the Knowledge of the Servicer, no release of any Hazardous Commodities has occurred on or from any of the Railcars or the Leases, which requires investigation, assessment, monitoring, remediation or cleanup under Environmental Laws.

*Section 4.02. Company Representations and Warranties*. The Company hereby represents and warrants to the Servicer, the Agent and the Lenders as follows:

(a) The Company has been duly organized and is validly existing and in good standing under the laws of the jurisdiction of its organization, with all requisite power and authority to own its properties and to transact the business in which it is now engaged, and the Company is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business requires it to be so qualified except where failure to so qualify would not have a Material Adverse Effect. The Company has all requisite power and authority and has taken all action necessary to enter into this Agreement and the other Transaction Documents to which it is a party, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by The Company of this Agreement and the other Transaction Documents are within the Company’s powers, have been duly authorized by all necessary action and do not contravene any applicable Law, the Company’s organizational documents or any contractual or other obligation binding on or affecting the Company or any of its assets.

(b) The performance of the Company’s obligations under this Agreement and each other Transaction Document to which it is a party will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than as contemplated by this Agreement and the other Transaction Documents, and other than Permitted Liens) upon any of the property or assets of the Company pursuant to the terms of any loan agreement, mortgage, deed of trust, or other agreement (including the Leases) or instrument to which it is a party or by which it is bound or to which any of its property or assets is subject, nor will such action result in any violation of the provisions of any charter document of the Company or any statute or any order, rule or regulation of any court or

Governmental Authority having jurisdiction over it or any of its properties; and no consent, approval, authorization, order, registration or qualification of or with any court, or any such Governmental Authority is required for the consummation of the other transactions contemplated by this Agreement or any other Transaction Document to which it is a party except such consents, approvals and authorizations which have been obtained or such registrations or qualifications which have been made.

(c) Each Transaction Document to which the Company is a party has been duly authorized, executed and delivered by the Company and each such Transaction Document is a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, subject as to enforceability to applicable bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting creditors' rights generally and to general principles of equity regardless of whether enforcement is sought in a court of law or equity.

(d) The Company has delivered to the Servicer a true, complete and correct copy of the Loan Documents.

*Section 4.03. Requirements upon Breach of Certain Representations and Warranties.* (a) Upon discovery by the Company or the Servicer that any of the representations or warranties with respect to each Railcar and Lease of the Seller set forth in the Sale Agreement or the Initial Manager set forth in the Management Agreement was incorrect as of the time made, the party making such discovery shall give prompt notice to the others, to the Agent and to the Lenders, and the Servicer shall take such steps as are necessary to cause the Seller or the Initial Manager, as the case may be, to comply with its obligations set forth in Section \_\_\_ of the Sale Agreement or Section 4.04 of the Management Agreement, as applicable.

(b) If, as a result of any act or failure to act of the Initial Servicer (other than actions taken as a result of a default on the part of the Equipment Lessee), any Lease shall be terminated in whole or in part by the Equipment Lessee or amounts due under any Lease shall be reduced or impaired, other than by reason of a short-term credit granted or allowed by the Initial Servicer in the ordinary course of business which does not reduce the amount of Rent relating to the relevant Lease, the Initial Servicer shall be required to Purchase all of the Railcars related to such Lease by deposit of the Purchase Price into the Collection Account on or prior to the Determination Date next following the calendar month in which the Initial Servicer's obligation to purchase such Railcars arose.

## **Article V**

### **Servicer Covenants**

*Section 5.01. Corporate Existence; Status as Initial Servicer; Merger.* (a) The Initial Servicer shall keep in full effect its existence and good standing as a corporation in its state of incorporation and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to enable the Initial Servicer to perform its duties under this Agreement, except where the failure to so qualify would not have a Material Adverse Effect on the Initial Servicer or its ability to perform its duties hereunder; *provided, however,* that the Initial Servicer may reincorporate in another state, if to do so would be in the best interest of the Initial Servicer and would not have a Material Adverse Effect upon the Company, the Agent or the Lenders and the Initial Servicer has complied with the requirements set forth in Section 5.01(b).

(b) The Initial Servicer shall not consolidate with or merge into any other Person or convey, transfer or lease substantially all of its assets as an entirety to any Person, unless (i) the entity formed by such consolidation or into which the Initial Servicer has merged or the Person which acquires by conveyance, transfer or lease substantially all the assets of the Initial Servicer as an entirety, executes and delivers to the Company and the Agent an agreement, in form and substance reasonably satisfactory to the Company and the Required Lenders, which contains an assumption by such successor entity of the due and punctual performance and observance of each covenant and condition to be performed or observed by the Initial Servicer under this Agreement, (ii) such Person at the time of the execution of

such agreement has at least the same Tangible Net Worth as the Initial Servicer at the time of such consolidation, merger or transfer, but in any event a Tangible Net Worth of at least \$75,000,000, (iii) after giving effect to such merger or consolidation, no Servicer Event of Termination shall have occurred and be continuing, (iv) such Person shall meet the criteria required of and applicable to a Successor Servicer set forth in Section 6.01(b) and (v) the Initial Servicer shall have received the prior written consent of the Agent and the Required Lenders.

*Section 5.02. The Servicer Not to Resign; No Assignment.* (a) The Servicer shall not resign from the duties and obligations hereby imposed on it except (i) upon a determination by its Board of Directors that by reason of a change in applicable legal requirements the continued performance by the Servicer of its duties under this Agreement would cause it to be in violation of such legal requirements, said determination to be evidenced by a resolution of its Board of Directors to such effect accompanied by an Opinion of Counsel reasonably satisfactory to the Agent, to such effect, (ii) upon appointment of a Successor Servicer by the Company, with the approval of the Agent (acting at the direction of the Required Lenders), and (iii) upon the entering into of amendments to this Agreement to effect such succession in form reasonably acceptable to the Company and the Agent (acting at the direction of the Required Lenders).

(b) The Servicer may not assign this Agreement or delegate any of its rights, powers, duties or obligations hereunder, *provided, however*, that the Servicer may subservice its duties and obligations hereunder in accordance with Section 2.01(k) and assign this Agreement in connection with a consolidation, merger, conveyance, transfer or lease made in compliance with Section 5.01(b).

(c) Except as provided in Sections 5.02(a) and 6.01, the duties and obligations of the Servicer under this Agreement shall continue until this Agreement shall have been terminated as provided in Section 8.01, and shall survive the exercise by the Company, the Agent or the Lenders of any right or remedy under this Agreement, or the enforcement by the Company or the Agent of any provision of the Loan Agreement, the Note or this Agreement.

*Section 5.03. Servicer Indemnification.* The Servicer shall indemnify and hold harmless each of the Company, the Agent and the Lenders, their respective Affiliates and the directors, officers, employees and agents of each thereof (the "*Indemnified Parties*"), from and against:

(a) any breach of or any inaccuracy in any representation or warranty made by the Servicer in this Agreement or in any certificate delivered pursuant thereto;

(b) any breach of or failure by the Servicer to perform any covenant or obligation of the Servicer set out or contemplated in this Agreement (except for any such breach or failure which has been fully remedied in accordance with Section 4.03);

(c) the negligence, recklessness or willful misconduct of the Servicer;

(d) any dispute, counterclaim, defense, loss, liability, expense, damage or injury suffered or sustained by reason of any acts, omissions or alleged acts or omissions arising out of any act or failure to act on the part of the Servicer with respect to its obligations under this Agreement, including but not limited to any judgment, award, settlement, reasonable attorneys' fees and other reasonable costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim;

(e) any failure by the Servicer to comply with any applicable Law with respect to any Railcar or Lease;

(f) the commingling by the Servicer of Equipment Lease Proceeds at any time with any other funds; or

(g) any inability to obtain any judgment in or utilize the court or other adjudication system of, any jurisdiction in which a Equipment Lessee may be located as a result of the failure of the Servicer to qualify to do business or file any notice of business activity report or any similar report;

*provided, however,* that (i) the Servicer shall not indemnify the Indemnified Parties if such acts, omissions or alleged acts or omissions constitute fraud, gross negligence, or willful misconduct by such Indemnified Party, (ii) the Servicer shall not indemnify the Indemnified Parties for any liability, cost or expense of the Collateral with respect to any federal, state or local income or franchise taxes (or any interest or penalties with respect thereto) required to be paid by the Agent or the Lenders in connection herewith to any taxing authority, and (iii) in the event that a Successor Servicer shall succeed to the duties of the Servicer, the provisions of this Section 5.03 shall not apply to such Successor Servicer unless expressly agreed to thereby. The provisions of this Section 5.03 shall survive any expiration or termination of this Agreement. Any indemnification owed to the Indemnified Parties under this Section 5.03 shall be due and payable within 30 days of the applicable Indemnified Party' s demand therefor.

## Article VI

### Servicer Termination

*Section 6.01. Servicer Events of Termination.* (a) If any of the following acts or occurrences (each, a “*Servicer Event of Termination*”) shall occur and be continuing:

(i) any failure by the Servicer to deposit into any Lockbox Account or any Collection Account any payment, transfer or deposit, any Insurance Proceeds or any other amounts paid under or with respect to any Railcar or Lease to the Servicer or the Company pursuant to this Agreement, or any failure to deliver any original of any Lease constituting chattel paper to the Agent (or to such other Person as the Agent may direct), in each case required to be made hereunder that continues unremedied for a period of two Business Days after the date such deposit or delivery is required to be made; or

(ii) any failure by the Servicer to submit a Quarterly Servicer Report pursuant to Section 3.01 that continues unremedied for a period of two Business Days after the earliest of the date upon which (A) the Agent provides written notification to the Servicer of such failure, or (B) the date on which an Authorized Officer of the Servicer obtains actual knowledge of such failure; or

(iii) any representation or warranty made by the Servicer in this Agreement, any other Transaction Document to which it is a party or in any certificate delivered by the Servicer hereunder proves to have been untrue or incorrect in any material respect when made and such untruth or incorrectness shall continue to be material and unremedied; *provided, however,* solely if such untruth or incorrectness is capable of being remedied, no such untruth or incorrectness shall constitute cause for termination hereunder for a period of 30 days after the earlier of (A) the date on which an Authorized Officer obtains actual knowledge of such failure or (B) the Servicer' s receipt of notice from the Company or the Agent so long as the Servicer is diligently proceeding to remedy such untruth or incorrectness and shall in fact remedy such untruth or incorrectness within such period; *provided, however,* such untrue or incorrect representation or warranty shall be deemed to be remediable or remedied only after all adverse consequences thereof, if any, can be and have been remedied as applicable; or

(iv) any failure on the part of the Servicer duly to observe or to perform in any material respect any covenant or agreement of the Servicer (including the furnishing of documents) set forth in this Agreement or any other Transaction Document to which it is a party (including if the Servicer is also acting as the Manager, of its duties as the Manager), which failure, if such failure is curable, continues unremedied for a period of 30 days after the earlier to occur of (A) the date on which written notice of such failure or breach, requiring the situation giving rise to such failure or breach to be remedied, shall have been given to the Servicer by the Agent or the Company or (B) the date on which an Authorized Officer of the Servicer obtains actual knowledge of such failure; or

(v) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Servicer in an involuntary case or proceeding under any applicable federal or state bankruptcy,

insolvency, reorganization or other similar law, or (B) a decree or order adjudging the Servicer a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Servicer under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Servicer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any of the foregoing unstayed and in effect for a period of 45 consecutive days; or

(vi) the commencement by the Servicer of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Servicer in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Servicer or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Servicer in furtherance of any such action; or

(vii) any assignment by the Servicer to a delegate of its duties or rights hereunder, except as specifically permitted hereunder, or any attempt to make such an assignment; or

(viii) a final nonappealable judgment of a court of competent jurisdiction for more than \$1,000,000 shall be entered against the Servicer and shall not be stayed, vacated, bonded, paid or discharged within 45 days; or

(ix) the Servicer shall fail to pay, when and as the same shall become due and payable (after giving effect to any applicable grace period), any principal or interest, regardless of amount, due in respect of any indebtedness of the Servicer in a principal amount in excess of \$5,000,000 or any event shall occur with respect to any such indebtedness, the effect of which is to cause, or allow the holder thereof to cause, such indebtedness to become due before its stated maturity; or

(x) the Servicer shall cease to be engaged in the railcar servicing business; or

(xi) the failure of the Initial Servicer to maintain a ratio of long term debt minus the non-recourse portion of long term debt to Tangible Net Worth of not more than 1.25 to 1; or

(xii) so long as the Initial Servicer is the Servicer, the occurrence of a Change of Control; or

(xiii) so long as the Servicer or any Affiliate thereof is acting as Manager, the occurrence of a Manager Event of Termination pursuant to Section 6.01 of the Management Agreement;

then, and in each and every case, so long as a Servicer Event of Termination shall not have been remedied within any applicable period set forth above, the Agent may, and shall at the direction of the Required Lenders, by notice (the "*Servicer Termination Notice*") then given in writing to the Servicer, terminate all, but not less than all, of the rights (other than any rights to receive, subject to the priority of payments set forth in Section 3.2 and 7.3 of the Security Agreement, as applicable, all amounts owed to the Servicer, including but not limited to the Servicer Fee accrued up to the effective date specified by the Servicer Termination Notice) and obligations of the Servicer under this Agreement, which termination shall be effective as of the date of such Servicer Termination Notice or such later date as such Servicer Termination Notice may specify.

(b) The Servicer may not be terminated in whole or in part, unless (i) a successor Servicer (the “*Successor Servicer*”) has been appointed by the Agent (acting at the direction of the Required Lenders) and (ii) such Successor Servicer has accepted such appointment. Any Successor Servicer shall be located in the United States and be acceptable to the Agent. Any Successor Servicer, however appointed, shall execute and deliver to the Agent, and the Company and to the predecessor Servicer an instrument accepting such appointment, including customary confidentiality provisions in favor of the predecessor Servicer and the Company, and thereupon such Successor Servicer, without further act, shall become vested with all the rights, powers, duties and trusts of the predecessor Servicer hereunder with like effect as if originally named the Servicer herein.

(c) On and after the time the Servicer receives a Servicer Termination Notice pursuant to this Section 6.01 and a Successor Servicer shall be appointed by the Agent acting at the direction of the Required Lenders), all authority and power of the Servicer under this Agreement shall pass to the Successor Servicer appointed pursuant to Section 6.02, and, without limitation, such Successor Servicer is hereby authorized and empowered to execute and deliver, as Servicer and on behalf of the Company, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such Servicer Termination Notice, whether to complete the transfer of the Lease Files and related documents or otherwise.

(d) Upon becoming Successor Servicer, the Successor Servicer will make arrangements for the prompt and safe transfer of all Lease Files to it from the terminated Servicer and any other relevant parties, at the expense of the terminated Servicer.

(e) The terminated Servicer shall cooperate with the Agent and the Successor Servicer in effecting the termination of the responsibilities and rights of the terminated Servicer hereunder and the transition of the servicing to the Successor Servicer, including, without limitation, (i) by transferring to the Successor Servicer for administration by it of all cash amounts that shall at the time be held by the Servicer for deposit, or have been deposited by the Servicer, in any Collection Account or any Lockbox Account or thereafter received with respect to Leases (and in accordance therewith, the Agent shall have the right to access amounts on deposit in any Lockbox Account), (ii) by assisting the Successor Servicer in enforcing all rights under Insurance Policies to the extent that they relate to the Leases and the Railcars, (iii) by transferring, at its own expense, its electronic records relating to such Leases and Railcars to the Successor Servicer in such electronic form as the Successor Servicer may reasonably request, (iv) by transferring the related Lease Files and all other records, correspondence and documents relating to the Leases and Railcars that it may possess to the Successor Servicer in the manner and at such times as the Successor Servicer shall reasonably request and (v) by responding to all reasonable requests of the Successor Servicer.

*Section 6.02. Successor Servicer to Act; Appointment of Successor; Acting as Manager.* (a) Subject to Section 6.01, on and after the time the Servicer receives a Servicer Termination Notice pursuant to Section 6.01, and a Successor Servicer shall be appointed by the Agent (acting at the direction of the Required Lenders), the Successor Servicer, shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof; *provided, however*, that any Successor Servicer shall not (i) be liable for any acts or omissions of the outgoing Servicer or for any breach by the outgoing Servicer of any of its representations and warranties contained herein or in any related document or agreement, or (ii) be required to deliver financial reports pursuant to Section 3.02(h). Subject to the consent of the Required Lenders, the Successor Servicer may subcontract with another firm to act as subservicer so long as the Successor Servicer remains fully responsible and accountable for performance of all obligations of the Servicer. The Successor Servicer shall be entitled to the Servicer Fee in connection with acting as Servicer hereunder.

(b) The Servicer, the Agent and such Successor Servicer shall take such action, consistent with this Agreement, as shall be necessary to effectuate any such succession. The Successor Servicer shall be reimbursed for its respective expenses, if any, incurred in connection with the assumption of responsibilities of the Successor Servicer. In addition, the Successor Servicer shall be reimbursed for any fees and expenses paid to any third party legal or other advisors incurred in connection with the performance of its duties under this Agreement.



(c) If the Servicer is also acting as Manager under the Management Agreement, upon any resignation of the Manager, the Servicer will also be required to resign as Servicer. The Manager and Servicer shall at all times be the same Person.

*Section 6.03. Effects of Termination of Servicer.* (a) Upon the appointment of the Successor Servicer, the Servicer shall immediately remit any Rents or other payments that it has received or receives pursuant to any Lease or otherwise to the Successor Servicer for the benefit of the Agent and the Company after such date of appointment.

(b) After the delivery of a Servicer Termination Notice and appointment of a Successor Servicer, the former Servicer shall have no further obligations with respect to the servicing of the Leases or the enforcement, custody or collection of the Leases, and the Successor Servicer shall have all of such obligations, except that the former Servicer will transmit or cause to be transmitted directly to the Successor Servicer for the benefit of the Holders, promptly upon receipt and in the same form in which received, any amounts held by the former Servicer (properly endorsed where required for the Successor Servicer to collect them) received as payments upon or otherwise in connection with the Leases and the Railcars. The former Servicer's indemnification obligations pursuant to Section 5.03 will survive the termination of the Servicer hereunder but will not extend to any acts or omissions of a Successor Servicer.

(c) A Servicer Event of Termination shall not affect the rights and duties of the parties hereunder (including, but not limited to, the obligations and indemnities of the Servicer pursuant to Section 5.03) other than those relating to the servicing, custody or collection of the Leases and the Railcars.

(d) The predecessor Servicer shall defend, indemnify and hold the Successor Servicer and any officers, directors, employees or agents of the Successor Servicer harmless against any and all claims, losses, penalties, fines, forfeitures, legal fees and related costs, judgments and any other costs, fees, and expenses that the Successor Servicer may sustain in connection with the claims asserted at any time by third parties against the Successor Servicer which result from (i) any willful, bad faith or grossly negligent act taken or omission by the predecessor Servicer or (ii) a breach by the predecessor Servicer of an express obligation of the Servicer hereunder. The indemnification provided by this Section 6.03(d) shall survive the termination of this Agreement.

(e) The Successor Servicer will not be responsible for delays attributable to the predecessor Servicer's failure to deliver information, defects in the information supplied by the terminated Servicer or other circumstances beyond the control of the Successor Servicer.

The Successor Servicer shall have no responsibility and shall not be in default hereunder nor incur any liability for any failure, error, malfunction or any delay in carrying out any of its duties under this Agreement if any such failure or delay results from the Successor Servicer acting reasonably and in accordance with information prepared or supplied by a Person other than the Successor Servicer or the failure of any such Person to prepare or provide such information. The Successor Servicer shall have no responsibility, shall not be in default and shall incur no liability (i) for any act or failure to act by any third party, including the terminated Servicer, or for any inaccuracy or omission in a notice or communication received by the Successor Servicer from any third party or (ii) which is due to or results from the invalidity or unenforceability of any Lease under applicable law or the breach or the inaccuracy of any representation or warranty made by the terminated Servicer. The Successor Servicer shall not be liable for any acts or omissions of the Servicer occurring prior to such Servicer transfer or for any breach by the Servicer of any of its representations and warranties contained herein or in any related document or agreement.

Notwithstanding anything contained in this Agreement to the contrary, the Successor Servicer is authorized to accept and rely on all of the accounting, records (including computer records) and work of the terminated Servicer relating to the Leases and the Railcars (collectively, the *Predecessor Servicer Work Product*) without any audit or other examination thereof, and the Successor Servicer shall have no duty, responsibility, obligation or liability for the acts and omissions of the prior Servicer. If any error, inaccuracy, omission or incorrect or non-standard practice or procedure (collectively, the *Errors*) exist in any Predecessor Servicer Work Product and such Errors make it materially

more difficult to service or should cause or materially contribute to the Successor Servicer making or continuing any Errors (collectively, *Continued Errors*), the Successor Servicer shall have no duty, responsibility, obligation or liability for such Continued Errors; *provided, however*, that the Successor Servicer agrees to use its best efforts to prevent further Continued Errors. In the event that the Successor Servicer becomes aware of Errors or Continued Errors, the Successor Servicer shall, with the prior consent of the Agent, use its best efforts to reconstruct and reconcile such data as is commercially reasonable to correct such Errors and Continued Errors and to prevent future Continued Errors. The Successor Servicer shall be entitled to recover its costs thereby expended in accordance with in accordance with the Section 3.2 and 7.3, as applicable, of the Security Agreement.

*Section 6.04. Rights Cumulative.* All rights and remedies from time to time enforced upon or reserved to the Company, the Agent and the or to any or all of the foregoing are cumulative, and none is intended to be exclusive of another. No delay or omission in insisting upon the strict observance or performance of any provision of this Agreement, or in exercising any right or remedy, shall be construed as a waiver or relinquishment of such provision, nor shall it impair such right or remedy. Every right and remedy of the Company, the Agent or the Lenders may be exercised from time to time and as often as deemed expedient.

## Article VII

### Miscellaneous Provisions

*Section 7.01. Termination of Agreement.* (a) Except where otherwise expressly noted herein, the respective duties and obligations of the Servicer, the Company and the Agent created by this Agreement shall terminate upon the termination of the Loan Agreement and the Security Agreement in accordance with their terms. Upon the termination of this Agreement pursuant to this Section 7.01(a), the Servicer shall pay all monies with respect to the Leases and the Railcars held by the Servicer and to which the Servicer is not entitled to the Company or upon the Company's order.

(b) This Agreement shall not be automatically terminated as a result of an Event of Default under the Loan Agreement or any action taken by the Agent or the Lenders thereafter with respect thereto, and any liquidation or preservation of any property held as contemplated in the Loan Agreement and the other Loan Documents by the Agent or the Lenders thereafter shall be subject to the rights of the Servicer to service the Railcars and the Leases as provided hereunder.

*Section 7.02. Amendments.* (a) This Agreement may be amended from time to time by the parties hereto with the prior written consent of the Agent and the Required Lenders for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement.

(b) The Agent may request an Opinion of Counsel, an Officer's Certificate and such other opinions, certificates and documents as it deems advisable in connection with any proposed amendment of this Agreement. The Agent may, but shall not be obligated to, execute and deliver any such amendment which affects that Agent's rights, powers, immunities or indemnifications hereunder.

*Section 7.03. Governing Law.* **THIS AGREEMENT, INCLUDING THE VALIDITY HEREOF, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW JERSEY.**

*Section 7.04. Notices.* All demands, notices and communications hereunder shall be in writing and shall be delivered or mailed by registered or certified United States mail, postage prepaid, or by telephonic facsimile transmission and overnight delivery service, postage prepaid, and addressed, in each case as follows: (a) if to the Company, at 480 W. Dussel Drive, Suite S, Maumee, Ohio 43537; (b) if to the Servicer, at The Andersons Inc., 480 W. Dussel Drive, Maumee, Ohio 43537, Attention: Betsy Hall, Esq. (facsimile: (419) 491-6695); (c) if to the Agent or the Lenders, at the address specified in the Loan Agreement. Any of the Persons in subclauses (a) through (c) above may change the address for notices hereunder by giving notice of such change to other Persons. All notices and demands shall be

deemed to have been given at the time of the delivery thereof to any officer of the Person entitled to receive such notices and demands at the address of such Person for notices hereunder.

*Section 7.05. Severability of Provisions.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected..

*Section 7.06. Inspection and Examination Rights.* The Servicer agrees that, on reasonable prior notice, it will permit any representative of the Agent or the Company, during the Servicer's normal business hours, to examine all the Lease Files, books of account, records, reports and other papers of the Servicer relating to the Railcars and the Leases and related documents, to make copies and extracts therefrom, to cause such books to be examined by independent certified public accountants selected by the Agent or the Company, as the case may be, and to discuss its affairs, finances and accounts relating to the Railcars and the Leases with its officers, employees and independent public accountants (and by this provision the Servicer hereby authorizes said accountants to discuss with such representatives such affairs, finances and accounts), all at such reasonable times and as often as may be reasonably requested. Any expense incident to the exercise by the Agent or the Company of any right under this Section 7.06 shall be borne by the Initial Servicer, except that only the first examination in any year by the Agent will be at the Initial Servicer's expense (unless there has occurred and is continuing a Servicer Event of Termination (if the Manager is also the Servicer), a Servicer Event of Termination (or any event which, with the giving of notice or passage of time, would constitute any such event), in each of which cases each such examination shall be at the expense of the Servicer)), or if a Successor Servicer other than an Affiliate of the Initial Servicer is then acting as Servicer, such expense shall be borne by the party exercising such right of inspection; *provided, however,* that in no event shall the Agent or the Company be entitled to any expenses hereunder for which it has been previously reimbursed pursuant to Section 7.06 of the Management Agreement.

*Section 7.07. Binding Effect.* All provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

*Section 7.08. Article Headings.* The article headings herein are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

*Section 7.09. Legal Holidays.* In the case where the date on which any action required to be taken, document required to be delivered or payment required to be made is not a Business Day, such action, delivery or payment need not be made on such date, but may be made on the next succeeding Business Day.

*Section 7.10. Assignment for Security .* The Servicer understands that the Company will assign to, and grant to the Agent and the Lenders, under the Security Agreement a security interest in, all of its right, title and interest to this Agreement. The Servicer consents to such assignment and grant and further agrees that all representations, warranties, covenants, and agreements of the Servicer made herein shall also be for the benefit of and inure to the Agent.

*Section 7.11. Servicing Agreement to Control.* To the extent of any inconsistency between the provisions of this Servicing Agreement and the Management Agreement as to the obligations or responsibilities of the Servicer to service or administer the Leases, the provisions of this Servicing Agreement shall control.

*Section 7.12. Third-Party Beneficiaries.* The Agent, the Lenders and their successors and assigns shall be third-party beneficiaries to the provisions of this Agreement, and shall be entitled to rely upon and directly enforce such provisions of this Agreement. Nothing in this Agreement, express or implied, shall give to any Person, other than the Agent, the parties hereto and their successors hereunder and permitted assigns, any benefit or any legal or equitable right, remedy or claim under this Agreement.

*Section 7.13. No Bankruptcy Petition.* The Servicer hereby covenants and agrees for the benefit of each of the parties hereto, the Agent and the Lenders that, prior to the date which is one year and one day after the payment in full of all obligations of the Company, it will not institute against the Company, or join any other Person in instituting against the Company, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings under the laws of the United States, any state of the United States or any foreign jurisdiction. The Company hereby covenants and agrees for the benefit of the Agent and the Lenders, that, prior to the date which is one year and one day after the payment in full of all obligations of the Servicer and the Company, it will not institute against the Servicer or join any other Person in instituting against the Servicer any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings under the laws of the United States, any state of the United States or any foreign jurisdiction. This Section 7.13 shall survive the termination of this Agreement.

*Section 7.14. Entire Agreement.* This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. All prior agreements, understandings, representations, warranties and negotiations, if any, are merged into this Agreement, and this Agreement is the entire agreement between the parties hereto relating to the subject matter hereto.

*Section 7.15. Survival of Representations and Warranties.* All representations and warranties made herein or in connection herewith shall survive the execution and delivery of this Agreement.

*Section 7.16. Survival of Indemnities.* All the indemnity and expense provisions set forth in this Agreement shall survive the execution and delivery of this Agreement.

***[Signature Page to Follow]***

In Witness Whereof, the Company and the Servicer have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the date and year first above written.

THE ANDERSONS RAIL OPERATING I LLC

By: /s/ Richard R. George

Name: Richard R. George

Title: Manager

THE ANDERSONS, INC.

By: /s/ Gary Smith

Name: Gary Smith

Title: Vice President, Finance & Treasurer

Servicing Agreement

## **Schedule I**

### **Servicer Employee Benefits**

The Andersons, Inc. Defined Benefit Pension Plan  
The Andersons, Inc. Retirement Savings Investment Plan  
The Andersons, Inc. Employee Share Purchase Plan

**Exhibit A**

**The Andersons, Inc.  
Quarterly Servicer Report**

Pursuant to Section 3.01 of the Servicing Agreement dated as of December 29, 2005, between The Andersons Rail Operating I LLC (the “*Company*”) and The Andersons, Inc. (as Servicer) please find set forth below the Quarterly Servicer Report as of [Accounting Date]:

**Exhibit B  
Form of Request for Release**

Re: Servicing Agreement, dated as of December 29, 2005

(the “*Servicing Agreement*”), by and among

The Andersons Rail Operating I LLC,

and

The Andersons, Inc., as the servicer (the “*Servicer*”),

Pursuant to Section 2.06(e) of the above-referenced Servicing Agreement in connection with the Lease Files indicated on Schedule A hereto, we request the release of the original counterparts held by the Agent for the following purpose (check one):

- (a) in order to conduct collection and other servicing activities;  
 (b) pay off or other termination; or  
 (c) other (provide explanation).

The Servicer certifies that after giving effect to the release of the Lease Files listed on Schedule A, the Servicer will not be in possession of more than 10 Lease Files.

The Servicer hereby certifies that it shall hold and retain possession of such original counterparts in trust for the Agent solely for the purposes set forth above. The Servicer hereby agrees that it shall not cause or permit the original counterparts to be subject to, or encumbered by, any claim, liens, security interest, charges, writs of attachment or other impositions and the Servicer shall not assert or seek to assert any claims or rights of set-off to or against the original counterparts. The Servicer shall return all original counterparts when the need therefor no longer exists. The Servicer shall keep the original counterparts separate and distinct from all other property in the Servicer’s possession, custody or control.

The Andersons, Inc., as Servicer

By:

Name:

Title:

Documents returned to the Agent on \_\_\_, \_\_\_.

SIEMENS FINANCIAL SERVICES, INC., as Agent

By: \_\_\_

Name:

Title:

Schedule A  
to  
Request for Release

\$40,950,000

TERM LOAN AGREEMENT

Between

THE ANDERSONS RAIL OPERATING I LLC,

as Borrower,

THE LENDERS NAMED HEREIN,

and

SIEMENS FINANCIAL SERVICES, INC.,

as Agent and Lender

Dated as of

December 29, 2005

W I T N E S S E T H: 1	ARTICLE I. DEFINITIONS	1		
ARTICLE II. AMOUNT AND TERMS OF THE LOANS		12		
ARTICLE III. CONDITIONS OF LENDING		16		
ARTICLE IV. REPRESENTATIONS AND WARRANTIES		28		
ARTICLE V. COVENANTS OF THE BORROWER		25		
ARTICLE VI. EVENTS OF DEFAULT		32		
ARTICLE VII. AGENCY		34		
ARTICLE VIII. MISCELLANEOUS		38		
SCHEDULE A	ADMINISTRATIVE DETAILS	SCHEDULE B	EXCEPTION	
REPORT				
ADDENDUM I	SCHEDULE OF PRINCIPAL PAYMENTS			

EXHIBIT A – Form of Promissory Note

EXHIBIT B – Form of Pay Proceeds Letter

EXHIBIT C – Form of Officer’ s Certificate

EXHIBIT D – Form of Notice of Assignment

EXHIBIT E – Form of Transfer Agreement

TERM LOAN AGREEMENT, dated as of December 29, 2005, among THE ANDERSONS RAIL OPERATING I LLC, a Delaware limited liability company (the “Borrower”), the several banks and other financial institutions or entities from time to time parties to this Agreement (the “Lenders”) and SIEMENS FINANCIAL SERVICES, INC. (in its capacity as Agent for the Lenders hereunder together with its successors and permitted assigns in such capacity, the “Agent”).

WITNESSETH:

WHEREAS, the Borrower desires to acquire the Equipment and related Equipment Leases described in Schedule A to the Security Agreement;

WHEREAS, the Borrower wishes to borrow from the Lenders in order to facilitate the acquisition of the Equipment and related Equipment Leases described in Schedule A to the Security Agreement in accordance with the terms of the Transfer Documents.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.1. Definitions. The following terms shall have the following meanings for the purposes of this Agreement:

“AAR” means the Association of American Railroads.

“Affiliate” of any Person means any other Person, which directly or indirectly controls, or is controlled by, or is under common control with, such Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the management and policies of a Person, the ownership of voting securities, by contract or otherwise, and the term “controlled” shall have a meaning correlative to the foregoing.

“Agent” has the meaning specified in the initial paragraph of this Agreement.

“Agreement” means this Term Loan Agreement, together with all Exhibits and Schedules attached hereto, as the same may be amended, supplemented or modified, from time to time.

“Appraisal” means a written appraisal of the Fair Market Value of the Equipment conducted by an independent third party appraiser selected by Borrower and reasonably acceptable to the Agent.

“Appraisal Date” means, with respect to any Appraisal, the date of such Appraisal.

“Asset Sale” means any Disposition of any Collateral by the Borrower (including, without limitation, in connection with a 1031 Transaction) other than as a result of a Manager Buyback or a Servicer Buyback.

“Assignor” has the meaning assigned to it in Section 8.5(c).

“Benefited Lenders” has the meaning assigned to it in Section 8.13.

“Borrower” has the meaning specified in the initial paragraph of this Agreement.

“Business Day” means any day of the year other than a Saturday, Sunday or a holiday on which banks are required or authorized by law to close in the State of New Jersey.

“Car Mark Agreement” means the Car Mark Agreement, dated as of December 29, 2005, between the Borrower and The Andersons.



“Cash Collateral Account” has the meaning assigned to it in the Security Agreement.

“Cash Collateral Account Blocked Account Agreement” means the Account Control Agreement, dated as of December 29, 2005, among the Borrower, the Agent and Fifth Third Bank.

“Casualty Loss” means, with respect to any Item of Equipment, such Item of Equipment is destroyed, lost, stolen, irreparably damaged, or missing for a period in excess of thirty 30 days, taken by any governmental entity (including without limitation condemnation, confiscation, requisition, taking of title or use by any governmental entity).

“Closing Date” means the date the Loans are disbursed under this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and rulings and regulations issued thereunder.

“Collateral” has the meaning specified in the Security Agreement.

“Collection Account” has the meaning specified in the Security Agreement.

“Collection Account Blocked Account Agreement” means the Lockbox and Account Control Agreement, dated as of December 29, 2005, among the Borrower, the Agent and Fifth Third Bank.

“Commitment” means, for each Lender, the obligation of such Lender to make a Loan to the Borrower on the Closing Date in an amount equal to the amount set forth opposite the name of such Lender on the signature pages hereof.

“Concentration Limits” means the limitations set forth in Section 5.1(u).

“Debt Service Coverage Ratio”: means, for the calendar quarter immediately succeeding the applicable Determination Date, the ratio of (a) the Eligible Lease Receivables for such calendar quarter to (b) the scheduled payments of principal and interest payable by the Borrower in respect of the Loans for such calendar quarter.

“Default” means the occurrence and continuance of an event or condition which with giving of notice or the passage of time or both, would constitute an Event of Default.

“Default Rate” has the meaning assigned to it in Section 2.4(e).

“Determination Date” means of March 31, June 30, September 30 and December 31 of each calendar year.

“Disposition” means any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition; and the term “Dispose” and “Disposed” shall have correlative meaning.

“Dollars” and “\$” means the lawful and freely transferable currency of the United States of America.

“Eligible Assignee” means (i) a commercial bank, savings and loan institution, insurance company or financial institution organized under the laws of the United States, or any State thereof, (ii) a commercial bank organized under the laws of any other country which is a member of the OECD, or a political subdivision of any such country, provided that such bank is acting through a branch or agency located in the United States, the Cayman Islands or the country in which it is organized or another country which is also a member of the OECD, (iii) the central bank of any country which is a member of the OECD, and (iv) a finance company, insurance company or other financial institution or a fund which is engaged in making, purchasing or otherwise investing in commercial loans in the

ordinary course of its business, is doing business in the United States and is organized under the laws of the United States, or any State thereof, or under the laws of any member country of the OECD.

“Eligible Item of Equipment” means, as of any date of determination, an Item of Equipment that satisfies the representations and warranties with respect to Items of Equipment contained in Section 3.02 of the Sale Agreement (with respect to Items of Equipment transferred to the Borrower under the Sale Agreement) and Section 4.03 of the Management Agreement (with respect to all other Items of Equipment) as of the immediately preceding Payment Date.

“Eligible Lease” means, as of any date of determination, an Equipment Lease that satisfies each of the representations and warranties with respect to Equipment Leases contained in Section 4.1(o) of this Agreement and Section 3.02 of the Sale Agreement (with respect to Equipment Leases transferred to the Borrower under the Sale Agreement) and Section 4.03 of the Management Agreement (with respect to all other Equipment Leases) as of the immediately preceding Payment Date.

“Eligible Lease Receivables” means, for any calendar quarter, the aggregate of the scheduled payments of rent under each Eligible Lease other than those Eligible Leases as to which rent or other amounts payable are overdue by more than 120 days.

“Environmental Claim” shall mean any claim alleging any damage to the environment or violation of any Environmental Law.

“Environmental Laws” shall mean any federal, state, provincial, local, or foreign statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement or governmental restriction relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to any of the foregoing related to Hazardous Commodities or wastes, air emissions and discharges to waste or public systems.

“Equipment” has the meaning assigned to it in the Security Agreement.

“Equipment Lease Documents” means, with respect to each Equipment Lease, such Equipment Lease together with all other the agreements, documents and instruments executed in connection with such Equipment Lease.

“Equipment Lease Proceeds” all payments due and to become due under any Equipment Lease, whether as contractual obligations, damages, casualty payments, insurance proceeds or otherwise.

“Equipment Leases” mean all right, title, interest, claims and demands of the Borrower in, to and under each and every lease or other agreement, including the leases more fully described on Schedule A to the Security Agreement (whether or not such lease is in writing or is for a term certain, including, without limitation, per diem leases) and all Replacement Leases now or hereafter entered into relating to the Equipment, including any extensions of the term of every such lease, all of Borrower’s rights under any such lease to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, waiver or approval.

“Equipment Lessees” means the lessees under the Equipment Leases.

“ERISA” means the Employee Retirement Income Security Act of 1974, any successor statute, and all rules and regulations promulgated thereunder.

“ERISA Event” means the institution of any action or proceeding against the Borrower by the PBGC or a Plan to enforce against the Borrower any (i) liability for failure to make contributions to a Plan which are required

under Section 412 of the Code or Section 302 of ERISA, (ii) liability under Title IV of ERISA with respect to the termination of any Plan, or (iii) liability with respect to the withdrawal or partial withdrawal from any Plan.

“Event of Default” has the meaning assigned to it in Section 6.1.

“Fair Market Value” has the meaning assigned to it in the Security Agreement.

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day as of 11:00 a.m. New York time on such transactions received by the Agent from three federal funds brokers of recognized standing selected by it.

“GAAP” means at any time the generally accepted United States accounting principles at such time.

“Governmental Authority” means any federal, state, provincial, municipal or other governmental or quasi-governmental department, commission, board, bureau, agency, authority or instrumentality, or any court or administrative bureau, in each case whether of the United States, any of its possessions or territories, or of any foreign nation or any jurisdiction thereof, or, with respect to any Person, any arbitration, tribunal or non-governmental authority to whose jurisdiction such Person has consented.

“Hazardous Commodities” shall mean the following commodities: (a) any substance that is listed as a “hazardous waste” pursuant to 42 U.S.C. Section 6901 et seq. or exhibits one or more of the characteristics of “hazardous waste” described in regulations promulgated pursuant to 42 U.S.C. Section 6901 et seq.; (b) any substance that is a “hazardous substance” under the definition set forth in 42 U.S.C. Section 9601(14); (c) any substance contained on a list of “extremely hazardous substances” pursuant to 42 U.S.C. Section 11002(a)(2); (d) any petroleum product (other than solid plastic products); (e) any radioactive material; (f) asbestos; (g) polychlorinated biphenyls; (h) any substance that is a “pesticide” under the definition set forth in 7 U.S.C. Section 136(u); (i) any chemical substance or living organism regulated under 21 U.S.C. Chapter 9 (the Federal Food, Drug and Cosmetic Act) which is capable of having an acute or chronic toxic effect upon any species of living organism; (j) any Municipal Waste referred to in, or any K grade or W grade commodities listed in Appendix A to, Car Service Rule 14; (k) any other substance, product, liquid, waste, pollutant, chemical, contaminant, insecticide, pesticide, gaseous or solid matter, organic or inorganic matter, fuel, micro-organism, ray, odor, radiation, energy, vector, plasma, constituent or material which (i) is or becomes listed, regulated or addressed under any Environmental Law, or (ii) is, or is deemed to be, alone or in any combination, hazardous, hazardous waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination under any Environmental Law applicable to railcars operating in Canada.

“Indebtedness” means, with respect to any Person, without duplication, (i) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (ii) all obligations of such Person evidenced by bonds, debentures, equipment trust certificates, notes or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (vi) all Indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed but only up to the lesser of the value of the property at the time subject to such Liens and the amount of such Indebtedness, (vii) all guarantees by such Person of Indebtedness of others, (viii) all capital lease obligations of such Person, (ix) all obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements, (x) any sale-leaseback or similar arrangement and (xi) all obligations of such Person as an account party in respect of letters of credit and bankers’ acceptances. The

Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner (unless such Indebtedness is non-recourse to such general partner).

“Indemnified Party” has the meaning assigned to it in Section 8.8.

“Independent Manager” has the meaning set forth in the Borrower’s Limited Liability Company Agreement, dated as of December 29, 2005, as the same may be amended, supplemented or otherwise modified from time to time.

“Interest Rate” means 5.9108%.

“Investment Grade” means, with respect to any Person, that such Person or the long-term unsecured, unguaranteed indebtedness issued by such Person has been Rated “BBB-” or better by S&P or “Baa3” or better by Moody’s.

“Item of Equipment” has the meaning assigned to it in the Security Agreement.

“Lenders” has the meaning assigned to it in preamble hereto.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind.

“Loan” means any loan made by any Lender pursuant to this Agreement.

“Loan Documents” mean this Agreement, the Security Agreement, the Notes, the Pledge Agreement, the Cash Collateral Blocked Account Agreement, the Collection Account Blocked Account Agreement, the Lockbox Agreement and any certificates, notices and documents executed and delivered in connection herewith or therewith.

“Loan to Value Ratio” means, as of any Appraisal Date, the ratio, expressed as a percentage of (i) the outstanding principal balance of the Loan to (ii) the sum of (A) the aggregate Fair Market Value of the Equipment (not subject to Casualty Loss) set forth in the Appraisal issued on such Appraisal Date and (B) the aggregate amount on deposit in the Cash Collateral Account on such Appraisal Date that relates to the Net Cash Proceeds of permitted Asset Sales and Recovery Events; provided, however that (i) the Fair Market Value of any Equipment with respect to which the Agent does not have a valid, perfected first-priority Lien in the United States and Canada (other than Permitted Liens) on such Appraisal Date shall be excluded from the value of the Equipment in determining the Loan to Value Ratio and (ii) amounts on deposit in the Cash Collateral Account shall be excluded from the determination of the Loan to Value Ratio at such time as the Agent fails to have a valid, perfected first-priority Lien on the Cash Collateral Account.

“Lockbox Account” has the meaning assigned to it in the Security Agreement.

“Lockbox Agreement” means the Authorization Form for Treasury Services, dated December 29, 2005, between the Borrower and Fifth Third Bank.

“Management Agreement” means the Management Agreement, dated the date hereof, among The Andersons and the Borrower, as the same may be amended, supplemented or modified from time to time.

“Mangaer” means The Andersons or any other Person appointed as manager under the Management Agreement from time to time.

“Manager Buyback” has the meaning assigned to it in Section 2.7(c).

“Material Adverse Effect” means (i) a materially adverse effect on the business, condition (financial or otherwise), operations, performance or properties of the Borrower, or (ii) a material impairment of the ability of the Borrower to perform its obligations under or to remain in compliance with the Loan Documents.

“Maturity Date” means January 15, 2013.

“Moody’ s” means Moody’ s Investors Service, Inc.

“Net Cash Proceeds” means the proceeds thereof in the form of cash and cash equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of any Asset Sale or Recovery Event, net of attorneys’ fees, accountants’ fees and other customary fees and expenses actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements).

“Non-Excluded Taxes” has the meaning assigned to it in Section 8.22(a).

“Non-U.S. Lender” has the meaning assigned to it in Section 8.22(c).

“Note(s)” has the meaning assigned to it in Section 2.5.

“Obligations” has the meaning assigned to it in Section 8.13.

“OECD” means the Organization for Economic Cooperation and Development.

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” has the meaning assigned to it in Section 8.5(b).

“Pay Proceeds Letter” has the meaning assigned to it in Section 2.2.

“Payment Date” means the fifteenth day of each calendar month, commencing with February 15, 2006.

“Payment Office”: the office specified from time to time by the Agent as its payment office by notice to the Borrower and the Lenders.

“PBGC” shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

“Per Diem Lease” shall mean an Equipment Lease in which the Equipment Lessee pays an amount based on the miles traveled and the use of the Equipment, although the Equipment Lessee may have free use of the Equipment while the Equipment is on a Equipment Lessee’ s railroad.

“Permitted Affiliate Arrangements” means (i) the Management Agreement, the Servicing Agreement or such other management, lease administration, auditing and accounting, secretarial and other administrative and operational services to the Borrower at rates reasonably determined by the Borrower’ s managing member to be no less favorable to the Borrower than the rates which could be obtained for similar services from independent third parties, (ii) the Car Mark Agreement and (iii) the inclusion of the Borrower as an insured under a policy of insurance obtained by the Servicer or its subsidiaries with an insurance company which policy shall be on terms reasonably determined by the

Borrower's managing member to be no less favorable to the Borrower than the terms at which a similar policy could be obtained directly from independent third parties.

"Permitted Liens" means (a) materialmen's, mechanics', carriers', repairmen's, employees' or other similar Liens arising in the ordinary course of business, other than Liens for amounts due and owing, that individually or in the aggregate do not detract from the value of the property subject thereto or affected thereby, (b) Liens for current taxes, of any kind, not yet due and payable or that are being contested in good faith by appropriate proceeding for which adequate reserves have been established in accordance with GAAP, so long as enforcement thereof has been stayed and such proceedings do not involve any material risk of forfeiture, loss or sale of any Items of Equipment and (c) statutory Liens arising or incurred in the ordinary course of business by operation of law for which payment is not yet due and payable or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP.

"Person" includes any individual, business trust, partnership, limited liability company, limited liability partnership, joint venture, firm, corporation, association, joint stock company, trust or other enterprise, or any government or political sub-division or agency, department or instrumentality thereof.

"Plan" means any employee pension benefit plan of the Borrower subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower, or any trade or business that for purposes of Title IV of ERISA is a member of the Borrower's controlled group, or under common control with the Borrower, within the meaning of Section 414 of the Code, is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pledge Agreement" means the Pledge Agreement, dated the date hereof, executed and delivered by The Andersons in favor of the Agent and the Lenders, as the same may be amended, supplemented or otherwise modified from time to time.

"Pledged Collateral" has the meaning set forth in the Pledge Agreement.

"Prime Rate" means the rate of interest per annum adopted and announced from time to time by J.P. Morgan Chase Bank as its prime commercial lending rate at its primary lending office in the United States.

"Qualified Intermediary" has the meaning set forth in 26 C.F.R. 1.1031(k)-1(g)(4).

"Rated" means, with respect to any Person, the rating most recently published, issued or announced by S&P or Moody's, as the case may be.

"Recovery Event" means any settlement of or payment in respect of Casualty Loss.

"Register" has the meaning assigned to it in Section 8.5(d).

"Registrar General" has the meaning assigned to it in Section 3.1(c).

"Reinvestment Deferred Amount" means with respect to any Asset Sale or Recovery Event, the aggregate Net Cash Proceeds received by the Borrower or deposited with a Qualified Intermediary (in the case of a 1031 Transaction) in connection therewith that are not applied to prepay the Loans pursuant to Section 2.7(b) as a result of the delivery of a Reinvestment Notice.

"Reinvestment Notice" means a written notice executed by a Responsible Officer stating that no Default or Event of Default has occurred and is continuing and that the Borrower intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Recovery Event to acquire or repair assets useful in its business.

“Reinvestment Prepayment Amount” means with respect to any Asset Sale or Recovery Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire assets useful in the Borrower’s business.

“Reinvestment Prepayment Date” means with respect to any Asset Sale or Recovery Event, the earlier of (a) the date occurring six months after such Asset Sale or Recovery Event and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, acquire or repair assets useful in the Borrower’s business with all or any portion of the relevant Reinvestment Deferred Amount.

“Replacement Unit” has the meaning assigned to it in the Security Agreement.

“Replacement Lease” has the meaning assigned to it in the Security Agreement.

“Required Lenders” means the holders of in excess of 50% of the outstanding principal amount of the Loans; provided, however any principal amount of the Loans held by an Affiliate of the Borrower shall not be included in the determination of the Required Lenders.

“Reserve Amount” shall mean \$2,631,389.16.

“Responsible Officer” means any one of the President, the Chief Financial Officer, the Treasurer, the Assistant Treasurer, the Secretary or the Assistant Secretary of the Servicer or any Person instructed by the Servicer to have responsibility over and to administer this transaction or any aspect thereof; provided, that with respect to certifying financial statements, “Responsible Officer” shall not include the Secretary or Assistant Secretary of the Servicer.

“Rolling Stock” means standard gauge railroad rolling stock, other than passenger equipment or work equipment, used or intended for use in connection with interstate commerce, excluding, however, railroad rolling stock scrapped or intended to be scrapped.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“Sale Agreement” means the Sale Agreement, dated as of December 29, 2005, between the Borrower, as buyer, and The Andersons, as seller.

“Securities Act” means the Securities Act of 1933, as amended from time to time.

“Security Agreement” means the Security Agreement, dated the date hereof, made by the Borrower in favor of the Lenders and the Agent, as the same may be amended, supplemented or modified from time to time.

“Seller Buyback” has the meaning assigned to it in Section 2.7(c).

“Servicer” means The Andersons or any other Person appointed servicer under the Servicing Agreement from time to time.

“Servicer Buyback” has the meaning assigned to it in Section 2.7(c).

“Servicing Agreement” means the Servicing Agreement, dated the date hereof, among The Andersons and the Borrower, as the same may be amended, supplemented or modified from time to time.

“Solvent” shall mean with respect to any Person that as of the date of determination both (a)(i) the then fair saleable value of the property of such Person is (A) greater than the total amount of liabilities (including contingent liabilities) of such Person and (B) not less than the amount that will be required to pay the probable liabilities on such

Person's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person, (ii) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction, and (iii) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (b) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"STB" has the meaning assigned to it in Section 3.1(c).

"Subsidiary" means as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

"1031 Exchange Agreement" has the meaning assigned to it in Section 5.1(m).

"1031 Proceeds" has the meaning assigned to it in Section 5.1(m).

"1031 Transaction" shall mean a like-kind exchange transaction in accordance with Section 1031 of the Code which shall be in all respects acceptable to the Agent.

"The Andersons" means The Andersons, Inc., an Ohio corporation.

"Transaction Documents" means, collectively, the Loan Documents, the Transfer Documents, the Servicing Agreement, the Management Agreement and the Car Mark Agreement.

"Transfer Agreement" means a transfer agreement between a transferring Lender and a Transferee substantially in the form of Exhibit E hereto.

"Transfer Documents" means, collectively, (i) the Sale Agreement and (ii) the Bill of Sale and Assignment Agreement, dated as of December 29, 2005, made by The Andersons in favor of the Borrower.

"Transferee" means a transferee permitted under Section 8.5(c).

"UCC" means the Uniform Commercial Code in effect in the State of Delaware, unless otherwise specified, as amended from time to time.

"UMLER" means the Universal Machine Language Equipment Register maintained by the AAR.

"Utilization Rate" shall mean a fraction (expressed as a percentage) the numerator of which is equal to the total number of units of Equipment constituting Collateral which are subject to an Eligible Lease and the denominator of which is equal to the total number of units of Equipment constituting Collateral.

**SECTION 1.2. Other Interpretive Provisions.** (a) Except as otherwise specified herein, all references herein (i) to any Person shall be deemed to include such Person's successors and permitted assigns, (ii) to any applicable law defined or referred to herein shall be deemed references to such applicable law or any successor applicable law as the same may have been or may be amended or supplemented from time to time and (iii) any agreement or document shall



be deemed references to such agreement or document as amended, supplemented, restated or otherwise modified and in effect from time to time.

(b) When used in this Agreement, (i) the words “this Agreement,” “herein,” “hereof” and “hereunder” and words of similar import shall refer to this Agreement as a whole (together with all Schedules and Exhibits) and not to any provision of this Agreement unless otherwise specified and (ii) the words “Article,” “Section,” “Schedule” and “Exhibit” shall refer to Articles and Sections of, and Schedules and Exhibits to, this Agreement unless otherwise specified.

(c) Whenever the context so requires, the neuter gender includes the masculine or feminine, the masculine gender includes the feminine, and the singular number includes the plural, and vice versa.

(d) Any item or list of items set forth following the word “including,” “include” or “includes” is set forth only for the purpose of indicating that, regardless of whatever other items are in the category in which such item or items are “included,” such item or items are in such category, and shall not be construed as indicating that the items in the category in which such item or items are “included” are limited to such items or to items similar to such items.

(e) The table of contents and the captions to Articles, Sections and subsections of, and Schedules and Exhibits to, this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or in any way affect the meaning or construction of any provision of this Agreement.

(f) Except as otherwise specified therein, terms that are defined herein that are used in any other Loan Documents, certificates, opinions and other documents delivered in connection herewith shall have the meanings ascribed to them herein and such documents shall be otherwise interpreted in accordance with the provisions of this Section 1.2.

(g) References to days shall refer to calendar days unless Business Days are expressly specified.

## ARTICLE II.

### AMOUNT AND TERMS OF THE LOANS

SECTION 2.1. The Loans. Upon the terms and subject to the conditions hereinafter set forth, each Lender severally and not jointly agrees to make a Loan to the Borrower in a single advance on the date of this Agreement in an amount equal to such Lender’s Commitment, which such Loan, when aggregated with all other Loans made by all Lenders, shall be in an aggregate amount equal to \$40,950,000.

SECTION 2.2. Making the Loan. The Loans shall be made on at least two (2) Business Days’ written, telegraphic, telex or telecopy notice from the Borrower to the Agent, specifying the date (which shall be a Business Day) thereof. Not later than 11:00 A.M. (New York City time) on the date of such Loans, each Lender will make available to the Agent at the Agent’s Account by wire transfer of immediately available funds in an aggregate amount equal to its Commitment. Upon receipt by the Agent of such funds and upon fulfillment of the conditions set forth in Article III, the Agent will make such funds available to the Borrower in accordance with the payment instructions of the Borrower (the “Pay Proceeds Letter”) delivered to the Agent, in the form set forth in Exhibit B.

SECTION 2.3. Repayment of Loans. (a) On each Payment Date, the Borrower shall pay to the Agent at the office specified from time to time by the Agent in immediately available funds for account of the Lenders, the amount of principal due on such Payment Date as set forth on Addendum I hereto together with accrued interest on the unpaid outstanding principal balance of the Loans.

(b) On the Maturity Date, the Borrower promises to pay to the Agent for the account of each Lender, the entire outstanding principal balance of the Loans on such date, plus all accrued and unpaid interest in accordance with Section 2.4 and all other amounts then due and owing to the Lenders hereunder and under the other Loan Documents.

SECTION 2.4. Interest. (a) Interest on the unpaid outstanding principal balance of the Loans shall accrue in arrears at a rate per annum equal to the Interest Rate.

(b) On January 15, 2006, the Borrower shall pay to the Agent at the Agent's Account in immediately available funds for the account of the Lenders, in arrears, an amount equal to \$112,734.34, which represents interest on the unpaid outstanding principal balance of the Loans on such date.

(c) On each Payment Date, the Borrower shall pay to the Agent at the Agent's Account in immediately available funds for the account of the Lenders, accrued interest on the unpaid outstanding principal balance of the Loans.

(d) All calculations of applicable interest under this Section 2.3 shall be made for actual days elapsed on the basis of a year consisting of 365 (or 366, as the case may be) days. Interest accrued on any Loan shall also be payable, on any date such Loan is prepaid (whether due to acceleration or otherwise) and on the Maturity Date.

(e) The Borrower shall pay to the Agent for the account of the Lenders interest on overdue principal and (to the extent permitted by applicable law) overdue interest and on any other amounts payable hereunder or under the other Loan Documents which are overdue, at the rate (the "Default Rate") of two percent (2%) per annum in excess of the Interest Rate (calculated on the basis of a year consisting of twelve, 30-day months), and such interest shall be payable upon demand of the Agent.

(f) In no event shall the interest rate for the Loan or any other amount payable under the Loan Documents exceed the maximum rate permitted by law, provided, further that notwithstanding anything to the contrary herein, the interest rate payable pursuant to this Agreement shall at no time exceed the lower of (i) the relevant interest rate stated herein, and (ii) the maximum interest rate permitted under applicable law. In the event the Agent ever receives, collects, or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of such other amounts due hereunder or under the Loan Documents then outstanding, and, if such other amounts then outstanding are paid in full, any remaining excess shall forthwith be paid to the Borrower. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the highest lawful rate, the Borrower, the Agent and the Lenders shall, to the maximum extent permitted under applicable law, (A) characterize any payment other than a payment of principal or interest hereunder as an expense, fee, or premium rather than as interest, (B) exclude any voluntary prepayments and the effects thereof, and (C) spread the total amount of interest throughout the period during which any principal of the Loan remains outstanding so that the interest rate is uniform throughout the period during which any principal of the Loan remains outstanding.

SECTION 2.5. Evidence of Debt. (a) Each Loan made by each Lender shall be evidenced by a single promissory note duly executed by the Borrower in favor of such Lender, dated the Closing Date (the "Notes"), which shall be issued in substantially the form attached hereto as Exhibit A, and in a principal amount equal to such Lender's Commitment and delivered to such Lender pursuant to Article III. The parties agree that the aggregate principal amount of the Notes outstanding at any time shall not exceed the sum of the Commitments of all of the Lenders reduced by any payments, prepayments and repayments of principal made by the Borrower.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from the Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Agent, on behalf of the Borrower, shall maintain the Register in which shall be recorded (i) the amount of each Loan made hereunder and the Note evidencing such Loan, (ii) the amount of any principal or interest

due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any sum received by the Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Agent to maintain the Register, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

SECTION 2.6. Optional Prepayments. At any time, and from time to time, upon not less than five (5) Business Days' prior written notice to the Agent and the Lenders, the Borrower may prepay the Loans in whole or ratably in part prior to the Maturity Date without any premium or penalty; provided that the Borrower may only prepay the Loans in an aggregate amount equal to \$4,095,000 in any calendar year. All prepayments of principal of the Loans, whether voluntary or otherwise (including, but not limited to, prepayment following acceleration upon the occurrence and during the continuance of an Event of Default), shall be accompanied by accrued interest on the amount prepaid and any fees due the Agent and the Lenders but unpaid. Partial prepayments of the Loans shall be in an aggregate principal amount of \$500,000 or a whole multiple thereof.

SECTION 2.7. Mandatory Prepayments.

(a) If, on any Appraisal Date, the Loan to Value Ratio exceeds 85%, the Borrower shall, within 3 Business Days thereafter, either (i) prepay the Loans or (ii) add additional Collateral in accordance with Section 6.2(c) of the Security Agreement, to the extent necessary to reduce the Loan to Value Ratio to or below 85%.

(b) If on any date the Borrower shall receive Net Cash Proceeds from any Asset Sale or Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof on the date of receipt by the Borrower of such Net Cash Proceeds, the Loans shall be prepaid by an amount equal to the amount of such Net Cash Proceeds, as set forth in Section 2.8; provided, that, notwithstanding the foregoing, (i) the aggregate Net Cash Proceeds of Asset Sales and Recovery Events that may be excluded from the foregoing requirement pursuant to a Reinvestment Notice shall be immediately deposited by the Borrower into the Cash Collateral Account or deposited with, or placed under the control of, a Qualified Intermediary (solely in the case of 1031 Transaction) unless such Net Cash Proceeds are used by the Borrower on such date to purchase Replacement Units and such Replacement Units (and any related Replacement Leases) become subject to the Lien of the Security Agreement in accordance with Section 6.2(b) of the Security Agreement and (ii) on each Reinvestment Prepayment Date, the Loans shall be prepaid by an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Asset Sale or Recovery Event. The provisions of this Section 2.7(b) do not constitute a consent to the consummation of any Disposition not permitted under the Loan Documents.

(c) If on any date the Borrower shall receive proceeds of the purchase of any Items of Equipment and/or Equipment Leases by the Manager in accordance with the terms of Section 4.04 the Management Agreement (a "Manager Buyback"), the Servicer in accordance with the terms of Section 4.03(b) of the Servicing Agreement (a "Servicer Buyback"), or The Andersons in accordance with the terms of Section 3.04 of the Sale Agreement (a "Seller Buyback"), then on the date of receipt by the Borrower of such proceeds, the Loans shall be prepaid by an amount equal to the amount of such proceeds.

SECTION 2.8. Pro Rata Treatment and Payments. (a) Each payment (including each prepayment) by the Borrower on account of principal of the Loans shall be made pro rata according to the respective outstanding principal amounts of the Loans then held by the Lenders and shall be applied to the installments of the Loans in the order of the scheduled maturities of such installments; provided that all prepayments by the Borrower on account of the principal of the Loans shall be applied to the installments of the Loans in the inverse order of the scheduled maturities of such installments. Each payment of interest in respect of the Loans and each payment in respect of fees payable hereunder

shall be applied to the amounts of such obligations owing to the Lenders pro rata according to the respective amounts then due and owing to the Lenders. Amounts prepaid on account of the Loans may not be reborrowed.

(b) Whenever any payment to be made hereunder or under the other Loan Documents shall be stated to be due on a day, which is not a Business Day, such payment may be made on the next succeeding Business Day, together with interest thereon to the date of payment and such extension of time shall in such case be included in the computation of payment of interest.

(c) Upon receipt by the Agent of payments on behalf of Lenders, the Agent shall promptly distribute such payments to the Lenders entitled thereto, in like funds as received by the Agent.

SECTION 2.9. Use of Proceeds. The proceeds of the Loans shall be used by the Borrower to acquire the Equipment and the related Equipment Leases, to pay fees and expenses in connection herewith, and for working capital and general business purposes.

SECTION 2.10. Non-Receipt of Funds by the Agent. Unless the Borrower or a Lender, as the case may be, notifies the Agent prior to the date on which it is scheduled to make payment to the Agent of (i) in the case of a Lender, the proceeds of a Loan or (ii) in the case of the Borrower, a payment of principal, interest, fees or any other amount hereunder to the Agent for the account of the Lenders, that it does not intend to make such payment, the Agent may assume that such payment has been made. The Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or the Borrower, as the case may be, has not in fact made such payment to the Agent, the recipient of such payment shall, on demand by the Agent, repay to the Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Agent until the date the Agent recovers such amount at a rate per annum equal to (x) in the case of payment by a Lender, the Federal Funds Rate for such day for the first three days and, thereafter, the interest rate applicable to the relevant Loan or (y) in the case of payment by the Borrower, the interest rate applicable to the relevant Loan.

SECTION 2.11. Inspection Rights. Once every twelve (12) month period at the Borrower's sole expense (except if an Event of Default has occurred and is continuing, in which case, at any time and at the Borrower's sole expense), the Agent and each Lender shall have the right to inspect, and the Borrower shall, at the request of the Agent or any such Lender, cause to be exhibited to the Agent and such Lender for purposes of such inspection, at the Borrower's sole expense, all of the lease records of the Borrower as to the status of the Equipment (other than the original executed Equipment Leases in the possession of the Agent) and any portion of the Equipment located at such time on the premises of the Borrower or any of its Affiliates or at any junction at the time of such inspection. In addition, the Agent, at the request of the Required Lenders, may, at the Lenders' expense, inspect, within 90 days of any addition or substitution, any Equipment added or substituted in accordance with Section 6.2 of the Security Agreement located at such time on the premises of the Borrower or its Affiliates.

### ARTICLE III.

#### CONDITIONS OF LENDING

SECTION 3.1. Conditions Precedent to the Loan. The obligation of the Lenders to advance the Loans shall be subject to fulfillment of the following conditions precedent on or prior to the Closing Date:

- (a) The Borrower shall have delivered to the Agent the Pay Proceeds Letter;
- (b) Each Lender shall have received its applicable Note duly executed by the Borrower;
- (c) The Agent shall have received the following documents in form and substance satisfactory to the Agent:

- (i) This Agreement duly executed by the Borrower;
- (ii) The Security Agreement duly executed by the Borrower together with a memorandum of the Security Agreement to be filed with the United States Surface Transportation Board (“STB”) and the Office of the Registrar General of Canada (“Registrar General”) together with evidence of such filings (and the favorable opinions of Alvord & Alvord, special Surface Transportation Board counsel to the Borrower, and McCarthy Tétrault LLP, special Canadian counsel to the Borrower);
- (iii) The Pledge Agreement duly executed by The Andersons;
- (iv) The Servicing Agreement duly executed by the Borrower and The Andersons;
- (v) The Management Agreement duly executed by the Borrower and The Andersons;
- (vi) The Lockbox Agreement duly executed by the Borrower and Fifth Third Bank;
- (vii) The Collection Account Blocked Account Agreement duly executed by the Borrower and Fifth Third Bank;
- (viii) The Cash Collateral Blocked Account Agreement duly executed by the Borrower and Fifth Third Bank;
- (ix) A certificate of insurance naming the Agent as additional insured and loss payee for the benefit of the Lenders, which satisfies the requirement of Section 4.2 of the Security Agreement;
- (x) A certificate substantially in the form of Exhibit C, duly executed by the secretary or assistant secretary of the Borrower and Servicer;
- (xi) Results of a recent lien search in each of the STB and each of the jurisdictions in which Uniform Commercial Code financing statements or other filings or recordations should be made to evidence or perfect security interests in the Collateral, and such search shall reveal no liens on any of the Collateral or any of the assets of the Borrower (except for the liens described in Section 5.1(e)(ii));
- (xii) A favorable opinion dated the Closing Date and addressed to the Lenders of each of: (A) in-house counsel to the Borrower; (B) Alvord & Alvord, special Surface Transportation Board counsel to the Borrower and (C) McCarthy Tétrault LLP, special Canadian counsel to the Borrower and (D) Chapman and Cutler LLP, special counsel to the Borrower;
- (xiii) A copy of the UCC-1 Financing Statements (i) naming Borrower as debtor and Agent as secured party, covering the Collateral, (ii) naming The Andersons, as debtor and the Agent, as secured party, covering the Pledged Collateral and, in each case to be filed and recorded with the office of the Secretary of State of the State of Delaware;
- (xiv) Evidence reasonably satisfactory to the Agent that a notice of the assignment of each Equipment Lease to the Borrower has been delivered to each Equipment Lessee thereunder;
- (xv) Evidence reasonably satisfactory to the Agent that an amount equal to the Reserve Amount is on deposit in the Cash Collateral Account;
- (xvi) An undated, signed Notice of Assignment with respect to each of the Equipment Leases, in substantially the form of Exhibit D;

(xvii) A copy of each of (i) the Transfer Documents, (ii) the Management Agreement, (iii) Servicing Agreement and the (iv) Car Mark Agreement, each certified by a Responsible Officer of the Borrower as true, correct and complete;

(xviii) an Appraisal as to the Fair Market Value of the Equipment, such Appraisal being based on a desktop review of the Equipment signed by a third party appraiser acceptable to the Agent; and

(xix) Good standing certificates of each of the Borrower, the Manager and the Servicer, certified by the respective states of formation or incorporation, as the case may be, all as reasonably acceptable to the Agent.

(d) The Borrower shall have made arrangements reasonably satisfactory to the Agent to pay for all filing fees and expenses incurred in connection with the filing of the Security Agreement with the United States Surface Transportation Board and the Office of the Registrar General of Canada, and the UCC Financing Statements (as described above in 3.1(c)(viii) with the Secretary of the State of the State of Delaware.

(e) The Borrower shall have paid to the Agent its agreed upon fees due on the Closing Date (it being understood that such fee or a portion thereof (x) may be paid directly from the Loan proceeds and (y) may be paid by the Agent to the Lenders).

(f) Except as specified on Schedule B hereto, the Borrower shall have delivered to the Agent with respect to each Equipment Lease (a) the chattel paper original of such Equipment Lease and (b) certified copies of each of the other Equipment Lease Documents.

#### ARTICLE IV.

#### REPRESENTATIONS AND WARRANTIES

SECTION 4.1. Representations and Warranties of the Borrower. The Borrower represents and warrants as of the Closing Date as follows:

(a) Organization. The Borrower (i) is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) has full power and authority to own its property, (iii) is qualified to do business in every jurisdiction where such qualification is required except where the failure to be so qualified would not have a material adverse effect on its ability to conduct its business and (d) is in compliance with all laws, treaties, rules or regulations of any Governmental Authority applicable to or binding upon the Borrower or the Collateral except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect. As of the Closing Date, (i) all of the outstanding economic membership interests of the Borrower are directly owned by The Andersons and (ii) the Borrower has no Subsidiaries.

(b) No Indebtedness. The Borrower has not created, incurred or permitted to exist any Indebtedness.

(c) Litigation. There are no actions, suits or proceedings pending to which the Borrower, the Servicer or any of the Servicer's Subsidiaries is a party, and there are no other actions, suits or proceedings threatened against the Borrower or the Servicer of which the Borrower has knowledge, before any court, arbitrator or administrative agency, which, either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(d) Authority of Borrower: No Conflicts. The execution, delivery and performance by the Borrower of the Loan Documents are within the Borrower's organizational powers and have been duly authorized by all necessary limited liability company action. Neither the execution and delivery of any of the Loan Documents or the Transaction Documents nor the consummation of the transactions herein or therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will (i) conflict with, violate, or result in a breach of, any of the

terms, conditions or provisions of (A) any law, or any regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or (B) the articles of incorporation, as amended, or the code of regulations, as amended, of the Servicer, or the certificate of formation or the operating agreement of the Borrower, or (C) any bond, debenture, note, mortgage, indenture, agreement, lease or other instrument to which the Borrower is a party or (ii) constitute, with the giving of notice or the passage of time or both, a default under any such agreement or instrument, or (iii) result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Borrower (except for the Liens contemplated or permitted by the Loan Documents) pursuant to the terms of any such agreement or instrument.

(e) Environmental Matters. Except to the extent such matters would not have a Material Adverse Effect:

(i) to the knowledge of the Borrower, the Equipment owned by it is in compliance with all applicable Environmental Laws. Except for matters that have been fully resolved, the Borrower has not received any written communication from any person or Governmental Authority that alleges that its operations are not in compliance with applicable Environmental Laws;

(ii) to the knowledge of the Borrower, it has obtained all environmental, health and safety permits and governmental authorizations (collectively, the “Environmental Permits”) necessary for the conduct of its railcar leasing business, and all such permits are in good standing or, where applicable, a renewal application has been timely filed and is pending agency approval, and to the knowledge of the Borrower, the Borrower is in compliance with all terms and conditions of the Environmental Permits;

(iii) there is no Environmental Claim pending or, to the knowledge of the Borrower, threatened against or concerning the Equipment;

(iv) To the knowledge of the Borrower, no release of any Hazardous Commodity has occurred on or from any of the Equipments, which requires investigation, assessment, monitoring, remediation or cleanup under Environmental Laws.

(f) No Agreements. The Borrower is not a party to any agreement, instrument or transaction other than its limited liability company agreement, this Agreement and the other Loan Documents and the Transaction Documents.

(g) Intellectual Property. The Borrower has all patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights and copyrights that the Borrower considers necessary to the conduct of its business as currently operated or proposed to be operated.

(h) Governmental Authority. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for the due execution, delivery and performance by the Borrower of any of the Loan Documents or the Transaction Documents (to which the Borrower is a party) or for the creation and perfection of the first priority security interest on the Collateral or Pledged Collateral intended to be created in favor of the Agent under the Security Agreement or Pledge Agreement, respectively, except for the filing of the Security Agreement or a memorandum thereof with the United States Surface Transportation Board and the Registrar General of Canada, and the filing UCC-1 financing statements in the State of Delaware naming the Borrower or The Andersons, as applicable, as debtor and the Agent, as secured party.

(i) Tax Returns. (i) The Borrower has filed or caused to be filed, or has timely requested and, if necessary, has obtained, an extension to file all federal and material state and local tax returns which, to the Borrower’s knowledge, are required to be filed, and has paid, or made provisions for the payment of, all taxes which have or may have become due pursuant to such returns or pursuant to any assessment received by them or any of their properties, and all other taxes, fees or other charges imposed on it or any of its properties, other than taxes which are being contested in good faith by appropriate proceedings and with respect to which appropriate reserves in accordance with GAAP consistently applied have been provided on their books; and (ii) no tax liens have been filed and no claims are

being asserted with respect to any such taxes, fees or other charges, other than those the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which appropriate reserves in accordance with GAAP consistently applied have been provided on the applicable books.

(j) Enforceability of Agreements. Each of the Loan Documents and Transaction Documents to which the Borrower is a party is legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms.

(k) Investment Company. The Borrower is not an “investment company” as such term is defined under the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder, nor will the making of the Loans hereunder by the Lenders on the terms and conditions hereunder provided and the use of the proceeds therefrom by the Borrower result in any violation by the Borrower of any of the provisions of the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

(l) Ownership of Collateral. The Borrower has good and marketable title to the Collateral, free and clear of all liens and encumbrances, other than Permitted Liens, subject and subordinate always to the rights of the Agent and the rights of the Equipment Lessees to use the Equipment pursuant to the Equipment Leases.

(m) Margin Regulations T, U, X. The proceeds of the Loans will be used by the Borrower only for the purposes set forth in Section 2.9. None of the proceeds will be used, directly or indirectly, for the purpose of purchasing any margin stock as such term is defined in Regulation U issued by the Board of Governors of the Federal Reserve System of the United States (the “Board”), as applicable (“Margin Stock”), or to extend credit to any other person for the purpose of purchasing or carrying any Margin Stock. The Borrower is not engaged principally, or as one of its important business activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. Neither the Borrower nor any Subsidiary nor any agent acting in its or on their behalf has taken or will take any action which might cause this Agreement or any of the documents or instruments delivered pursuant hereto to violate any regulation of the Board or to violate the Securities Exchange Act of 1934, as amended.

(n) Securities Act of 1933. Neither the Borrower nor, to its knowledge, anyone acting on its behalf has directly or indirectly offered or sold any interest in the Collateral, other securities or beneficial interests in the Equipment to, solicited offers to buy any interest in the Collateral, other securities or beneficial interests in the Equipment from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any interest in the Collateral, other securities or beneficial interests in the Equipment with, any Person so as to bring the transactions contemplated by this Agreement within the provisions of Section 5 of the Securities Act.

(o) Accuracy of Information. All information heretofore furnished by the Borrower to the Agent and the Lenders in connection with the Loan Documents is, and all such information hereafter furnished by it hereunder will be, true, complete and correct in every material respect, on the date such information is stated or certified, and no such item contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading (it being understood that with respect to any information received by the Borrower from any Lessee and furnished to Agent and the Lenders, the Borrower represents that any such information, to its knowledge, is true, complete and correct in every material respect, on the date such information is stated or certified, and no such item contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading).

(p) Equipment and Equipment Leases.

(i) The list of Equipment Lease Documents and all information with respect thereto set forth in Schedule A to the Security Agreement is accurate, true and correct in all material respects and is sufficient to identify the railcars comprising the Equipment and the rents payable by each Equipment Lessee under each



Equipment Lease specified in Schedule A to the Security Agreement for each rental period and the number of rental periods of anticipated rents under each such Equipment Lease. Each Equipment Lessee and the Borrower is in compliance in all material respects with all material provisions of the related Equipment Lease. The Borrower is not aware of any material default under any of the Equipment Leases.

(ii) (A) Each Equipment Lease Document (assuming due authorization, execution and delivery by the Equipment Lessee party thereto) is valid and enforceable in accordance with its terms, is non-cancelable, all sums payable thereunder are payable in the amounts and at the times stated therein and no part thereof has been prepaid, released or modified, or encumbered or disposed of by the Borrower; any and all sums of money previously paid by any Equipment Lessee thereunder as advance payments or deposit of security have been fully disclosed to the Agent; (B) each Equipment Lease has been entered into in the ordinary course of business, has been duly authorized and executed by bona fide, legally competent Equipment Lessees, is (together with the Equipment Lease Documents related thereto) the entire agreement with each such Equipment Lessee relating to the Equipment covered thereby, has not been amended, modified, cancelled or waived in any respect, and none of the Borrower's rights thereunder have been released, modified, encumbered or disposed of; any consent, approval, authorization of, or registration, declaration or filing with, any Governmental Authority (federal, state or local, domestic or foreign) required in connection with the execution, delivery or performance of any Equipment Lease by the Borrower has been obtained; (C) the Equipment covered by each Equipment Lease has been delivered, is in good working order, has been maintained in compliance with all the AAR's mechanical regulations and industry commercial standards for revenue interchange loading, has been used for the purpose for which it was built and shall have been accepted by the applicable Equipment Lessee as being in a condition which complies with the terms and conditions of such Equipment Lease; (D) no Equipment Lease or related Equipment Lease Document contains any purchase option or permits the Equipment Lessee to make prepayments of rent; and (E) all financial and credit information that the Borrower may at any time furnish to the Agent relating to the Equipment Lessee under each Equipment Lease is, to the best of the Borrower's knowledge, true, complete and not misleading.

(iii) Except as set forth on Schedule A to the Security Agreement, all of the Equipment is subject to an Equipment Lease.

(iv) Each Item of Equipment and each Equipment Lease is an Eligible Item of Equipment or an Eligible Lease, as applicable.

(v) With respect to each Equipment Lease, the Agent is in possession of, or will be pursuant to Section 5.2 of the Security Agreement, (a) a chattel paper original of such Equipment Lease and (b) copies of all other agreements, documents and instruments executed in connection with such Equipment Lease. No Equipment Lessee is in possession of any Equipment Lease that by its express terms is the chattel paper original of any Equipment Lease or any original receipt therefor.

(q) Security Interest. Upon the execution of the Cash Collateral Account Blocked Account Agreement, the Collection Account Blocked Account Agreement, the completion of the recordation and filing of a memorandum of the Security Agreement with the STB, and the deposit, registration and filing of a memorandum of the Security Agreement at the office of the Registrar General pursuant to Section 105 of the Canada Transportation Act, the Agent will have a first priority perfected security interest in the Collateral, subject only to Permitted Liens.

(r) Concerning Prior Ownership of the Equipment. Each of the Transfer Documents (i) was duly executed by the parties thereto; (ii) was duly authorized by all necessary action of each of the parties thereto; (iii) constitutes the legal, valid and binding obligation of each party thereto, enforceable in accordance with its terms (subject, as to enforceability, to applicable bankruptcy, insolvency, moratorium and similar laws affecting the enforcement of creditor's rights generally and to general applicable principles of equity).

(s) No Casualty Loss. To the best knowledge of Borrower, no Item of Equipment has suffered a Casualty Loss.

(t) Solvency. Both before and after giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, the Borrower is Solvent.

(u) Separateness. The Borrower is operated in such a manner that the separate corporate existence of the Borrower, on the one hand, and The Andersons or any Affiliate thereof, on the other, would not be disregarded in the event of the bankruptcy or insolvency of any of The Andersons or any Affiliate thereof and, without limiting the generality of the foregoing:

(i) (i) the Borrower is a limited purpose limited liability company whose activities are restricted in its organizational documents to activities related to purchasing or otherwise acquiring the Equipment and related assets and rights and conducting any related or incidental business or activities it deems necessary or appropriate to carry out its primary purpose, including entering into this Agreement and the other Transaction Documents;

(ii) the Borrower has not engaged, or presently engages, in any activity other than those activities expressly permitted hereunder and under the other Transaction Documents, nor has the Borrower entered into any agreement other than this Agreement and the other Transaction Documents to which it is a party;

(iii) (A) the Borrower maintains its own deposit account or accounts, separate from those of any of its Affiliates, with commercial banking institutions, (B) the funds of the Borrower are not and have not been diverted to any other Person for any use other than the corporate use of the Borrower, and (C), except as may be expressly permitted or required by this Agreement or any other Transaction Document, the funds of the Borrower are not and have not been commingled with those of any other Person;

(iv) to the extent that the Borrower contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other Person, the costs incurred in so doing are fairly allocated to or among the Borrower and such entities for whose benefit the goods and services are provided, and the Borrower and each such entity bears its fair share of such costs; and all material transactions between the Borrower and any of its Affiliates shall be only on an arm's-length basis;

(v) the Borrower maintains a principal executive and administrative office through which its business is conducted and a telephone number and stationery through which all business correspondence and communication are conducted separate from those of its Affiliates;

(vi) Borrower conducts its affairs strictly in accordance with its organizational documents and observes all necessary, appropriate and customary corporate formalities, including (A) holding all regular and special equity holders' and directors' or managers' , as applicable, meetings appropriate to authorize all company action (which, in the case of regular equity holders' and directors' or managers' , as applicable, meetings, are held at least annually), (B) keeping separate and accurate minutes of such meetings, (C) passing all resolutions or consents necessary to authorize actions taken or to be taken, and (D) maintaining accurate and separate books, records and accounts, including intercompany accounts;

(vii) all decisions with respect to the Borrower's business and daily operations are independently made by the Borrower and are not dictated by any Affiliate of the Borrower (it being understood that the Manager, which is an Affiliate of the Borrower, will undertake and perform all of the operations, functions and obligations of it set forth in the Management Agreement and it may appoint sub-managers, which may be Affiliates of the Borrower, to perform certain of such operations, functions and obligations and that the Servicer, which is an Affiliate of the Borrower, will undertake and perform all of the operations, functions

and obligations of it set forth the Servicing Agreement and it may appoint sub-servicers, which may be Affiliates of the Borrower, to perform certain of such operations, functions and obligations);

(viii) the Borrower acts solely in its own name and through its own authorized officers and agents, has not held itself out as a “division” or “part” of any other Person, and no Affiliate of such Person shall be appointed to act as its agent, except as expressly permitted by this Indenture and the other Transaction Documents;

(ix) no Affiliate of the Borrower advances funds to such Issuer, other than as is otherwise expressly provided herein or in the other Transaction Documents, and no Affiliate of the Borrower (other than pursuant to the express terms of the Loan Documents and the Transaction Documents) otherwise supplies funds to, or guaranties debts of, the Borrower;

(x) other than organizational expenses and as expressly provided herein, the Borrower pays all expenses, indebtedness and other obligations incurred by it;

(xi) the Borrower does not guarantee, or is not otherwise liable for, any obligation of any of its Affiliates;

(xii) any financial reports required of the Borrower comply with GAAP and are issued separately from, but may be consolidated with, any reports prepared for any of its Affiliates;

(xiii) the Borrower is adequately capitalized to engage in the transactions contemplated in its organizational documents;

(xiv) the Borrower maintains a board of managers consisting of three individuals. The Borrower’s board of managers includes at least one independent manager (A) who is not currently or within the preceding five years has been: (1) a stockholder, director, officer, employee, manager, or partner of The Andersons or any Affiliate of The Andersons (other than as an independent director of the Borrower), (2) a direct or indirect holder of any voting securities of The Andersons or any Affiliate of The Andersons, (3) a creditor, supplier, contractor or any other person who derives any of its purchases or revenues from its activities with The Andersons or any of The Andersons’ other Affiliates, or (4) a member of the immediate family of any stockholder, director, officer, employee, partner, customer, supplier or contractor of The Andersons or any of its other Affiliates, and (B) who has (1) prior experience as an independent director for a corporation whose charter documents required the unanimous consent of all independent directors thereof before such corporation could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy; and (2) is employed with one or more entities that provide, in the ordinary course of their respective businesses, advisory, management or placement services to issuers of securitization or structural finance instruments, agreements or securities; and

(xv) the organizational documents of the Borrower require (A) the affirmative vote of an independent manager before a voluntary petition under any bankruptcy, insolvency, reorganization or similar act, law or statute now or hereafter in effect may be filed by the Borrower, and (B) the borrower to maintain correct and complete books and records of account and minutes of the meetings and other proceedings of its stockholders and board of managers.

SECTION 4.2. Representation of the Borrower, Lenders and Agent. Each of the Borrower, each Lender and the Agent, hereby represents and warrants, severally and not jointly, that no brokers’ commissions related to the Loan Documents are payable by or through it.

## ARTICLE V.

## COVENANTS OF THE BORROWER

SECTION 5.1. Covenants. So long as any obligation contemplated hereunder or under the Security Agreement or under any other Loan Document shall remain unpaid, the Borrower agrees, that:

(a) Notice of Events of Default, Servicer Events of Termination and Manager Events of Termination.

(i) The Borrower will promptly deliver to the Agent, but in any event no later than 5 Business Days, after any Responsible Officer has knowledge of any Default or Event of Default, written notice of the occurrence of any such event, specifying each such default of which such Responsible Officer shall have knowledge relating to the nature and period of existence thereof and what action has been taken or is proposed to be taken with respect thereto.

(ii) The Borrower shall deliver to the Agent, together with each of the annual financial statements caused to be delivered by the Borrower pursuant to Section 5.1(e), a certificate of the Responsible Officer stating whether or not, to the best knowledge of such Responsible Officer, a Default or Event of Default has occurred and is continuing, and, if so, specifying each such default of which such Responsible Officer shall have knowledge relating to the nature and period of existence thereof and what action has been taken or is proposed to be taken with respect thereto.

(iii) The Borrower will promptly deliver to the Agent, but in any event no later than 3 Business Days, after any Responsible Officer has knowledge of the occurrence of any Servicer Event of Termination (as defined in the Servicing Agreement) or Manager Event of Termination (as defined in the Management Agreement), or event that, with the passage of time or the giving of notice, or both, would constitute such an occurrence, written notice of the occurrence of such event.

(b) Litigation. The Borrower will deliver to the Agent prompt written notice of any litigation or legal proceeding against the Borrower or The Andersons as a defendant involving a judgment in an amount, singly or in the aggregate, in excess of \$500,000, whether or not covered by insurance.

(c) Compliance with Laws, Equipment Leases, Etc. The Borrower will (i) comply with all laws, rules, regulations and orders applicable to the Collateral or the operation of the Borrower's business, if the failure to so comply would materially adversely affect the Borrower's business or the Collateral, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith by appropriate proceedings and for which appropriate reserves have been established on the Servicer's books in accordance with GAAP and (ii) comply with all of the terms, provisions, restrictions, covenants and agreements set forth in the Equipment Leases and the other Equipment Lease Documents and in each and every supplement to or amendment thereof.

(d) No Liens; No Loans. (i) The Borrower (A) shall not renew, create, assume or permit to exist any Lien (other than Permitted Liens) on any property or assets, including, without limitation, the Equipment, the Equipment Leases, or any other Collateral now owned or hereafter acquired by it and (B) will pay or discharge, at its own cost and expense, any and all debt, tax, assessment, obligations, claims, liens or charges (other than Permitted Liens) on or with respect to the Collateral. The Borrower further agrees to indemnify and hold harmless the Agent and the Lenders from and against any direct loss, costs or expenses (including reasonable legal fees and expenses) incurred, in each case, as a result of the imposition or enforcement of any such debt, tax, assessment, obligations, claim, lien, or charge. Without limiting the foregoing, there will be no financing statement or other filed or recorded instrument in which the Borrower is named or which the Borrower has signed, as debtor or mortgagor, now on file at the STB or the Registrar General covering any of the Collateral except the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for in the Security Agreement and in the Equipment Leases and except for any of the foregoing as to which a corresponding release has been or contemporaneously herewith is being filed with the STB, the Registrar General and the Secretary of State of the State of Delaware.

(ii) The Borrower will not make any loan, advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing, or otherwise), endorse (except for the endorsement of checks for collection or deposit) or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stock or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person.

(e) Reporting Requirements. The Borrower will cause to be furnished to the Agent:

(i) (A) as soon as available and in any event within 90 days after the end of each of the first three quarters of each fiscal year of (x) the Servicer, unaudited financial statements of the Servicer and its consolidated Subsidiaries in the form regularly prepared for its operations, including a balance sheet of the Servicer and its consolidated Subsidiaries as of the end of such quarter and statements of income and cash flow of the Servicer and its consolidated Subsidiaries as of the end of such quarter, and statements of income and cash flow of the Servicer and its consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, and (y) the Borrower, unaudited financial statements of the Borrower in the form regularly prepared for its operations, including a balance sheet of the Borrower as of the end of such quarter and statements of income of the Borrower as of the end of such quarter and statements of income and cash flow of the Borrower for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, in each case certified by a Responsible Officer; (B) as soon as available and in any event within 120 days after the end of each fiscal year of the Servicer, consolidated audited financial statements of the Servicer and its consolidated Subsidiaries certified by independent public accountants of recognized standing selected by the Servicer and acceptable to the Agent in its reasonable judgment; and (C) as soon as available and in any event within 120 days after the end of each fiscal year of the Borrower, unaudited financial statements of the Borrower in the form regularly prepared for its operations, including a balance sheet of the Borrower as of the end of such fiscal year and statements of income of the Borrower as of the end of such fiscal year and statements of income of the Borrower for the period commencing at the end of the previous fiscal year and ending with the end of such fiscal year, certified by a Responsible Officer;

(ii) concurrently with the delivery of the financial statements pursuant to in subsection (i) above, (A) a certificate of a Responsible Officer stating that, to the best of such Responsible Officer's knowledge, the Borrower has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (B) a compliance certificate containing all information and calculations necessary for determining compliance by the Borrower with the provisions of this Agreement as of the last day of the fiscal quarter or fiscal year of the Borrower, as the case may be, in a form reasonably acceptable to the Agent;

(iii) if so requested by the Agent or the Lenders, promptly after such request (or if later after receipt thereof from the applicable Equipment Lessee), all material information in relation to the financial status of each Equipment Lessee, including relevant financial statements of each Equipment Lessee, which is in the possession of the Borrower, the Manager or the Servicer, is publicly available or is required to be delivered pursuant to the terms of the applicable Equipment Lease;

(iv) the Quarterly Manager Report in accordance with Section 3.01 of the Management Agreement;  
and

(v) such other information regarding the condition or operations, financial or otherwise, of the Borrower or the Collateral as the Agent may from time to time reasonably request.

(f) Equipment Lease Payments. (i) The Borrower shall not modify or amend the payment terms under any Equipment Lease or request or accept any prepayment of rent from any Equipment Lessee under any Equipment Lessee.

(ii) The Borrower shall instruct each Equipment Lessee to make all payments of Equipment Lease Proceeds directly to the Lockbox Account and shall use its best efforts to cause each Equipment Lessee to make such directly to the Lockbox account.

(iii) The Borrower shall cause all payments in the Lockbox Account to be deposited into the Collection Account as promptly as possible and in any event no later than one Business Day after such payments become available in the Lockbox Account.

(iii) The Borrower agrees that if any payment is received by it (or by the Servicer or Manager on its behalf) under an Equipment Lease, such payment shall be held in trust for the sole benefit of the Agent and shall promptly be remitted by the Borrower to the Agent for deposit to the Collection Account.

(v) The Borrower shall not make any change in the instructions to the Equipment Lessees regarding payments to be made in respect of the Equipment into the Collection Account.

(g) Equipment Leases.

(i) Quarterly, within 20 days after the end of each fiscal quarter of the Borrower, the Borrower shall notify the Agent in writing regarding any material change related to the Equipment Leases, including, but not limited to, a change in the identity of any Equipment Lessee, in the car number assigned to any Item of Equipment, in the amount of rentals, or in any terms of the Equipment Leases. Nothing in this Section 5.1(g) shall be construed as a waiver of Borrower's obligations under the Security Agreement with respect to the Equipment Leases.

(ii) The Borrower shall use its best efforts to maintain in full force and effect all of its rights, as lessor, and all of the Equipment Lessee's obligations, as Lessee, under each Equipment Lease and shall take such action as is necessary to enforce its rights and the Equipment Lessee's obligations thereunder.

(iii) The Borrower shall not waive an event of default under an Equipment Lease unless no Event of Default then exists hereunder and such waiver and failure of an Equipment Lessee to comply with the relevant obligation (including with respect to the removal of any Liens) does not affect the then fair market value, utility or remaining useful life of the relevant Equipment. In no event shall any such waiver alter or diminish the Borrower's obligations hereunder (including with respect to the insurance, use or maintenance of the Equipment).

(iv) The Borrower shall not (and shall cause the Servicer not to) amend, modify, consent to any change in the terms or otherwise alter any Equipment Lease, except as expressly permitted under this Agreement, the Security Agreement, the Management Agreement or the Servicing Agreement.

(v) The Borrower shall use its best efforts (and shall cause the Manager to use its best efforts) to cause each Item of Equipment Railcar to be subject to, and maintained under, an Equipment Lease.

(vi) The Borrower shall ensure that (A) except as provided on Schedule B hereto, the chattel paper original of each Equipment Lease set forth on Schedule A to the Security Agreement has been delivered to the Agent and (B) the chattel paper original of each Replacement Lease and each amendment, supplement or other modification to an Equipment Lease set forth on Schedule A to the Security Agreement shall be delivered to the Agent within 15 days after the execution by the Equipment Lessee thereof.

(vii) Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, the Borrower shall not renew, extend or otherwise modify any Equipment Lease described on Schedule B hereto unless the Borrower shall have delivered to the Agent the chattel paper original of such Equipment Lease.

(h) Investment Company Act. The Borrower will conduct its operations, and will cause the Borrower's operations to be conducted, in a manner which will not subject it to registration as an "investment company" under the Investment Company Act of 1940, as amended.

(i) Subsidiaries. The Borrower shall not create any Subsidiaries.

(j) No Other Business. Other than in connection with the operation of its assets consisting of the Equipment and the Equipment Leases or pursuant to or as expressly permitted by any of the Loan Documents, the Borrower shall not engage in any business.

(k) Title; Control of Equipment. The Borrower will warrant and defend title to the Collateral against all claims and demands (other than Permitted Liens) of all persons whatsoever. The Equipment shall at all times be in the possession of or under the control of the Borrower, the Servicer, the Manager or, to the extent such Item of Equipment is subject to an Equipment Lease permitted by the Loan Documents, the Equipment Lessee under such Equipment Lease; provided that, subject to the terms of the Management Agreement, the Borrower or the Manager may relinquish possession to parties in the business and capable of repairing the Equipment for the limited purpose of effecting such repairs.

(l) Limitations on Indebtedness. The Borrower shall not create, incur or permit to exist any Indebtedness other than (i) the Loans, the Notes and other amounts payable under the Loan Documents and (ii) trade payables incurred in its ordinary course of business.

(m) Limitations on Dispositions.

(i) The Borrower shall not Dispose of any of its right or interest in or to property of any kind whatsoever (including, without limitation, the Collateral), whether real, personal or mixed and whether tangible or intangible, except (i) the Disposition of Equipment no more than once per calendar quarter; provided that the Borrower shall not in any calendar year Dispose of Equipment with an aggregate Fair Market Value (based on the most recent Appraisal delivered to the Agent) greater than 25% of the Fair Market Value of all the Equipment, (ii) in connection with a Manager Buyback, Servicer Buyback or Seller Buyback, (iii) in connection with a substitution of Replacement Units and Replacement Leases pursuant to Section 3.04 of the Sale Agreement or Section 4.04 of the Management Agreement so long as such Replacement Units and Replacement Leases become subject to the Lien of the Security Agreement in accordance with Section 6.2(b) of the Security Agreement and (iv) in connection with any Recovery Event.

(ii) The proceeds of any Disposition permitted under subsection (i) above shall be applied in accordance with Section 2.7.

(iii) Notwithstanding anything herein to the contrary, with respect to a Disposition in connection with a 1031 Transaction: (A) the Borrower shall provide the Agent with no less than 30 days prior written notice of any such proposed Disposition, (B) the proceeds of such Disposition ("1031 Proceeds") shall be deposited with, or otherwise placed under the control of, a Qualified Intermediary reasonably acceptable to the Agent, in accordance with Section 1031 of the Code, (C) all 1031 Proceeds held pursuant to a 1031 Exchange Agreement shall be held subject to 26 C.F.R. 1.1031(k)-1(g)(6) until such 1031 Proceeds are distributed in accordance with subsection (D) below, (D) the exchange or other similar agreement between the Qualified Intermediary and the Borrower (the "1031 Exchange Agreement") shall require the Agent's written consent prior to the distribution of such 1031 Proceeds by the Qualified Intermediary, unless (I) such

1031 Proceeds are used by the Qualified Intermediary to acquire Replacement Units that qualify as “replacement property” within the meaning of 26 C.F.R. 1.1031(k)-1 and (II) such Replacement Units are contemporaneously transferred by the Qualified Intermediary to the Borrower in accordance with Section 6.2 of the Security Agreement and (E) any such Disposition shall be in all other respects reasonably acceptable to the Agent.

(iv) Without limitation and notwithstanding anything herein to the contrary, Borrower shall have no right to receive, pledge, borrow or otherwise obtain the benefit of 1031 Proceeds held by a Qualified Intermediary while such funds are held by a Qualified Intermediary pursuant to a 1031 Exchange Agreement on or before such 1031 Proceeds are distributed in accordance with Section 5.1(m)(iii)(D).

(v) So long as no Event of Default or Default has occurred and is continuing, upon the written request of the Borrower, the Agent shall take such action as may be reasonably requested by the Borrower, at the sole cost and expense of the Borrower, in order to release from the Lien of the Security Agreement any Collateral Disposed of by the Borrower as permitted by this Section 5.1(m).

(n) Fundamental Changes. The Borrower shall maintain its existence as a limited liability company under the laws of the State of Delaware and shall not enter into any transaction of merger or consolidation, or change the form of organization of its business, or transfer all or substantially all of its properties and assets to any other Person. The Borrower shall obtain and preserve its qualification in each jurisdiction in which such qualification is necessary to protect the validity and enforceability of the Loan Documents.

(o) Limitations on Investments. The Borrower shall not purchase, hold or acquire any membership interests, capital stock, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to, or make or permit to exist any investment or any other interest in, any other Person except receivables arising from transactions with suppliers in the ordinary course of business.

(p) Limitation on Restricted Payments. The Borrower shall not declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any capital stock of the Borrower or any Subsidiary of the Borrower, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Borrower or any Subsidiary at any time after the occurrence and continuance of a Default or an Event of Default.

(q) Limitation on Amendments. (r) The Borrower shall not amend, supplement or otherwise modify the terms and conditions of (i) any of the Transaction Documents or (ii) the certificate of organization, operating agreement or other organizational documents of the Borrower, without the prior written consent of the Required Lenders, nor shall the Borrower take, or permit any other Person to take, any other action under any such documents that could have a Material Adverse Effect or which is inconsistent with the terms of this Agreement or any of the other Loan Documents.

(s) Transactions with Affiliates. Other than as set forth in Section 4.1(g), the Borrower will not, directly or indirectly, enter into any transaction with any Affiliate of the Borrower or the Servicer except (i) transactions on terms (considered as a whole) no less favorable to the Borrower than would be available in a comparable transaction with a Person other than an Affiliate or (ii) Permitted Affiliate Arrangements. Nothing contained in this Section 5.1(j) shall be construed to prohibit the Borrower from making distributions to its member in accordance with its organizational documents.

(t) Non-Consolidation. The Borrower will take all actions necessary to ensure that the representations and warranties contained in Section 4.1(t) hereof remain true and correct at all times and that the Borrower would not be consolidated with The Andersons or any of their Affiliates in the event that any such entity shall become subject to bankruptcy or insolvency proceedings.



(u) Concentration Limits. The Borrower shall not permit at any time (i) more than 15% of the Fair Market Value of the Equipment (based on the most recent Appraisal delivered to the Agent) to be leased to any one Equipment Lessee and any of its Affiliates that is not Investment Grade, (ii) more than 20% of Fair Market Value of the Equipment (based on the most recent Appraisal delivered to the Agent) to be leased to any one Equipment Lessee and any of its Affiliates that is Investment Grade; provided that up to 21% of Fair Market Value of the Equipment may be leased to Dakota Minnesota & Eastern Railroad Corporation and its Affiliates so long as they remain Investment Grade, or (iii) more than 20% Fair Market Value of the Equipment (based on the most recent Appraisal delivered to the Agent) to be subject to Per Diem Leases.

(v) Debt Service Coverage Ratio. The Borrower shall not permit the Debt Coverage Ratio as of any Determination Date to be less than 1.50.

(w) Utilization. The Borrower shall not permit the Utilization Rate at any time to be less than 80%.

(x) Cash Collateral Account Reserve. If the amount on deposit in the Cash Collateral Account (less amounts on deposit in the Cash Collateral Account on account of Asset Sales and Recovery Events) shall at any time be less than the Reserve Amount, the Borrower shall, within 3 Business Days thereafter, deposit in the Cash Collateral Account an amount equal to the difference between the Reserve Amount and the amount on deposit in the Cash Collateral Account (less amounts on deposit in the Cash Collateral Account on account of Asset Sales and Recovery Events) on such date.

(y) Appraisals.

(i) The Borrower shall, at the Borrower's expense, deliver to the Agent no later than 90 days after the Closing Date, the results of a physical inspection of the Equipment by D.W. Beary & Associates, Inc. either confirming the results of the Appraisal delivered to the Agent on the Closing Date or providing a revised Appraisal of the Equipment based on the results of such physical inspection.

(ii) The Borrower shall, at the Borrower's expense, deliver to the Agent an Appraisal of the Equipment (i) on each anniversary of the Closing Date and (ii) at any time requested by the Agent after the occurrence and continuation of an Event of Default, such Appraisal being based on a physical inspection of the Equipment conducted not more than thirty (30) days prior to the delivery date thereof. In addition, after the occurrence of any change in applicable law (including the rules and regulations of the AAR), which, in the reasonable opinion of the Agent, could have a material adverse effect on the Fair Market Value of the Equipment, the Agent shall have the right to obtain a new Appraisal of the Equipment, at the Borrower's expense.

(z) No Bankruptcy Filing with the Consent of Independent Director. The Borrower shall not, without the consent of the Independent Manager, (i) commence any insolvency proceeding seeking to have an order for relief entered with respect to it or seeking re-organization, arrangement, adjustment, wind-up, liquidation, dissolution, composition or other relief with respect to it or its debts, (ii) seek appointment of a receiver, trustee, custodian or other similar official for it or any part of its assets, (iii) make a general assignment for the benefit of creditors or (iv) take any action in furtherance of, or consenting or acquiescing in, any of the foregoing.

(aa) No Consolidation. Except as otherwise expressly permitted hereunder, the Borrower shall not consolidate, amalgamate or merge with or into any other Person or convey or transfer its properties and assets substantially as an entirety to any Person.

(bb) Enforcement of Servicing Agreement, Management Agreement and Transfer Agreements. The Borrower shall take all actions necessary, and diligently pursue all remedies available to it, to the extent commercially reasonable, to enforce the obligations of the Servicer under the Servicing Agreement, the Manager under the

Management Agreement and the obligation of all other parties under the Transaction Documents to secure its rights thereunder.

(cc) Patriot Act. In compliance with the USA Patriot Act and 31 CFR Part 103.121 and, in the case of a non-U.S. entity, any other similar requirements of the relevant foreign jurisdiction, when requested the Borrower shall provide to each Lender certain information relating to the Borrower that the Lender may be required to obtain and keep on file, including the Borrower's name, address and codes of various identifying documents.

(dd) 1031 Transactions. The Borrower shall cause all 1031 Proceeds in the possession or control of a Qualified Intermediary to be promptly deposited (but in no event later than 2 days after the occurrence of such event) by such Qualified Intermediary in the Collection Account upon the occurrence of one of the following events:

(i) upon the expiration of the "identification period" (as defined in 26 C.F.R. 1.1031(k)-1(b)(2)) with respect to such 1031 Proceeds, if the Borrower has not identified "replacement property" in accordance with 26 C.F.R. 1.1031(k)-1;

(ii) upon the expiration of the "exchange period" (as defined in 26 C.F.R. 1.1031(k)-1(b)(2)) with respect to such 1031 Proceeds if the Borrower has not acquired "replacement property" with such 1031 Proceeds in accordance with 26 C.F.R. 1.1031(k)-1;

(iii) upon the occurrence of any other event that would disqualify the 1031 Proceeds from being applied in a 1031 Transaction; or

(ee) (iv) upon the occurrence of an Event of Default.  
Post-Closing Deliveries.

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(i) The Borrower shall provide to the Agent no later than January 16, 2006, fully-executed, chattel paper originals of Equipment Leases between the Borrower, as lessor, and The Andersons, as lessee, as replacement for the "Andersons" Equipment Leases set forth on Schedule A to the Security Agreement.

(ii) A lien search performed at the STB has revealed liens of record on the Items of Equipment with the following car marks: AEX 4540, AEX 8299, AEX 8391 (the "Encumbered Cars"). Notwithstanding anything herein or in the other Loan Documents to the contrary, the existence of such liens shall not result in a Default or Event of Default unless the Borrower fails to cause such Encumbered Cars to be free and clear of liens of record at the STB no later than January 15, 2005.

## ARTICLE VI.

### EVENTS OF DEFAULT

SECTION 6.1. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) The Borrower shall fail to pay to the Agent any installment of the principal or interest on the Loans or any other amounts payable under the Loan Documents within 10 days after the due date therefor; or

(b) Any representation or warranty made by the Borrower herein or in any other Loan Document to which it is a party or by The Andersons in the Pledge Agreement, shall prove to have been incorrect in any material respect when made; or

(c) The Borrower shall fail to perform or observe any term, covenant or agreement set forth, or refuses to comply with the requirements of, Section 5.1 of this Agreement (other than Section 5.1(g)(vi)); or

(d) The Borrower shall fail to perform or observe the covenant set forth, or refuses to comply with the requirements of, Section 5.1(g)(vi) of this Agreement or Section 5.2 of the Security Agreement, other than the failure of the Borrower to deliver the chattel paper original of the Equipment Leases set forth on Schedule B hereof; or

(e) The Borrower shall fail to obtain and maintain the insurance required under Section 4.2 of the Security Agreement; or

(f) The Borrower or The Andersons shall fail to perform or observe any other term, covenant or agreement set forth herein or in any other Loan Document to which it is a party and such failure continues unremedied for a period of 30 days after the earlier of (i) any Responsible Officer of the Borrower or The Andersons first acquiring knowledge thereof or (ii) the Borrower's receipt of written notice thereof from the Agent; or

(g) The entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Borrower in an involuntary case or proceeding under any bankruptcy, insolvency, reorganization or similar act, law or statute now or hereafter in effect, or adjudging the Borrower as bankrupt or insolvent, or approving a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under Title 11 of the United States Code, as now constituted or hereafter in effect or under any other applicable federal or state bankruptcy law or other similar law, or the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator (or similar official) of the Borrower or of any substantial part of its property or the Collateral or Pledged Collateral, or the entry of an order for the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(h) The commencement by the Borrower of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or similar law, or of any other case or proceeding to be adjudicated as bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Borrower in an involuntary case or proceeding, under any applicable federal or state bankruptcy, insolvency, reorganization or similar law or the filing by it of a petition or consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, sequestrator, or similar official of the Borrower, or any substantial part of the Collateral, or the making by it of an assignment for the benefit of the creditors, or the taking of organizational action by the Borrower in furtherance of any such action; or

(i) The Agent shall cease to have a valid, perfected first priority security interest in and lien on any of the Collateral or the Pledged Collateral (except for Permitted Liens and as otherwise provided in the Security Agreement); or

(j) The rendering against the Borrower of a final judgment, decree or order for payment of money in excess of \$500,000 and the continuance of such judgment, decree or order unsatisfied for a period of 30 consecutive days without being contested in good faith and by appropriate proceedings; or

(k) Any of the Collateral or the Pledged Collateral shall be attached, distrained or otherwise levied upon, other than attachments, distraint and levies which constitute Permitted Liens; or

(l) An ERISA Event shall have occurred pursuant to which the Borrower incurs liability having a material adverse effect on its ability to perform its material obligations under the Loan Documents to which it is a party; or

(m) a Manager Event of Termination (as defined in the Management agreement) has occurred and is continuing and the Agent is unable to find an acceptable replacement Manager who succeeds to the role of "Manager" within 30 days after the Agent gives notice of such termination as provided in the Management Agreement; or

(n) a Servicer Event of Termination (as defined in the Servicing Agreement) has occurred and is continuing and the Agent is unable to find an acceptable replacement Servicer who succeeds to the role of “Servicer” within 30 days after the Agent gives notice of such termination as provided in the Servicing Agreement.

then, and in any such event, the Agent, acting on instruction from the Required Lenders, may immediately declare all amounts due and payable under the Loans and all interest thereon notified in writing to the Borrower and other amounts payable under the Loan Documents to be forthwith due and payable, whereupon the Loans, all such principal, interest and all such other amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Borrower, provided that upon the occurrence of an Event of Default described in subsection (g) and (h) of this Section 6.1, the results that would otherwise occur upon the giving of notice by the Agent shall occur automatically without the giving of any such notice.

Upon the occurrence and during the continuance of an Event of Default, the Required Lenders may direct the Agent to exercise remedies in accordance with the Security Agreement and the Pledge Agreement.

## ARTICLE VII.

### AGENCY

SECTION 7.1. Appointment and Authority. Each Lender hereby irrevocably appoints Siemens Financial Services, Inc. to act on its behalf as the Agent hereunder, under the other Loan Documents and under the other Transaction Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

SECTION 7.2. Rights as a Lender. The Person serving as the Agent hereunder and under the other Loan Documents shall have the same rights and powers in its capacity as a Lender and may exercise the same as though it were not the Agent and the term “Lender” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or other Affiliate thereof as if such Person were not the Agent hereunder and under the Security Agreement and the Pledge Agreement and without any duty to account therefor to any Lender.

SECTION 7.3. Exculpatory Provisions. The Agent shall have no any duties or obligations except those expressly set forth herein and in the other Loan Documents and pursuant to applicable law. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders, provided that the Agent is not required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement, any other Loan Document or any other Transaction Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Event of Default or Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document, any other Transaction Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to it, (vi) the value, sufficiency, creation, perfection or priority of any Lien in any Collateral or Pledged Collateral; or (vii) the financial condition of the Borrower, the Servicer, the Manager or any of the Servicer's or Manager's Subsidiaries. The Agent shall not have any duty to disclose to the Lenders information that is not required to be furnished by the Borrower to the Agent at such time, but is voluntarily furnished by the Borrower to the Agent (either in its capacity as Agent or in its individual capacity).

SECTION 7.4. Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless it shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 7.5. Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder, under any other Loan Document or any other Transaction Document by or through any one or more sub-agents appointed by it. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective related parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the related parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

SECTION 7.6. Action on Instructions of Lenders. The Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder, under any other Loan Document or any other Transaction Document in accordance with written instructions signed by the Required Lenders or all Lenders, as the case may be, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. The Lenders hereby acknowledge that the Agent shall be, from time to time, required or requested to take discretionary action permitted to be taken by it pursuant to the provisions of this Agreement, any other Loan Document or any other Transaction Document. In taking such action, the Agent shall not have any liability therefor, other than for the Agent's gross negligence or willful misconduct. The Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document at the request of the Required Lenders unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

SECTION 7.7. Resignation of Agent. The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Lenders shall have the right (so long as no Event of Default shall have occurred and be continuing, in consultation with the Borrower) to appoint a successor, which shall be a bank with an office in New York City, the State of New York, or an Affiliate of any such bank with an office in New York City, the State of New York. If no such successor shall have been so appointed by the Lenders and

shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder, under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and under the other Transaction Documents and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to the Lenders directly, until such time as the Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder or under the Security Agreement and the Pledge Agreement, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent and the retiring Agent shall be discharged from all of its duties and obligations hereunder, under the other Loan Documents and the other Transaction Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder, under the other Loan Documents and the other Transaction Documents, the provisions of this Article shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective related parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

SECTION 7.8. Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any other Transaction Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 7.9. Agent's Reimbursement and Indemnification. The Lenders agree to reimburse and indemnify each of the Agent ratably in proportion to their respective Commitments (i) for any amounts not reimbursed by the Borrower for which it is entitled to reimbursement by the Borrower under the Loan Documents, (ii) to the extent not reimbursed by the Borrower, for any other expenses incurred by it on behalf of the Lenders, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents (including, without limitation, for any reasonable expenses incurred by it in connection with any dispute between it and any Lender or between two or more of the Lenders) and (iii) to the extent not reimbursed by the Borrower, for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against it in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby (including, without limitation, for any such amounts incurred by or asserted against it in connection with any dispute between it and any Lender) or between two or more of the Lenders), or the enforcement of any of the terms of the Loan Documents or of any such other documents, provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Agent's gross negligence or willful misconduct. The obligations of the Lenders under this Section 7.10 shall survive payment of the Loans and termination of this Agreement.

SECTION 7.10. Notice of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless it has received written notice from a Lender or the Borrower referring to this Agreement describing such Default or Event of Default. In the event that the Agent shall receive such a notice, the Agent shall give notice thereof to the Lenders. The Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this

Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement); provided that unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 7.11. Authorization to Release Liens. The Agent is hereby irrevocably authorized by each of the Lenders to effect any release of Liens contemplated by the Security Agreement, the Pledge Agreement or the other Loan Documents.

## ARTICLE VIII.

### MISCELLANEOUS

SECTION 8.1. Amendments, Etc. An amendment or waiver of any provision of any of the Loan Documents, or consent to any departure by the Borrower therefrom shall in any event be effective only if the same shall be in writing and signed by the Required Lenders and the Borrower and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however:

(a) that no such amendment, waiver or consent shall, without the consent of all of the Lenders:

(i) extend the Maturity Date or forgive all or any portion of the principal amount of the Loans or postpone regularly scheduled payments of principal of any Loan or reduce the rate or extend the time of payment of interest or fees thereon or related thereto;

(ii) modify the percentage specified in the definition of Required Lenders;

(iii) reduce the amount or extend the payment date for any mandatory payments or increase the amount of any Lender's Commitment or permit the Borrower to assign its rights hereunder or the other Loan Documents;

(iv) amend or waive the obligations of the Borrower as set forth in Section 8.1 of the Security Agreement or Section 8.5 of this Agreement;

(v) release any Collateral, except as expressly provided for in the Loan Documents;

(vi) amend or otherwise modify any provision in the Loan Documents that, by its express terms, permits the Borrower to take or refrain from taking any action only upon the consent of all the Lenders hereunder; or

(vii) amend this Section 8.1 or Section 8.13.

(b) that notwithstanding the foregoing, the Agent may, without the consent of any of the Lenders, release and accept additions to and substitutions of any Collateral made in accordance with the express provisions of the Security Agreement and make determinations of whether any Replacement Unit and/or Replacement Lease delivered in connection therewith is acceptable or satisfactory,

No amendment of any provision of Article VII of this Agreement shall be effective without the written consent of the Agent. No amendment of any Note shall be effective without the written consent of the Lender holding such Note.

SECTION 8.2. Notices, Etc. All notices and other communications required or permitted to be given hereunder shall be in writing (including telegraphic, telecopy or cable communication) and mailed, telegraphed, telecopied, cabled or delivered by hand as provided below:

if to the Borrower, at its address at:

c/o The Andersons, Inc.

480 W. Dussel Drive, Suite S

Maumee, OH 43537

Fax: (419) 891-6670

Attention: Vice President and Treasurer

if to the Agent, at its address at:

Siemens Financial Services, Inc.

170 Wood Avenue South

Iselin, NJ 08830

Fax: (732) 590-6545

Attention: Vice President CBF, Operations and Credit

with a copy to:

Siemens Financial Services, Inc.

170 Wood Avenue South

Iselin, NJ 08830

Fax: (732) 590-6687

Attention: General Counsel

if to any Lender, at its address set forth in its Administrative Details (attached hereto as Schedule A).

All such notices and communications shall be effective when delivered personally or three days after the date on which it shall be deposited in the United States mail, first class, postage prepaid, return receipt requested or delivered to the telegraph company, confirmed by telex, telecopy answerback or delivered to the cable company, or deposited with a reputable overnight courier to be delivered the next day addressed as aforesaid, except that notices to any party pursuant to the provisions of Article II shall not be effective until received by such party.

SECTION 8.3. No Waiver; Remedies. No failure on the part of the Lenders to exercise, and no delay in exercising, any right hereunder or under the Loan Documents shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder or under the Security Agreement or the Notes preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 8.4. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistently applied, except as otherwise stated herein.



SECTION 8.5. Binding Effect; Assignments; Participations. (a) This Agreement shall be binding upon and inure to the benefit of the Borrower, the Lenders, the Agent, all future holders of the Loans and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Agent and each Lender.

(b) Any Lender may, without the consent of the Borrower, in accordance with applicable law, at any time sell to one or more banks, financial institutions or other entities (each, a "Participant") participating interests in any Loan owing to such Lender or any other interest of such Lender hereunder and under the other Loan Documents. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents, and the Borrower and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. In no event shall any Participant under any such participation have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, except to the extent that such amendment, waiver or consent would require the consent of all Lenders pursuant to Section 8.1. The Borrower agrees that if amounts outstanding under this Agreement and the Loans are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement, provided that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 8.13 as fully as if such Participant were a Lender hereunder. The Borrower also agrees that each Participant shall be entitled to the benefits of Section 9.20 with respect to its participation in the Loans outstanding from time to time as if such Participant were a Lender; provided that, in the case of Section 9.20, such Participant shall have complied with the requirements of said Section, and provided, further, that no Participant shall be entitled to receive any greater amount pursuant to such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred.

(c) Any Lender (an "Assignor") may, in accordance with applicable law and upon written notice to the Agent, at any time and from time to time assign to any Lender or any affiliate thereof, any Eligible Assignee with a net worth (as determined in the accordance with GAAP) in excess of \$75,000,000 or, with the consent of the Borrower and the Agent (which, in each case, shall not be unreasonably withheld or delayed), to an any other bank, financial institution or other entity (each such party, a "Transferee") all or any part of its rights and obligations under this Agreement pursuant to a Transfer Agreement substantially in the form attached hereto as Exhibit E, executed by such Transferee and such Assignor (and, where the consent of the Borrower and the Agent is required pursuant to the foregoing provisions, by the Borrower and the Agent) and delivered to the Agent for its acceptance and recording in the Register; provided that no such assignment to a Transferee (other than any Lender or any affiliate thereof) shall be in an aggregate principal amount of less than \$5,000,000 (other than in the case of an assignment of all of a Lender's interests under this Agreement), unless otherwise agreed by the Borrower and the Agent. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Transfer Agreement, (x) the Assignee thereunder shall be a party hereto and, to the extent provided in such Transfer Agreement, have the rights and obligations of a Lender hereunder with Loans as set forth therein, and (y) the Assignor thereunder shall, to the extent provided in such Transfer Agreement, be released from its obligations under this Agreement. Notwithstanding any provision of this Section, the consent of the Borrower shall not be required for any assignment that occurs at any time when any Event of Default shall have occurred and be continuing.

(d) The Agent shall, on behalf of the Borrower, maintain at its address referred to in Section 8.2 a copy of each Transfer Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and principal amount of the Loans owing to each Lender from time to time. The entries in the Register

shall be conclusive, in the absence of manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of the Loans and any Notes evidencing such Loans recorded therein for all purposes of this Agreement. Any assignment of any Loan shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide). Any assignment or transfer of all or part of a Loan shall be registered on the Register only upon surrender for registration of assignment or transfer of the Note evidencing such Loan, accompanied by a duly executed Transfer Agreement; thereupon one or more new Notes in the same aggregate principal amount shall be issued to the designated Assignee, and the old Notes shall be returned by the Agent to the Borrower marked "canceled".

(e) Upon its receipt of a Transfer Agreement executed by an Assignor and an Assignee (and, in any case where the consent of any other Person is required, by each such other Person) together with payment to the Agent of a registration and processing fee of \$3,500, the Agent shall (i) promptly accept such Transfer Agreement and (ii) on the effective date determined pursuant thereto record the information contained therein in the Register and give notice of such acceptance and recordation to the Borrower. On or prior to such effective date, the Borrower, at its own expense, upon request, shall execute and deliver to the Agent (in exchange for the Note of the assigning Lender) a new Note to the order of such Assignee in an amount equal to the Loans assumed or acquired by it pursuant to such Transfer Agreement and, if the Assignor has retained a Loan, upon request, a new Note to the order of the Assignor in an amount equal to the Loans retained by it hereunder. Such new Note or Notes shall be dated the Closing Date and shall otherwise be in the form of the Note or Notes replaced thereby.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**SECTION 8.6. GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, INCLUDING THE VALIDITY HEREOF AND THEREOF, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW JERSEY.**

**SECTION 8.7. CONSENT TO JURISDICTION. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY LOAN DOCUMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY, MAY BE INSTITUTED IN ANY FEDERAL, STATE OR LOCAL COURT IN THE COUNTY OF MIDDLESEX, STATE OF NEW JERSEY AND THE BORROWER HEREBY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND, SOLELY FOR THE PURPOSES OF ENFORCING THE LOAN DOCUMENTS, THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING.**

**SECTION 8.8. Indemnity. The Borrower agrees to indemnify, protect and hold harmless the Lenders and the Agent and their respective assigns, directors, officers, employees, agents and representatives (each an "Indemnified Party") from and against all losses, damages, injuries, liabilities, claims, suits, obligations, penalties, actions, judgments, costs, interest and demands of any kind or nature whatsoever (all the foregoing losses, damages, etc. are the "indemnified liabilities"), and expenses in connection therewith (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnified Party whether or not in connection with any investigative, administrative or judicial proceeding, whether or not such Indemnified Party shall be designated a party thereto, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel) or of appraisers arising out of, in connection with, or as the result of, (i) any claim arising from the operation, use, condition, possession, storage or repossession of any of the Collateral or the Pledged Collateral, (ii) any claim relating to any laws, rules or regulations, including, without limitation, environmental control, noise and pollution laws, rules or regulations, (iii) the preparation, execution, delivery or performance of the Loan Documents, (iv) the preservation or enforcement of any rights thereunder, (v) the retention by the Agent of a security interest in the Collateral or the**

Pledged Collateral, (vi) any claim for personal injury or property damage arising from the operation, use, condition, possession, storage or repossession of any of the Collateral or the Pledged Collateral, (vii) any claim relating to any laws, rules or regulations, including, without limitation, environmental control, noise and pollution laws, rules or regulations or arising during the period of any delivery, rejection, storage or repossession of any of the Equipment while a security interest therein remains in the Agent or during the period of the transfer of such security interest in the Collateral by the Agent pursuant to any of the provisions of the Security Agreement, (viii) any modifications, supplements, or amendments to any Loan Document or any releases of the Collateral or the Pledged Collateral pursuant thereto as a result of a prepayment of principal or otherwise, (ix) any claim relating to the Management Agreement, the Servicing Agreement, the Transfer Documents, the Car Mark Agreement or the transactions contemplated thereby, (x) any investigation of any Default or Event of Default or alleged default or (xi) with respect to the Agent only, for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent arising exclusively from any dispute between two or more Lenders; provided, however, that the Borrower shall have no obligation to so indemnify any Indemnified Party for any indemnified liabilities arising from such Indemnified Party's willful misconduct or gross negligence. The foregoing indemnity shall survive the termination of this Agreement, the other Loan Documents, the other Transaction Documents and payment of all obligations under the Loan Documents.

SECTION 8.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one agreement.

SECTION 8.10. Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected.

SECTION 8.11. Entire Agreement. This Agreement, together with other Loan Documents, constitutes the entire understanding between the parties with respect to the subject matter hereof. All prior agreements, understandings, representations, warranties and negotiations, if any, are merged into this Agreement, and this Agreement is the entire agreement between the parties hereto relating to the subject matter hereto. This Agreement cannot be changed or terminated orally.

SECTION 8.12. Survival of Representations and Warranties. All representations and warranties made herein, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans.

SECTION 8.13. Adjustments; Set-off. (a) Except to the extent that this Agreement provides for payments to be allocated to a particular Lender, if any Lender (a "Benefited Lender") shall at any time receive any payment of all or part of the Loans or other amounts owing to it under the Loan Documents ("Obligations"), or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 6.1(f) or (g) or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Obligations, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Obligations, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted

by applicable law, upon any amount becoming due and payable by the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the Agent after any such setoff and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 8.14. Confidentiality. Each of the Agent and the Lenders agrees to keep confidential all non-public information provided to it by the Borrower pursuant to this Agreement that is designated by the Borrower as confidential; provided that nothing herein shall prevent any Agent or any Lender from disclosing any such information (a) to the Agent, any other Lender or any affiliate of any thereof, (b) to any Participant or Assignee or prospective Participant or Assignee that agrees to comply with the provisions of this Section or substantially equivalent provisions, (c) to any of its employees, directors, agents, attorneys, accountants and other professional advisors, (d) upon the request or demand of any Governmental Authority having jurisdiction over it, (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to applicable law, (f) in connection with any litigation or similar proceeding, (g) that has been publicly disclosed other than in breach of this Section, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

SECTION 8.15. Costs and Expenses. The Borrower agrees (a) to pay or reimburse the Agent for its reasonable out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including, without limitation, the reasonable fees and disbursements and other charges of counsel to the Agent, (b) to pay or reimburse each Lender and the Agent for all their costs and expenses incurred after the occurrence of a Default or Event of Default in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith, including, without limitation, the fees and disbursements of counsel (including the allocated fees and disbursements and other charges of in-house counsel) to each Lender and of counsel to the Agent and (c) to pay, indemnify, or reimburse each Lender and the Agent for, and hold each Lender and the Agent harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents.

SECTION 8.16. No Third Party Beneficiary. This Agreement is solely for the benefit of the parties hereto and their successors and permitted assigns, and nothing contained in this Agreement shall be deemed to confer upon any other Person any right to insist upon or to enforce the performance or observance of any of the obligations contained herein. All conditions to the obligations of the Lenders to make the Loan hereunder are imposed solely and exclusively for the benefit of the Lenders and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Lenders will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by any Lender at any time if, in any Lender's sole discretion, such Lender deems it advisable or desirable to do so.

SECTION 8.17. Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall govern and prevail.

SECTION 8.18. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, any Loan Document or any amendment or exhibit hereto or thereto.

SECTION 8.19. Survival of Indemnities. All the indemnity and expense provisions set forth in this Agreement and the other Loan Documents shall survive the execution and delivery of this Agreement and the Notes and the payment in full of the Loans and all other obligations hereunder or under any Loan Documents.

**SECTION 8.20. WAIVER OF JURY TRIAL. BY ITS SIGNATURE BELOW WRITTEN EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS HEREIN DESCRIBED OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

SECTION 8.21. Taxes. (a) All payments made by the Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on the Agent or any Lender as a result of a present or former connection between the Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Agent' s or such Lender' s having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") or any Other Taxes are required to be withheld from any amounts payable to any Agent or any Lender hereunder, the amounts so payable to the Agent or such Lender shall be increased to the extent necessary to yield to such Agent or such Lender (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement; provided, however, that the Borrower shall not be required to increase any such amounts payable to any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Lender' s failure to comply with the requirements of paragraph (d) of this Section or (ii) that are United States withholding taxes imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender' s assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower with respect to such Non-Excluded Taxes pursuant to this paragraph (a). In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(b) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Agent for the account of the Agent or Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Agent or any Lender as a result of any such failure. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder and under the other Loan Documents.

(c) Each Lender (or Transferee) that is not a "U.S. Person" as defined in Section 7701(a)(30) of the Code (a "Non-U.S. Lender") shall deliver to the Borrower and the Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or any subsequent versions thereof or successors thereto properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the other Loan Documents. Such forms shall be

delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation). In addition, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(d) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate, provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's reasonable judgment such completion, execution or submission would not materially prejudice the legal position of such Lender.

SECTION 8.22. Waiver. The Borrower hereby waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding in connection with this Agreement or the other Loan Documents any special, exemplary, punitive or consequential damages.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Borrower:

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THE ANDERSONS RAIL OPERATING I LLC

By: /s/ Richard R. George  
Name: Richard R. George  
Title: Manager

Agent:

SIEMENS FINANCIAL SERVICES, INC.,  
in its capacity as Agent

By: /s/ Peter Donaldson  
Name: Peter Donaldson  
Title: VP Credit & Operations

Commitment: \$40,950,000

Lenders:  
SIEMENS FINANCIAL SERVICES, INC.

By: /s/ Peter Donaldson  
Name: Peter Donaldson  
Title: VP Credit & Operations

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Schedule A

Administrative Details

Siemens Financial Services, Inc.

170 Wood Avenue South

Iselin, NJ 08830

Fax: (732) 590-6545

Attention: Vice President CBF, Operations and Credit

Schedule B

Exception Report

Schedule of Principal Payments Addendum I

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<b>Date</b>	<b>Principal</b>	<b>Date</b>	<b>Principal</b>
2/15/2006	\$232,835.63	10/15/2009	\$295,862.26
3/15/2006	\$253,785.67	11/15/2009	\$292,595.93
4/15/2006	\$235,278.53	12/15/2009	\$298,721.10
5/15/2006	\$242,974.19	1/15/2010	\$295,564.42
6/15/2006	\$237,679.42	2/15/2010	\$297,048.19
7/15/2006	\$245,309.29	3/15/2010	\$312,075.28
8/15/2006	\$240,104.09	4/15/2010	\$300,106.07
9/15/2006	\$241,309.44	5/15/2010	\$306,025.46
10/15/2006	\$248,839.85	6/15/2010	\$303,148.93
11/15/2006	\$243,770.06	7/15/2010	\$308,984.95
12/15/2006	\$251,233.05	8/15/2010	\$306,221.93
1/15/2007	\$246,255.04	9/15/2010	\$307,759.20
2/15/2007	\$247,491.27	10/15/2010	\$313,468.90
3/15/2007	\$267,089.48	11/15/2010	\$310,877.85
4/15/2007	\$250,074.53	12/15/2010	\$316,502.09
5/15/2007	\$257,364.78	1/15/2011	\$314,027.38
6/15/2007	\$252,621.94	2/15/2011	\$315,603.83
7/15/2007	\$259,842.39	3/15/2011	\$328,919.35
8/15/2007	\$255,194.58	4/15/2011	\$318,839.43
9/15/2007	\$256,475.69	5/15/2011	\$324,245.52
10/15/2007	\$263,590.55	6/15/2011	\$322,067.80
11/15/2007	\$259,086.49	7/15/2011	\$327,385.44

12/15/2007	\$266,129.81	8/15/2011	\$325,328.14
1/15/2008	\$261,941.16	9/15/2011	\$326,961.33
2/15/2008	\$263,517.29	10/15/2011	\$332,144.89
3/15/2008	\$281,633.99	11/15/2011	\$330,270.13
4/15/2008	\$266,246.54	12/15/2011	\$335,363.03
5/15/2008	\$273,090.14	1/15/2012	\$333,741.01
6/15/2008	\$268,946.68	2/15/2012	\$335,568.87
7/15/2008	\$275,716.27	3/15/2012	\$347,038.66
8/15/2008	\$271,673.49	4/15/2012	\$338,986.29
9/15/2008	\$273,033.60	5/15/2012	\$343,835.87
10/15/2008	\$279,691.15	6/15/2012	\$342,404.78
11/15/2008	\$275,800.77	7/15/2012	\$347,160.65
12/15/2008	\$282,382.46	8/15/2012	\$345,857.03
1/15/2009	\$278,397.53	9/15/2012	\$347,588.54
2/15/2009	\$279,555.01	10/15/2012	\$352,202.30
3/15/2009	\$296,195.67	11/15/2012	\$351,091.98
4/15/2009	\$282,445.36	12/15/2012	\$355,609.70
5/15/2009	\$288,848.65	1/15/2013	\$16,734,526.36
6/15/2009	\$285,313.33		
7/15/2009	\$291,638.04		
8/15/2009	\$288,209.70		
9/15/2009	\$289,656.55		

Borrower Initial RRG