

RECORDATION NO. 25874 FILED

SEP 30 '05 5-31 PM

SURFACE TRANSPORTATION BOARD

OF COUNSEL  
URBAN A. LESTER

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.

20036

(202) 393-2266

FAX (202) 393-2156

E-MAIL [alvordlaw@aol.com](mailto:alvordlaw@aol.com)

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

September 30, 2005

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of June 27, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Seller:	General Electric Railcar Services Corporation 161 North Clark Street Chicago, Illinois 60601
Buyer:	The Andersons, Inc. 480 West Dussel Drive Maumee, Ohio 43537

Mr. Vernon A. Williams  
September 30, 2005  
Page 2

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

98 railcars within the series MDW 7100 – MDW 7204 as more particularly set forth in the equipment schedule attached to the document.

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

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm  
Enclosures

SEP 30 '05

5-31 PM

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

SURFACE TRANSPORTATION BOARD

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of June 27, 2005 (this "Agreement"), is between General Electric Railcar Services Corporation, a Delaware corporation (the "Seller"), and The Andersons, Inc., an Ohio corporation (the "Buyer").

**RECITALS**

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement, dated as of June 27, 2005 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

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

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

**AGREEMENT**

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

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

3. **Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.** The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by all the terms of, the Operative Agreements. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Operative Agreements and each reference in the Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller, in respect of the period on and after the Closing Date, is released of all obligations of the Seller under the Operative Agreements.

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

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

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

**Equipment:** the units of equipment listed on Schedule 1 hereto.

**Lease:** Extension No. 2 to Schedule No. 13 to Lease Agreement No. 5804-92-1, dated as of May 18, 2005, between Seller (identified therein as "General Electric Rail Services Corporation") and Lessee.

**Lessee:** The Minnesota, Dakota and Western Railway Company.

**Master Lease:** Per Diem Lease Agreement 5804-92-1, dated as of January 1, 1997, between Seller and Lessee.

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

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

6. **Notices.** All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

7. **Headings.** The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. **Counterparts.** This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

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

10. **Entire Agreement.** This Agreement, the Purchase Agreement, and the Bill of Sale (together with their exhibits and schedules) represent the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede and cancel any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

*[Remainder of page intentionally left blank]*

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

**GENERAL ELECTRIC RAILCAR  
SERVICES CORPORATION**

By: James N. Muday  
Name: James N. Muday  
Title: Vice President

**THE ANDERSONS, INC.**

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

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

**GENERAL ELECTRIC RAILCAR  
SERVICES CORPORATION**

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

**THE ANDERSONS, INC.**

By: Gary Smith  
Name: Gary Smith  
Title: Vice President, Finance and Treasurer

State of Ohio )

County of Lucas ) ss:

On this, the 24<sup>th</sup> day June, 2005, before me, a Notary Public in and for said County and State, personally appeared Gary Smith, the Vice President, Finance and treasurer of The Andersons, Inc., who acknowledged himself to be a duly authorized officer of The Andersons, Inc., and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.



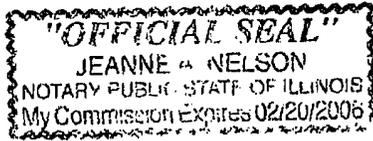
Marian R. Emch  
Name: MARIAN R. EMCH  
Notary Public

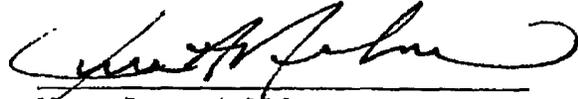
My Commission Expires: 1-19-2009  
Residing in: Lucas County, Ohio

State of ILLINOIS    )  
                                  )  
County of COOK        )

On this, the \_\_\_\_ day of June, 2005, before me, a Notary Public in and for said County and State, personally appeared James N. Muday, a Vice President of General Electric Railcar Services Corporation, who acknowledged himself to be a duly authorized officer of General Electric Railcar Services Corporation, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.



  
Name: Jeanne A. Nelson  
Notary Public

My Commission Expires: 2/20/06  
Residing in: Cook County, Illinois

**EXHIBIT A**

The following Plate C 52'6" 100 Ton Cushioned Boxcars with Sliding Double Doors:

<u>Count</u>	<u>Car Initial</u>	<u>Car Number</u>	<u>Count</u>	<u>Car Initial</u>	<u>Car Number</u>
1	MDW	7100	51	MDW	7155
2	MDW	7101	52	MDW	7156
3	MDW	7103	53	MDW	7157
4	MDW	7104	54	MDW	7158
5	MDW	7105	55	MDW	7160
6	MDW	7106	56	MDW	7161
7	MDW	7107	57	MDW	7162
8	MDW	7109	58	MDW	7163
9	MDW	7110	59	MDW	7164
10	MDW	7112	60	MDW	7165
11	MDW	7113	61	MDW	7166
12	MDW	7114	62	MDW	7167
13	MDW	7115	63	MDW	7168
14	MDW	7116	64	MDW	7169
15	MDW	7117	65	MDW	7170
16	MDW	7118	66	MDW	7171
17	MDW	7119	67	MDW	7172
18	MDW	7120	68	MDW	7173
19	MDW	7121	69	MDW	7174
20	MDW	7122	70	MDW	7175
21	MDW	7123	71	MDW	7176
22	MDW	7124	72	MDW	7177
23	MDW	7125	73	MDW	7178
24	MDW	7126	74	MDW	7179
25	MDW	7127	75	MDW	7180
26	MDW	7128	76	MDW	7181
27	MDW	7129	77	MDW	7182
28	MDW	7130	78	MDW	7183
29	MDW	7131	79	MDW	7184
30	MDW	7133	80	MDW	7185
31	MDW	7134	81	MDW	7186
32	MDW	7135	82	MDW	7187
33	MDW	7136	83	MDW	7188
34	MDW	7137	84	MDW	7189
35	MDW	7138	85	MDW	7190
36	MDW	7139	86	MDW	7192
37	MDW	7140	87	MDW	7193
38	MDW	7141	88	MDW	7194
39	MDW	7142	89	MDW	7195
40	MDW	7143	90	MDW	7196
41	MDW	7145	91	MDW	7197
42	MDW	7146	92	MDW	7198
43	MDW	7147	93	MDW	7199
44	MDW	7148	94	MDW	7200
45	MDW	7149	95	MDW	7201
46	MDW	7150	96	MDW	7202
47	MDW	7151	97	MDW	7203
48	MDW	7152	98	MDW	7204
49	MDW	7153			
50	MDW	7154			

**EXHIBIT I**

**FORM OF BILL OF SALE**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, General Electric Railcar Services Corporation ("Seller"), does hereby sell, transfer and assign to The Andersons, Inc. ("Buyer") all of Seller's rights, title and interest in and to the equipment described in Schedule 1 hereto, subject to the terms and conditions of the Purchase Agreement, dated as of June \_\_\_\_, 2005, between Seller and Buyer, and the Assignment and Assumption Agreement, dated June \_\_\_\_, 2005, between Seller and Buyer.

General Electric Railcar Services  
Corporation

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

**Schedule 1**

(List of Equipment)

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: September 30, 2005



Robert W. Alvord