

**FEDERATED CAPITAL CORPORATION**

April 25, 2014

RECORDATION NO. 31180 FILED

Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

APR 28 '14 -3 05 PM

SURFACE TRANSPORTATION BOARD

**RE: Promissory Note & Security Agreement Dated February 28, 2014.**

Dear Sir/Madame:

Enclosed for recording pursuant to the provisions of 49 U.S.C. Section 1130 (a) are two copies of Promissory Note & Security Agreement, dated as of February 28, 2014, a primary document as defined in the Board's Rules for the Recordation of Documents.

The name and address of the parties to the enclosed documents are:

Borrower: Rail Logistics, LC and Rail Logistics/Cold Train, LC  
6600 College Boulevard, Suite 310  
Overland Park, Kansas 66211

Lender: LPF II, LLC.  
30955 Northwestern Highway  
Farmington Hills, Michigan 48334

The description of the railroad equipment covered by the document is:

Twenty Three (23) railcars marked "EAFX" and Forty-Six railcars marked "RRLX", which are all listed further in the attached Addendum A.

A short Summary of the document to appear in the index is "Promissory Note & Security Agreement dated February 28, 2014." Also enclosed is a check in the amount of \$~~44~~400 payable to the Surface Transportation Board covering the recording fee. Please return the stamped copies to me in the enclosed self-addressed, prepaid envelope.

Thank you for your attention, and should you have any questions, please do not hesitate to contact me.

Very truly yours,

Gregory S. Pierce  
General Counsel

APR 28 '14 -3 05 PM

## PROMISSORY NOTE

SURFACE TRANSPORTATION BOARD

\$1,250,000.00

February 28, 2014

FOR VALUE RECEIVED, Rail Logistics, L.C., a Kansas limited liability company, and Rail Logistics/Cold Train, LC, a Kansas limited liability company (jointly and severally, the "**Borrowers**"), with an address at 6600 College Boulevard, Suite 310, Overland Park, KS 66211, hereby promises to pay to the order of ~~LCI II, LLC~~ limited liability company (together with any successors and assigns, "**Lender**"), with an address at 30955 Northwestern Highway, Farmington Hills, MI 48334, the principal amount of one million two hundred and fifty thousand dollars (\$1,250,000.00), at the interest rates stated below, with interest and principal to be paid as set forth below. All payments shall be made by the Borrowers to Lender at the office of Lender indicated above or such other place as Lender may from time to time specify in writing in immediately available funds, without counterclaim or setoff and free and clear of, and without any deduction or withholding for, any taxes or other payments.

1. Interest; Payment.

1.1. All amounts outstanding hereunder from time to time shall bear interest at a rate equal to the lesser of two percent (2%) per annum and the maximum permitted by law until the date on which all amounts due and payable hereunder have been paid in full. From and after the occurrence of an Event of Default, including but not limited to failure to pay all amounts due hereunder on or before the date set forth in Section 1.2 below, all amounts outstanding hereunder shall bear interest at a rate equal to the lesser of eight percent (8%) per annum and the maximum permitted by law.

1.2. The Borrowers shall pay to Lender an amount equal to all outstanding principal and accrued interest, together with any other amounts then due under this Note, within ninety (90) days of the date of this Note.

1.3. The principal amount of this Note is prepayable in whole or in part at any time and from time to time, without premium or penalty. All payments shall be applied first to payment of accrued interest, and the balance on account of outstanding principal; provided, however, that after an Event of Default hereunder, payments will be applied to the obligations of the Borrowers to Lender as Lender determines in its sole discretion.

2. Loan Purpose.

2.1. Federated Railways, Inc., an affiliate of Lender, is contemplating the purchase of certain assets of the Borrowers. The parties acknowledge and agree that the loan contemplated under this Note is being made in connection with such contemplated purpose and but for such contemplated purchase, such loan would not be made. Accordingly, the Borrowers acknowledge that Lender may, at its option, assign its rights under this Note and the Loan Documents to one or more of its or Federated Railway Inc.'s affiliates, and in connection therewith, to the extent that the contemplated purchase is contemplated, the assignee of this Note and the Loan Documents may set-off, against the purchase price in connection with such acquisition, any amounts due under this Note or the Loan Documents.

2.2. The Borrowers agree that any amounts advanced pursuant to this Note is to be solely used towards the satisfaction of debts owed by the Borrowers to certain short haul trucking companies. Accordingly, in connection with the foregoing, the Borrowers agree that a separate bank account shall be established in which the money to be advanced under this Note is to be deposited pursuant to which the only authorized signer on the account shall be Louis Ferris. In connection

therewith, and so long as no Event of Default is then occurring, upon presentment to Mr. Ferris of outstanding invoices owed to such short haulers, Mr. Ferris will issue a check to such short hauler for the sums due under the applicable invoice from such account up to an amount not to exceed \$1,250,000.00. If at any time there is an Event of Default, Lender shall have the option of withdrawing the funds from such account and use such funds towards paying any sums due hereunder or under the Loan Documents.

3. Collateral. This Note is secured by collateral as set forth in the following documents dated as of the date of this Note (collectively and as each may be amended or modified from time to time, the "Collateral Documents"):

3.1. Unlimited Guaranty executed by Michael Lerner and Michael Lerner Revocable Trust in favor of Lender;

3.2. Membership Interest Pledge Agreement executed by Michael Lerner and Michael Lerner Revocable Trust in favor of Lender;

3.3. Membership Interest Pledge Agreement executed by Rail Logistics, L.C. in favor of Lender;

3.4. Security Agreement executed by Rail Logistics, L.C. in favor of Lender; and

3.5. Security Agreement executed by Rail Logistics/Cold Train, LC in favor of Lender.

4. Representations and Warranties. Each Borrower represents and warrants that each of the following is and will remain true and correct until the obligations under this Note have been fully satisfied: (a) the execution and delivery of this Note and the performance of the obligations it imposes do not violate any law, conflict with any agreement by which it is bound, or require the consent or approval of any other person; (b) this Note is a valid and binding agreement of the Borrowers, enforceable according to its terms, except as may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditor's rights generally and by general principles of equity; and (c) all financial information or other information furnished to Lender in connection herewith is accurate and fairly reflects the condition of the Borrowers on their effective dates.

5. Events of Default. The Borrowers agree that the occurrence of any of the following shall constitute an event of default ("Event of Default") hereunder and under the Loan Documents (as hereafter defined) executed in connection herewith: (a) the Borrowers fail to timely make any payment due under this Note; (b) if either Borrower violates any covenant set forth herein or the Loan Documents, or the representations and warranties set forth herein or the Loan Documents were materially false or misleading at such time as they were made; (c) the occurrence of an event of default under the Loan Documents; (d) if either Borrower: (i) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) consents to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of any Borrower or of any substantial part of its property, (iii) makes any general assignment for the benefit of creditors, (iv) fails generally to pay its debts as such debts become due, or (v) takes any action in furtherance of any of the foregoing; or (e) the existence or occurrence at any time of one or more conditions or events, which, in the sole opinion of Lender, has resulted, or is reasonably likely to result in a material adverse change in the assets or financial condition of either Borrower.

6. Remedies. Upon the occurrence of an Event of Default, Lender may exercise any right, power or remedy permitted by law or as set forth herein or in the Loan Documents and, without limiting

the generality of the foregoing, Lender shall thereupon have the right at its option and without notice to the Borrowers to declare the entire unpaid principal amount hereof and all interest accrued hereon, and all other sums payable hereunder or under the Loan Documents, to be immediately due and payable, and such principal, interest and other sums shall thereupon become forthwith due and payable. The failure by Lender to exercise the acceleration option shall not constitute a waiver of his right to exercise the acceleration option at any other time so long as that Event of Default remains outstanding and uncured, or to exercise it upon the occurrence of another Event of Default. The Borrowers shall pay all costs and expenses incurred by or on behalf of Lender in connection with Lender's exercise of any or all of its rights and remedies under this Note or the Loan Documents, including but not limited to attorneys' fees, whether or not litigation is commenced.

7. Rights Cumulative. The rights and remedies of Lender as provided herein or in the Collateral Documents or any other documents executed in connection herewith (collectively, as may be amended or modified from time to time, the "*Loan Documents*") shall be cumulative and concurrent, and may be pursued singly, successively or together against either Borrower at the sole discretion of Lender; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same. Lender shall not by any act of omission or commission be deemed to waive any of its rights or remedies under this Note unless such waiver is in writing and signed by Lender, and then only to the extent specifically set forth therein; and a waiver of one event shall not be construed as continuing or as a bar to or waiver of such right or remedy upon a subsequent event.

8. Reinstatement. The Borrowers agree that to the extent any payment or transfer is received by Lender, and all or any part of such payment or transfer is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be transferred or repaid by the Borrowers or transferred or paid over to a trustee, receiver or any other person, whether under any bankruptcy act or otherwise (any of those payments or transfers is hereinafter referred to as a "*Preferential Payment*"), then this Note shall continue to be effective or shall be reinstated, as the case may be, even if all those liabilities have been paid in full and whether or not Lender is in possession of this Note, or whether this Note has been marked paid, released or canceled, or returned to the Borrowers and, to the extent of the payment, repayment or other transfer by Lender, the liabilities or part intended to be satisfied by the Preferential Payment shall be revived and continued in full force and effect as if the Preferential Payment had not been made.

9. Waivers. The Borrowers expressly waive presentment for payment, demand, notice of dishonor, protest, notice of protest, diligence of collection, and any other notice of any kind other than as required pursuant to this Note, the Collateral Documents or applicable law, and hereby consents to any number of renewals and extensions of time of payment hereof, which renewals and extensions shall not affect the liability of any party hereto. The Borrowers further agree that if more than one party is liable for the amounts due hereunder, Lender may accept, by way of compromise or settlement, from any one or more of the parties liable hereunder a sum or sums less than the amount of this Note, and may give releases to such parties without affecting the liability of any other party for the unpaid balance. Any such renewals or extensions may be made and any such partial payments accepted or releases given without notice to any such party.

10. Construction of Terms. The word "Borrowers" whenever used herein is intended to and shall be construed to mean the entities who have executed this Note and its successors and assigns (including but not limited to Michael Lerner in the event that any interest in any of the Borrowers is transferred to him). The word "Lender" whenever used herein is intended to and shall be construed to mean the Lender or its successors and assigns. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. The headings preceding

the text of the paragraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Note nor shall they affect its meaning, construction or effect.

11. Integration Clause. This Note, the Collateral Documents and the other Loan Documents are intended by the parties as the final, complete and exclusive statement of the transactions evidenced by this Note. All prior or contemporaneous promises, agreements and understandings, whether oral or written, with respect to the subject matter hereof, are deemed to be superseded by this Note and the other Loan Documents, and no party is relying on any promise, agreement or understanding not set forth in this Note or the other Loan Documents. This Note may not be amended or modified except by a written instrument describing such amendment or modification executed by the Borrowers and Lender.

12. Choice of Law and Jurisdiction. This Note and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Michigan.

13. Notices. All notices and other communications hereunder shall be in writing and shall be sent to the party at the address first set forth above or to such other address or addresses as the party to whom such notice is directed may have designated in writing to the other party hereto. A notice shall, for all purposes, be deemed given and received: (a) upon receipt if delivered in person, or (b) the third business day after mailing, if mailed, first class certified or registered mail, return receipt requested and postage prepaid, or (c) the day on which the notice is delivered by the delivery service company to such party (or on the day delivery is attempted if such party refuses delivery) if sent by recognized overnight courier with charges prepaid. A copy of any notice to Lender shall also be sent to Pepper Hamilton LLP, 4000 Town Center, Suite 1800, Southfield, MI 48075, Attention: René M.L. Hansemann, Esq.

14. Severability. If any provision of this Note or the application thereof is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall not be affected thereby, and each provision of this Note shall be valid and enforceable to the fullest extent permitted by law.

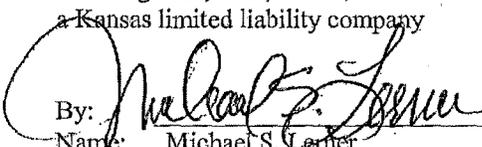
15. WAIVER OF SPECIAL DAMAGES. THE BORROWERS WAIVE, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM LENDER IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

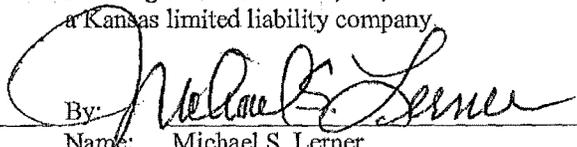
16. JURY WAIVER. THE BORROWERS AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE BORROWERS AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE OR THE LOAN DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING EVIDENCED BY THIS NOTE.

WITNESS the due execution hereof as a document under seal, as of the date first written above.

Rail Logistics, L.C.,  
a Kansas limited liability company

Rail Logistics/Cold Train, LC,  
a Kansas limited liability company

By:   
Name: Michael S. Lerner

By:   
Name: Michael S. Lerner

*Michael B. Jensen*  
Title: *Michael B. Jensen*

Title: Manager

By: *[Signature]*  
Name: *Steve Lawson*  
Title: Manager

By: *[Signature]*  
Name: Steve Lawson  
Title: Manager

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "*Agreement*") is made effective as of February 28, 2014 (the "*Effective Date*") between Rail Logistics, L.C., a Kansas limited liability company ("*Debtor*"), with its principal place of business at 6600 College Boulevard, Suite 310, Overland Park, KS 66211 and [REDACTED] limited liability company ("*Secured Party*"), with its principal place of business at 30955 Northwestern Highway, Farmington Hills, MI 48334.

### RECITALS

A. Pursuant to a Promissory Note of even date herewith (as amended, supplemented, amended and restated, or otherwise modified from time to time, the "*Promissory Note*"), executed by Debtor and Rail Logistics/Cold Train, LC, a Kansas limited liability company (jointly and severally, hereinafter "*Borrower*") in favor of Secured Party, Secured Party is making a term loan to Borrower in the original principal amount of \$1,250,000.00 (the "*Loan*").

B. As a condition precedent to the making of the Loan under the Promissory Note, Debtor is required to execute and deliver to Secured Party a security agreement in substantially the form hereof.

NOW, THEREFORE, to induce Secured Party to make the Loan, and in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Debtor and Secured Party hereby agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:

1.1. "*Collateral*" shall mean all the assets owned by Debtor or in which Debtor has an interest, whether tangible or intangible property, wherever located, whether now owned or hereafter acquired or arising, including but not limited to the following types or items of property:

1.1.1. Goods (including all Inventory, Equipment and any accessions thereto), Instruments (including Promissory Notes), Documents, Accounts, Chattel Paper, (whether tangible or electronic), Deposit Accounts, Letter of Credit Rights (whether or not the letter of credit is evidenced by writing), securities and all other Investment Property, Supporting Obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds or rights in any business or business venture, all General Intangibles (including Payment Intangibles, licenses, refund of deposits and premiums, tax refunds and registered copyrights), Commercial Tort Claims, Fixtures, and As-Extracted Collateral, together with all products and Proceeds (as hereafter defined) thereof, and all substitutions, additions, accessions, replacements, products, and renewals of, for, or to such property, or other rights ancillary to, or arising in any way in connection with, any of the foregoing. The capitalized terms used above shall have the meaning as defined in the applicable UCC as in effect from time to time.

1.1.2. **“Proceeds”** shall mean any “proceeds,” as such term is presently or hereafter defined in Article 9 of the UCC, now owned or hereafter acquired by Debtor, and in any event shall include, without limitation: any and all Proceeds of any of the foregoing, including, without limitation, whatever is received upon the use, lease, sale, exchange, collection, any other utilization or any disposition of any of the Collateral described in Section 1.1.1., whether cash or non-cash, all rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, and all insurance therefor.

1.2. **“Event of Default”** means (i) Borrower failing to make any payment due to Secured Party under the Promissory Note or Loan Documents when and as the same shall become due and payable, or (ii) any breach or violation of any representation, warranty, covenant or term of this Agreement, the Promissory Note or the Loan Documents that are not cured within the time period set forth herein or therein, as applicable.

1.3. **“Loan Documents”** has the meaning set forth in the Promissory Note.

1.4. **“Liabilities”** means and includes any and all indebtedness, obligations and liabilities of any kind arising in any way of Borrower to Secured Party, now existing or hereafter created, under the Promissory Note, the Loan Documents, or otherwise, including any existing or future debt and all liabilities and obligations of Borrower hereunder and thereunder.

1.5. **“UCC”** means the Uniform Commercial Code as in effect from time to time in the State of Kansas and any other applicable state.

2. Security Interest. As security for the due and punctual payment and full and complete performance of each of the Liabilities, Debtor hereby grants to Secured Party a security interest in and general lien upon all of Debtor’s right, title and interest in the Collateral and any part thereof. Secured Party’s security interest shall be first in priority.

3. Representations and Warranties:

3.1. Debtor’s Legal Status. Debtor represents and warrants to Secured Party as follows:

3.1.1. Debtor’s full legal name is: Rail Logistics, L.C.

3.1.2. Debtor’s principal place of business at: 6600 College Boulevard, Suite 310, Overland Park, KS 66211.

3.1.3. Debtor is a limited liability company duly organized and ~~validly existing and in good standing under the laws of the State of Kansas, and its~~ organizational identification number is 2661932.

3.2. Concerning Collateral. Debtor represents and warrants to Secured Party that Debtor has the rights in or power to transfer the Collateral, free from any right or claim or any person or any adverse lien, security interest or other encumbrance, except for the security created by this Agreement and the previous liens granted in favor of Great Western Bank.

4. Covenants. Debtor covenants with Secured Party as follows:

4.1. Debtor's Legal Status. That without providing at least 30 days prior written notice to Secured Party, Debtor will not change its name or its principal place of business.

4.2. Concerning Collateral. That (i) except as otherwise set forth in this Agreement, Debtor is the owner of and has rights in the Collateral free from any right or claim of any other person, lien, security interest or other encumbrance, and Debtor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to Secured Party and (ii) Debtor shall not create or suffer to exist any right of any person in or claim by any person to the Collateral, or any security interest, lien or encumbrance in the Collateral in favor of any person, other than Secured Party or as otherwise provided in this Agreement.

5. Protection of Collateral. Debtor shall keep all Collateral in good order and repair and shall not waste or destroy any Collateral. Debtor shall immediately notify Secured Party of any event resulting in loss or depreciation in the value of any Collateral and the amount of such loss or depreciation. Secured Party may examine and inspect any Collateral at any time wherever located. Debtor shall at all times maintain accurate books and records in forms satisfactory to Secured Party relating to the possession of all of the Collateral and the proceeds thereof, and Secured Party may, on request, examine the records of Debtor for any purpose consistent with the terms of this Agreement.

6. Other Actions. To further the attachment, perfection and first priority of, and the ability of Secured Party to enforce, Secured Party's security interest in the Collateral, and without limitation on Debtor's other obligations in this Agreement, Debtor agrees, in each case at Debtor's expense, to take the following actions with respect to the following Collateral:

6.1. Promissory Notes and Tangible Chattel Paper. If Debtor shall at any time hold or acquire any promissory notes or tangible chattel paper, Debtor shall forthwith endorse, assign and deliver the same to Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as Secured Party may from time to time specify.

6.2. Deposit Accounts. For each deposit account that Debtor at any time opens or maintains, Debtor shall, at Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, either (a) cause the depository bank to comply at any time with instructions from Secured Party to such depository bank directing the disposition of funds from time to time credited to such deposit account, without further consent of Debtor, or (b) arrange for Secured Party to become the customer of the depository bank with respect to the deposit account, with Debtor being permitted, only with the consent of Secured Party, to exercise rights to withdraw funds from such deposit account. Secured Party agrees with Debtor that Secured Party shall not give any such instructions or withhold any withdrawal rights from Debtor, unless an Event of Default has occurred and is continuing, or would occur with the passage of time. The provisions of this paragraph shall not apply to (i) any deposit account for which Debtor, the depository bank and Secured Party have entered into a cash collateral agreement specially negotiated among Debtor, the depository bank and Secured Party for the

specific purpose set forth therein, and (ii) deposit accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Debtor's salaried employees.

6.3. Investment Property. If Debtor shall at any time hold or acquire any certificated securities, Debtor shall forthwith endorse, assign and deliver the same to Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as Secured Party may from time to time specify. If any securities now or hereafter acquired by Debtor are uncertificated and are issued to Debtor or its nominee directly by the issuer thereof, Debtor shall immediately notify Secured Party thereof and, at Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, either (a) cause the issuer to agree to comply with instructions from Secured Party as to such securities, without further consent of Debtor or such nominee, or (b) arrange for Secured Party to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by Debtor are held by Debtor or its nominee through a securities intermediary or commodity intermediary, Debtor shall immediately notify Secured Party thereof and, at Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply with entitlement orders or other instructions from Secured Party to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by Secured Party to such commodity intermediary, in each case without further consent of Debtor or such nominee, or (ii) in the case of financial assets or other investment property held through a securities intermediary, arrange for Secured Party to become the entitlement holder with respect to such investment property, with Debtor being permitted, only with the consent of Secured Party, to exercise rights to withdraw or otherwise deal with such investment property. Secured Party agrees with Debtor that Secured Party shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by Debtor, unless an Event of Default has occurred and is continuing, or, would occur with the passage of time.

6.4. Electronic Chattel Paper and Transferable Records. If Debtor at any time holds or acquires an interest in any electronic chattel paper or any "transferable record," as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, Debtor shall promptly notify Secured Party thereof and, at the request and option of Secured Party, shall take such action as Secured Party may reasonably request to vest in Secured Party control, under Section 9-105 of the UCC, of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. Secured Party agrees with Debtor that Secured Party will arrange, pursuant to procedures satisfactory to Secured Party and so long as such procedures will not result in Secured Party's loss of control, for Debtor to make alterations to the electronic chattel paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to

make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by Debtor with respect to such electronic chattel paper or transferable record.

6.5. Letter-of-Credit Rights. If Debtor is at any time a beneficiary under a letter of credit, Debtor shall promptly notify Secured Party thereof and, at the request and option of Secured Party, Debtor shall, pursuant to an agreement in form and substance satisfactory to Secured Party, either (i) arrange for the issuer and any confirmer or other nominated person of such letter of credit to consent to an assignment to Secured Party of the proceeds of the letter of credit, or (ii) arrange for Secured Party to become the transferee beneficiary of the letter of credit, with Secured Party agreeing, in each case, that the proceeds of the letter to credit are to be applied.

6.6. Commercial Tort Claims. If Debtor shall at any time hold or acquire a commercial tort claim, Debtor shall immediately notify Secured Party in a writing signed by Debtor of the particulars thereof and grant to Secured Party in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Secured Party.

6.7. Other Actions as to Any and All Collateral. Debtor further agrees, at the request and option of Secured Party, to take any and all other actions Secured Party may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of Secured Party to enforce, Secured Party's security interest in any and all of the Collateral, including, without limitation, (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC, to the extent, if any, that Debtor's signature thereon is required therefor, (b) causing Secured Party's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of Secured Party to enforce, Secured Party's security interest in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Secured Party to enforce, Secured Party's security interest in such Collateral, (d) obtaining governmental and other third party waivers, consents and approvals in form and substance satisfactory to Secured Party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, and (e) obtaining waivers from mortgagees and landlords in form and substance satisfactory to Secured Party.

7. Taxes or Encumbrances; Reimbursement. Debtor shall pay promptly when due all taxes, assessments, liens, or encumbrances, governmental or private, levied on or against any of its Collateral. At its option, Secured Party may discharge any such encumbrance at any time levied or placed on any Collateral and may pay for the maintenance and preservation of any Collateral. Debtor shall reimburse Secured Party on demand for any such payment made or expense incurred, all of which shall be included in the Liabilities.

8. Risk of Loss; Insurance. The risk of loss of any Collateral shall be on Debtor at all times. Debtor shall have and maintain at all times policies of insurance with respect to all Collateral against risks of fire (including extended coverage), theft, and all such other risks as

Secured Party may require. Such policies of insurance shall contain such terms, be in such form, continue for such periods, and be written by such companies as deemed satisfactory by Secured Party. Debtor shall furnish Secured Party on demand with certificates or other evidence deemed satisfactory by Secured Party of compliance with the foregoing insurance provision. Secured Party may act as agent for Debtor in obtaining and canceling such insurance or adjusting and settling losses thereunder.

9. Further Assurances; Filing.

9.1. Delivery of Documents. At any time and from time to time, upon the demand of Secured Party, Debtor will, at Debtor's expense, give, execute, deliver, file, and/or record any notice, statement, instrument, assignment, document, agreement, or other papers that may be necessary or desirable, or that Secured Party may request, in order to create, preserve, perfect, or validate any security interest granted pursuant hereto or intended to be granted hereunder or to enable Secured Party to exercise or enforce their rights hereunder or with respect to such security interest. Debtor will cooperate with Secured Party in obtaining control with respect to Collateral consisting of deposit accounts, investment property, letter of credit rights, and electronic chattel paper.

9.2. Filing of Financing Statement. Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file financing statements (including amendments and continuations thereto) that: (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of the UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor (if required by the applicable jurisdiction).

9.3. Secured Party's Collateral Custody Duties. With respect to the Collateral, or any part thereof, which at any time may come into the possession, custody or under the control of Secured Party or any of its agents, associates or correspondents, Debtor hereby acknowledges and agrees that the sole duty of Secured Party with respect to the custody, safekeeping and physical preservation of such Collateral, whether pursuant to Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as Secured Party deals with similar property for its own account. Neither Secured Party, nor any of its partners, members, managers, directors, officers, employees, agents, associates, or correspondents shall be liable for failure to demand, collect, or realize upon any of the Collateral or for any delay in doing so.

10. General Authority.

10.1. Secured Party as Attorney-in-Fact. Debtor hereby irrevocably appoints Secured Party (and any of its attorneys, officers, employees, or agents) as his true and lawful attorney-in-fact, said appointment being coupled with an interest, with full power of substitution, in the name of Debtor, Secured Party, or otherwise, for the sole use and benefit of Secured Party in its sole discretion, but at Debtor's expense, to exercise, to the extent permitted by law, in Secured Party's name or in the name of Debtor or otherwise, the powers set forth herein, whether

or not any of the Liabilities are due, such powers, including but not limited to the powers at any time following demand for payment under the Promissory Note, or upon the occurrence of an Event of Default: (i) to endorse the name of Debtor upon any instruments relating to the Collateral; (ii) to demand, collect, receive payment of all or any of the Collateral; (iii) upon Event of Default to settle, compromise or adjust, with input from Debtor, all or any of the Collateral; (iv) to sign and file one or more financing statements naming Debtor as debtor and Secured Party as secured party and indicating therein the types or describing the items of Collateral herein specified; (v) to execute any notice, statement, instrument, agreement, or other paper that Secured Party may require to create, preserve, perfect, or validate any security interest granted pursuant hereto or to enable Secured Party to exercise or enforce its rights hereunder or with respect to such security interest.

10.2. Liability of Secured Party as Attorney-in-Fact. Neither Secured Party nor its attorneys, officers, employees, or agents shall be liable for acts, omissions, any error in judgment or mistake in fact in its/their capacity as attorney-in-fact. Debtor hereby ratifies all acts of Secured Party as his attorney-in-fact other than as a result of the negligence or misconduct of Secured Party. This power, being coupled with an interest, is irrevocable until the Liabilities have been fully satisfied. Secured Party shall not be required to take any steps necessary to preserve any rights against prior parties with respect to any of the Collateral.

10.3. Effect of Extensions and Modifications. Secured Party may extend the time of payment, arrange for payment in installments or otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, Debtor.

## 11. Remedies.

11.1. Acceleration of Liabilities; General Rights of Secured Party. Upon the occurrence of an Event of Default, at Secured Party's sole option, all Liabilities shall immediately become due and payable in full, all without protest, presentment, demand or further notice of any kind to Debtor, all of which are expressly waived. Upon and following an Event of Default, Secured Party may, at its option, exercise any and all rights and remedies it has under the Security Documents and/or applicable law, including, without limitation, the right to charge and collect interest on the principal portion of the Liabilities at a rate equal to the highest interest allowable by law, such rate of interest to apply to the Liabilities, at Secured Party's option, both before and after an Event of Default, maturity (whether by acceleration or otherwise) and entry of a judgment in favor of Secured Party with respect to any or all of the Liabilities.

11.2. Right of Set-off. Upon the occurrence of an Event of Default, Secured Party shall have the right, without notice to Debtor and regardless of the adequacy of the Collateral for the Liabilities or other means of obtaining repayment of the Liabilities, and is specifically authorized hereby to apply toward and set-off against and apply to the then unpaid balance of the Liabilities any items or funds held by Secured Party and any and all deposits (whether general or special, time or demand, matured or unmatured) or any other property of Debtor, including, without limitation, securities, now or hereafter maintained by Debtor for his own account with Secured Party and any other indebtedness at any time held or owing by Secured Party to or for the credit or the account of Debtor, even if effecting such set-off results

in a loss or reduction of interest or the imposition of a penalty applicable to the early withdrawal of time deposits. For such purpose, Secured Party shall have, and Debtor hereby grants to Secured Party, a first lien on and security interest in such deposits, property, funds, and accounts and the proceeds thereof (subject only to the existing rights of Great Western Bank. Such right of set-off shall exist whether or not Secured Party shall have made any demand under the Promissory Note, or any other document executed in connection therewith, and whether or not the Liabilities are matured or unmatured.

11.3. Additional Rights and Remedies. In addition to the rights and remedies available to Secured Party as set forth above and any other rights or remedies available to Secured Party under applicable law, upon the occurrence of an Event of Default hereunder, or at any time thereafter, Secured Party may at its option, immediately and without any further notice, do any or all of the following, which rights and remedies are cumulative, may be exercised from time to time, and are in addition to any rights and remedies available to Secured Party under any other agreement or instrument by and between Debtor and Secured Party:

11.3.1. Demand, sue for, collect, or retrieve any money or property at any time payable, receivable on account of or in exchange for, or make any compromise, or settlement deemed desirable with respect to the Collateral; and/or

11.3.2. Upon ten (10) calendar days' prior written notice to Debtor (or one (1) day's notice by telephone with respect to Collateral that threatens to decline rapidly in value), which Debtor hereby acknowledges to be sufficient, commercially reasonable and proper, Secured Party may sell, lease or otherwise dispose of its rights in the Collateral at any time and from time to time at public or private sale, with or without advertisement thereof, and apply the proceeds of any such sale first to Secured Party's expenses in preparing the Collateral for sale (including reasonable attorneys' fees) and second to the complete satisfaction of the Liabilities in any order deemed appropriate by Secured Party in its sole discretion. To the extent that the proceeds resulting from disposition of the Collateral exceed the amount owing to Secured Party by Debtor the excess proceeds shall be applied in the manner set forth in the UCC. Debtor waives the benefit of any marshaling doctrine with respect to Secured Party's exercise of its rights hereunder. Secured Party or anyone else may be the purchaser of any or all of the Collateral so sold and thereafter hold such Collateral absolutely, free from any claim or right of whatsoever kind, including any equity of redemption of Debtor any such notice, right and/or equity of redemption being hereby expressly waived and released.

## 12. Miscellaneous.

12.1. Remedies Cumulative; No Waiver. The rights, powers, and remedies of Secured Party provided in this Agreement are cumulative and not exclusive of any other right, power, or remedy provided by contract (including but not limited to the Security Documents), law or equity. No failure or delay on the part of Secured Party in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy.

12.2. Notices. All notices and other communications hereunder shall be in writing and shall be sent to the party at the address first set forth above or to such other address or addresses as the party to whom such notice is directed may have designated in writing to the other party hereto. A notice shall, for all purposes, be deemed given and received: (a) upon receipt if delivered in person, or (b) the third business day after mailing, if mailed, first class certified or registered mail, return receipt requested and postage prepaid, or (c) the day on which the notice is delivered by the delivery service company to such party (or on the day delivery is attempted if such party refuses delivery) if sent by recognized overnight courier with charges prepaid. A copy of any notice to Secured Party shall also be sent to Pepper Hamilton LLP, 4000 Town Center, Suite 1800, Southfield, MI 48075, Attention: René M.L. Hansemann, Esq.

12.3. Costs and Expenses. Upon occurrence of an Event of Default, Debtor shall promptly pay (or reimburse, as Secured Party may elect) all costs and expenses that Secured Party may hereafter incur in connection with the enforcement of this Agreement or the other Security Documents, and the collection of all amounts due under the Security Documents. Such costs and expenses shall include, without limitation, the reasonable fees and disbursements of counsel (both in-house and outside) for Secured Party, the costs of searches of public records, costs of filing and recording documents with public offices, internal and/or external audit and/or reasonable examination fees and costs, stamp, excise and other taxes, the reasonable fees of Secured Party's accountants, consultants or other professionals, costs and expenses from any actual or attempted sale of all or any part of the Collateral, or any exchange, enforcement, collection, compromise, or settlement of any of the Collateral or receipt of the proceeds thereof, and for the care and preparation for sale of the Collateral (including insurance costs) and defending and asserting the rights and claims of Secured Party in respect thereof, by litigation or otherwise. Debtor's reimbursement obligations under this Section 12.3 shall survive the termination of this Agreement or the other Security Documents.

12.4. Integration. This Agreement, the Promissory Note and the Loan Documents and the agreements executed pursuant to the foregoing constitute the sole agreement of the parties with respect to the subject matter hereof and thereof and supersede all oral negotiations and prior writings with respect to the subject matter hereof and thereof.

12.5. Amendment; Waiver. No amendment of this Agreement, and no waiver of any one or more of the provisions hereof shall be effective unless set forth in writing and signed by the parties hereto.

12.6. Successors and Assigns. This Agreement (i) shall be binding upon Debtor and Secured Party and, where applicable, their respective heirs, executors, administrators, successors, and permitted assigns, and (ii) shall inure to the benefit of Debtor and Secured Party and, where applicable, their respective heirs, executors, administrators, successors and permitted assigns; provided, however, that Debtor may not assign its rights hereunder or any interest herein without the prior written consent of Secured Party, in its sole discretion, and any such assignment or attempted assignment by Debtor shall be void and of no effect with respect to Secured Party.

12.7. Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or

impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder. In lieu of any illegal or unenforceable provision in this Agreement, there shall be added automatically as a part of this Agreement a legal and enforceable provision as similar in terms to such illegal or unenforceable provision as may be possible.

12.8. Headings. The headings of sections and sections have been included herein for convenience only and shall not be considered in interpreting this Agreement.

12.9. Governing Law. This Agreement shall be construed in accordance with and governed by the substantive laws of the State of Michigan without reference to conflict of laws principles.

12.10. Membership Interest Pledge Agreement. Concurrently herewith, Debtor is executing and delivering to Secured Party a Membership Interest Pledge Agreement pursuant to which Debtor is granting a security interest to Secured Party in all of the limited liability company interests of Rail Logistics/Cold Train, LC. If there is a conflict between such Membership Interest Pledge Agreement and this Agreement, the Membership Interest Pledge Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**SECURED PARTY:**

~~RAIL LOGISTICS, L.C.~~

By: 

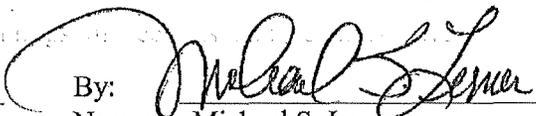
Name: Louis P. Ferris, Jr

Title: Member

**DEBTOR:**

RAIL LOGISTICS, L.C.,

a Kansas limited liability company

By: 

Name: Michael S. Lerner

Title: Manager

By: \_\_\_\_\_

Name: Michael S. Lerner

Title: Manager

## ADDENDUM A

<u>Railcar ID</u>	<u>Car Type</u>	<u>Railcar ID</u>	<u>Car Type</u>
EAFX005006	Covered Hopper	RRLX005990	Covered Hopper
EAFX005007	Covered Hopper	RRLX005993	Covered Hopper
EAFX005008	Covered Hopper	RRLX005994	Covered Hopper
EAFX005010	Covered Hopper	RRLX005995	Covered Hopper
EAFX005011	Covered Hopper	RRLX005996	Covered Hopper
EAFX005013	Covered Hopper	RRLX007048	Open Top Hopper
EAFX005033	Covered Hopper	RRLX007056	Open Top Hopper
EAFX005034	Covered Hopper	RRLX007066	Open Top Hopper
EAFX005037	Covered Hopper	RRLX007068	Open Top Hopper
EAFX005042	Covered Hopper	RRLX007076	Open Top Hopper
EAFX005101	Covered Hopper	RRLX007078	Open Top Hopper
EAFX005102	Covered Hopper	RRLX007085	Open Top Hopper
EAFX005103	Covered Hopper	RRLX007090	Open Top Hopper
EAFX005104	Covered Hopper	RRLX007091	Open Top Hopper
EAFX005105	Covered Hopper	RRLX007097	Open Top Hopper
EAFX005162	Covered Hopper	RRLX007099	Open Top Hopper
EAFX005163	Covered Hopper	RRLX007111	Open Top Hopper
EAFX005167	Covered Hopper	RRLX007115	Open Top Hopper
EAFX005168	Covered Hopper	RRLX007120	Open Top Hopper
EAFX005169	Covered Hopper	RRLX007202	Covered Hopper
EAFX005170	Covered Hopper	RRLX007203	Covered Hopper
EAFX016033	Covered Hopper	RRLX007204	Covered Hopper
EAFX016034	Covered Hopper	RRLX007206	Covered Hopper
RRLX001010	Box Car	RRLX007209	Covered Hopper
RRLX001012	Box Car	RRLX007211	Covered Hopper
RRLX004203	Covered Hopper	RRLX007230	Covered Hopper
RRLX004208	Covered Hopper	RRLX007235	Covered Hopper
RRLX004217	Covered Hopper	RRLX007238	Covered Hopper
RRLX004233	Covered Hopper	RRLX007243	Covered Hopper
RRLX004239	Covered Hopper	RRLX096017	Big Gondola
RRLX004240	Covered Hopper	RRLX096021	Big Gondola
RRLX005969	Covered Hopper	RRLX005979	Covered Hopper
RRLX005972	Covered Hopper	RRLX005987	Covered Hopper
RRLX005973	Covered Hopper	RRLX005989	Covered Hopper
RRLX005978	Covered Hopper		

RRLX007202 Covered Hopper

RRLX007202 Covered Hopper