

TAFT, STETTINIUS & HOLLISTER

17449

REGISTRATION NO. FILED 145

1800 STAR BANK CENTER
425 WALNUT STREET
CINCINNATI, OHIO 45202-3957

JUL 23 1991 - 3 05 PM

INTERSTATE COMMERCE COMMISSION

WASHINGTON, D C OFFICE
SUITE 500 - 625 INDIANA AVENUE, N W
WASHINGTON, D C 20004-2901
202-628-2838
FAX 202-347-3419

513-381-2838
CABLE TAFTHOL TWX 810-461-2623
FAX 513-381-0205

COLUMBUS, OHIO OFFICE
SUITE 1000 - 33 NORTH HIGH STREET
COLUMBUS, OHIO 43215-3022
614-221-2838
FAX 614-221-2007

COVINGTON, KENTUCKY OFFICE
SUITE 340 - 1717 DIXIE HIGHWAY
COVINGTON, KENTUCKY 41011-2783
606-331-2838
513-381-2838
FAX 513-381-6613

July 19, 1991

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

1-204A044
\$15.00

Mr. Sydney L. Strickland
Secretary
Interstate Commerce Commission
12th Street & Constitution Ave., N.W.
Washington, D.C. 20423

Dear Mr. Strickland:

I have enclosed herewith an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Railroad Equipment Lease (modified Net Lease), a primary document, dated June 12, 1991.

The names and addresses of the parties to the document are as follows:

LESSOR: The David J. Joseph Company
300 Pike Street
Cincinnati, Ohio 45202

LESSEE: RailTex, Inc.
4040 Broadway, Suite 200
San Antonio, Texas 78209

The equipment covered by the enclosed document is described in Exhibit A hereto.

A fee of \$15.00 is enclosed. Please return the original executed copy of the enclosed document to:

Philip F. Schultz, Esq.
Taft, Stettinius & Hollister
1800 Star Bank Center
425 Walnut Street
Cincinnati, OH 45202-3957

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

Mr. Sydney L. Strickland
July 19, 1991
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Railroad Equipment Lease between The David J. Joseph Company, 300 Pike Street, Cincinnati, Ohio 45202 and RailTex, Inc. 4040 Broadway, Suite 200, San Antonio, Texas 78209 dated as of June 12, 1991 and covering twenty-five (25) 100 ton open top hopper railcars (ballast cars) built in 1966 and 1967 by Gunderson.

Please call me if you should have any questions.

Yours truly,



Philip F. Schultz
Attorney for
The David J. Joseph Company

PFS/lsc
Enclosure

EXHIBIT A

DESCRIPTION OF UNITS

Twenty-five (25) 100 ton open top hopper railcars (ballast cars) built in 1966 and 1967 by Gunderson and bearing the following reporting marks:

TRAX 1300
TRAX 1302
TRAX 1303
TRAX 1304
TRAX 1308
TRAX 1313
TRAX 1314
TRAX 1316
TRAX 1318
TRAX 1322
TRAX 1329
TRAX 1333
TRAX 1336
TRAX 1339
TRAX 1344
TRAX 1350
TRAX 1353
TRAX 1355
TRAX 1356
TRAX 1357
TRAX 1362
TRAX 1363
TRAX 1364
TRAX 1365
TRAX 1371

CERTIFICATE

JUL 23 1991 -3 05 PM

INTERSTATE COMMERCE COMMISSION

The undersigned, Mark J. Ruehlmann, a notary public in and for the County of Hamilton, State of Ohio, hereby certifies that the copy of the document attached hereto has been compared with the original and that the undersigned has found the copy to be complete and identical in all respects to the original document.


Notary Public

MARK J. RUEHLMANN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date, Section 247.03 O.R.C.

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INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

(MODIFIED NET LEASE)

BY AND BETWEEN

THE DAVID J. JOSEPH COMPANY

AND

RAILTEX, INC.

DATED AS OF:

JUNE 12, 1991

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RAILROAD EQUIPMENT LEASE

THIS RAILROAD EQUIPMENT LEASE (the "Lease"), is entered into as of this 12th day of June, 1991, by and between The David J. Joseph Company, a Delaware corporation (hereinafter referred to as "Lessor") and RailTex, Inc., a Texas corporation (hereinafter referred to as "Lessee").

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee all of the items of equipment specified in Exhibit A attached hereto (hereinafter collectively referred to as the "Units" and singularly referred to as "Unit") on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements set forth herein, the parties hereby agree as follows:

1. LEASE OF UNITS

Lessor hereby leases to Lessee and Lessee hereby rents from Lessor the Units, to have and to hold the same unto Lessee for the period commencing on the date upon which Lessee accepts or uses the Units, or any Unit, as provided in Section 3 below; and ending for all Units on the last day of the thirty-sixth month following the Commencement Date of the last Unit delivered (the "Termination Date"). The period of time commencing on the Commencement Date and ending on the Termination Date shall sometimes hereinafter be referred to as the "Term".

2. BASE RENTAL

Lessee agrees to pay to Lessor, at Lessor's offices located at 300 Pike Street, Cincinnati, Ohio 45202, or to such other persons or at such other places as the Lessor may direct from time to time by written notice to Lessee the amount of rent specified in Exhibit B attached hereto (the "Base Rental") during the Term of this Lease. The Base Rental provided for herein and then in effect, shall be due and payable monthly in advance on the first day of each calendar month during the Term of this Lease. The Lessee shall also pay, as additional rent, all such other sums of money as shall become due and payable by Lessee to Lessor under this Lease (the Base Rental and any additional rent due hereunder are sometimes hereinafter referred to as "Gross Rental"). If the Commencement Date is not the first day of the month, a pro-rated monthly installment shall be paid at the then current rate for the fractional month during which the Commencement Date occurs. All past due Gross Rental shall bear interest from date due until paid at the rate of fourteen percent (14%) per annum, but in no event greater than the maximum rate permitted by applicable law.

This Lease is a "Modified Net Lease." Lessor agrees to reimburse Lessee for repair of certain truck components specified in Exhibit E attached, in accordance with Section 4 herein. Except as expressly provided in Section 4 of this Lease, Lessee shall not be entitled to any abatement of rent. Lessee shall not be entitled to any reduction of or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate; nor shall the respective obligations of the Lessor or the Lessee otherwise be affected by reason of (i) any defect in, or damage to, or loss of possession or loss of use of, or destruction of all or any portion of the Units from whatsoever cause, (ii) the prohibition of, or other restriction against Lessee's use of all or any portion of the Units, or the interference with such use by any person or entity, (iii) the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, (iv) any failure by the Lessor to perform any of its obligations herein contained, or (v) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that Gross Rental and all other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

3. DELIVERY AND ACCEPTANCE OF UNITS

Lessor will cause each Unit to be tendered to the Lessee at such point or points as are set forth on Exhibit C attached hereto. Immediately upon such tender, Lessee will cause its authorized inspectors or representatives to inspect the Units, and if such Units are found to be in good operating order and repair, to accept delivery of such Units (or so many of such Units as are acceptable to Lessee) and to execute and deliver to the Lessor a certificate in the form of Exhibit D hereto signed by a responsible officer of the Lessee acknowledging the delivery of the accepted Units by Lessor, the conformance of such Units to the requirements of the Interchange Rules of the Association of American Railroads and the acceptance of the Units by Lessee; whereupon such Units shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all of the terms and conditions of this Lease and such Lessee's certificate shall be absolutely binding upon Lessee. If any Unit is not deemed by Lessee to be in good operating order and repair, Lessee shall so notify Lessor in a writing that specifies the nature of the defect in the Unit, and Lessor, at its option, may either (i) repair such Unit, and immediately upon completion of such repairs the Unit shall be subject to all of the terms and conditions of this Lease; (ii) substitute a piece of equipment that

is substantially similar to the defective Unit, in which case such substituted equipment shall be a "Unit" and shall immediately be subject to the terms and provisions of this Lease; or (iii) delete the defective Unit, in which case the Unit so deleted shall not be subject to the terms and provisions of this Lease. If Lessee has not notified Lessor of any defect in any Unit within ten (10) days of the date such Unit was tendered by Lessor, or if Lessee uses any Unit prior to delivering a Lessee's certificate of acceptance with respect thereto, ten (10) days after such tender or on the date such Unit is used by Lessee, as the case may be, such Unit or Units shall be conclusively deemed to be accepted by Lessee and to conform in all respects with the standards of condition and repair set forth in this Lease.

4. MAINTENANCE AND REPAIRS

Lessee shall (i) keep and maintain the Units leased hereunder in normal working order, condition and repair, and free from any and all liens and claims; (ii) install parts on, and make all necessary repairs and replacements to the Units using only AAR approved components that are new or reconditioned or, when applicable, secondhand and that conform to the original construction specifications of the Units; and (iii) provide all labor, materials, lubricants, parts and other supplies or items consumed by or required, in connection with the use of the Units, all at the sole expense of Lessee, except that Lessor agrees to reimburse Lessee for the maintenance expense on the truck components as detailed on Exhibit E attached (excluding brake shoe and brake shoe key repairs) on the Equipment, provided that Lessee submits to Lessor an invoice for such repairs, accompanied by detail billing repair cards. Lessee shall provide Lessor written notice within 24 hours if Lessee issues disposition of any Unit to a repair facility. Lessee shall provide Lessor written notice of any Unit which has been bad ordered for repair of any truck components specified in Exhibit E hereto which are Lessor's responsibility and upon such notification Lessor shall provide disposition of the Unit to a repair facility and Lessor shall have such repairs completed within 5 business days of receipt of such written notice from Lessee, or Lessor shall abate the Base Rental on that Unit until such time as that Unit is released from such repair facility. In addition to repairs and maintenance required pursuant to this Section 4, Lessee shall, at its sole expense, except for those repairs detailed as Lessor's responsibility on Exhibit E, repair, replace, clean, oil, test, stencil and otherwise maintain the Units as required by, and in conformance with, the Interchange Rules of the Association of American Railroads, the FRA Railroad Freight Car Safety Standards, and the Safety Appliance and Power Brake Laws, as the same may be amended from time to time.

Any and all additions to any Unit, and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, without cost or expense to the Lessor

(except the cost of repairs to truck components in Exhibit E which Lessor is to reimburse Lessee), there shall immediately be vested in the Lessor the same interest in such accessions as the interest of the Lessor in such Unit. The Lessee may make alterations or modifications in any Unit so long as it does not affect the value of such Unit adversely.

5. DISCLAIMER OF WARRANTIES

LESSOR, NOT BEING THE MANUFACTURER OF THE UNITS, NOR THE MANUFACTURER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO: THE FITNESS FOR USE, DESIGN OR CONDITION OF THE UNITS; THE QUALITY OR CAPACITY OF THE UNITS; THE WORKMANSHIP IN THE UNITS; THAT THE UNITS WILL SATISFY THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; AND ANY GUARANTEE OR WARRANTY AGAINST PATENT INFRINGEMENT OR LATENT DEFECTS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE. LESSOR IS NOT RESPONSIBLE OR LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGE TO OR LOSSES RESULTING FROM THE INSTALLATION, OPERATION OR USE OF THE UNITS OR ANY UNIT. Lessor hereby acknowledges that any manufacturers and/or sellers warranties are for the benefit of both Lessor and Lessee. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between Lessor and Lessee, that each Unit described in any Lessee's certificate sent pursuant to Section 3 above and confirming such acceptance, is in all of the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against Lessor based on all or any one of the foregoing matters.

6. USE OF THE UNITS

Lessee agrees, for the benefit of Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules and the Codes of Car Hire and Car Service Rules of the Association of American Railroads, if applicable, and with all rules and regulations of the Interstate Commerce Commission, the Department of Transportation, and any other legislative, executive, administrative, judicial or governmental body or officer exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the ownership, possession, operations or use of such Unit; and Lessee shall and does hereby indemnify and hold harmless Lessor from and against any and all liability that may arise from any infringement or violation of any such laws or rules by Lessee, its agents, employees, or any other person. In the event that such laws or rules require any alteration, change, modification or enhancement of any nature whatsoever to the Units or any Unit, Lessee agrees to make such

alterations, changes, modifications and enhancements at Lessee's own expense, provided that the cost of such does not exceed \$200 per Unit, and to use, maintain and operate such Units in full compliance with such laws and rules so long as such Units are subject to this Lease, provided, however, that Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the sole opinion of Lessor, adversely affect the rights of Lessor in the Units and hereunder. Should the laws or rules require any alteration, change, modification or enhancement of any nature whatsoever to the Units or any Unit, the cost of which exceeds \$200 per Unit, Lessor agrees to make such alterations, changes, modifications and enhancements at Lessor's own expense.

Lessee agrees to use the Units within the United States of America. Lessee shall not use the Units, or any Unit, for the storage or hauling of any corrosive, hazardous, toxic or radioactive substance or material.

7. FILINGS

Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of, and furnish a copy to, Lessor) any and all reports required to be filed by Lessor, or requested by Lessor to be filed, with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Units, the security title of Lessor to the Units or the leasing of the Units to Lessee; provided, however, that Lessor shall be responsible for filing this Lease with the Interstate Commerce Commission pursuant to 49 U.S.C. Sec. 11303. Lessee will not place the Units in operation or exercise any dominion or control over the same until this Lease has been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Sec. 11303.

Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Exhibit A hereto and all other markings and stenciling required by the Interchange Rules and the Codes of Car Hire and Car Service Rules of by the Association of American Railroads, as the same may be amended from time to time, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words: "Owned by The David J. Joseph Company", or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the title of Lessor to the Units the rights of Lessor under this Lease. Lessee will not place any of the Units in operation or exercise any control or dominion over the same until such words have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. Lessee will not change, or permit to be changed, the

numbers on any Unit, except in accordance with a statement of new numbers to be submitted therefor which previously shall have been filed with Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Each Unit may be lettered in an appropriate manner for convenience of identification of the interests of Lessee therein. Except as above provided, Lessee will not allow the name of any person, association or corporation to be placed on any of the Units as a designation which might be interpreted as a claim of ownership thereof.

8. TAXES AND OTHER ASSESSMENTS

Lessee shall be responsible for, and shall indemnify and hold Lessor harmless from, all taxes (including, without limitation, sales, use, excise, import, domestication, personal property, ad valorem, withholding, stamp, documentary and other taxes, and excluding only any federal income taxes of Lessor or any state or local taxes imposed upon or measured by net income of Lessor), license fees, assessments, charges, duties, fines and penalties, currently or hereafter levied or imposed by any state, local, federal or foreign authority (all such expenses, taxes, license fees, assessments, charges, fines, penalties, being hereinafter called "Assessments") upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title made pursuant to this Lease, all of which Assessments Lessee assumes and agrees to pay on demand as additional rent hereunder in addition to the other payments to be made by and provided for herein. Lessee will also pay promptly all Assessments which may be imposed upon the Units or for the possession, rental, shipment, delivery, use or operation thereof or on the earnings arising therefrom (except as provided above) or on Lessor solely by reason of the ownership thereof and will keep at all times all and every part of the Units free and clear of all Assessments which might in any way affect the title of Lessor to any Unit or result in a lien upon any Unit. In the event that during the continuance of this Lease any reports with respect to Assessments involving the Units are required to be made, Lessee will either make such reports in such manner as to show the interest of Lessor in the Units or notify Lessor of such requirement and make such reports in a manner that shall be satisfactory to Lessor. Lessee shall, whenever requested by Lessor, submit to Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to Lessor of Lessee's performance of its duties under this Section 8. Lessee shall also furnish promptly on request all data as Lessor shall reasonably require to permit Lessor's compliance with the requirements of taxing jurisdictions.

To the extent that Lessee is prohibited by law from performing in its own name the duties required by this Section 8,

and only to such extent, Lessor hereby authorizes Lessee to act in Lessor's name and on its behalf; provided, however, that Lessee shall indemnify and hold Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by Lessee pursuant to this authorization.

In the event that, during the continuance of this Lease, the Lessee shall become liable for the payment or reimbursement of any Assessments pursuant to this Section 8, such liability shall continue, notwithstanding the termination of this Lease, until all such impositions are paid or reimbursed by Lessee.

9. INDEMNIFICATION

Except as otherwise provided in this Lease, Lessee assumes liability for, and hereby agrees to indemnify, protect and keep harmless Lessor, its employees, agents, successors and assigns from and against any and all liabilities, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees arising out of the possession, use, condition, operation, selection, delivery, leasing or return of the Units or any Unit, regardless of where, how and by whom operated, and regardless of any failure on the part of Lessor to perform or comply with any conditions of this Lease. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or other termination of this Lease. Nothing contained in this Lease shall authorize Lessee or any other person to operate any of the Units so as to incur or impose any liability or obligation for or on behalf of Lessor.

Lessor shall not be liable for any loss of or damage to any commodities loaded or shipped in the Units. Lessee agrees to indemnify against and to hold Lessor harmless from any claim in respect of such loss or damage and to assume responsibility for any damage caused to any Unit by such commodities.

10. LESSOR'S PERFORMANCE OF LESSEE'S OBLIGATIONS

If Lessee shall fail to duly and promptly perform any of its obligations under this Lease with respect to the Units, Lessor shall have the option, but not the obligation, to perform any act or make any payment which Lessor deems necessary for the maintenance and preservation of the Units and Lessor's title thereto, including payments for satisfaction of liens, repairs, Assessments, levies and reasonable insurance and all sums so paid or incurred by Lessor, and any reasonable legal and accounting fees incurred by Lessor in connection therewith shall be additional rent under this Lease payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the

part of the Lessee, and Lessee shall continue to be liable for any such performance or payment by Lessor notwithstanding the expiration or earlier termination of this Lease.

11. INSURANCE

Lessee will, at its expense, insure all of the Units at all times against all hazards, including but not limited to, fire, theft, vandalism, collision and all other hazards customarily insured against or as may reasonably be requested by Lessor. Such policies of insurance shall include a loss payee clause, naming Lessor as an additional insured as Lessor's interest may appear and shall be reasonably satisfactory to Lessor as to form and insurer, in such amounts as described in Exhibit F attached, and shall provide for at least thirty (30) days prior written notice of cancellation or modification to Lessor. Lessee shall furnish certificates of insurance to Lessor as proof of such insurance. Lessor is entitled as an additional insured to act with Lessee in making, adjusting or settling any claims under any insurance policies insuring the Units. Lessor, as joint loss payee, shall have the right to receive the proceeds of all-risk property insurance with respect to the Units, Lessor directs any insurer to pay all such proceeds jointly to Lessor and Lessee, and Lessor shall apply all such proceeds in accordance with Section 12 hereof.

Lessee will, at its expense, carry public liability insurance with respect to the Units and the use thereof, in such amounts as are required by any applicable rules or regulations of the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation, or any other federal, state, administrative, legislative, judicial or governmental body having jurisdiction in the matter and in such amounts as described in Exhibit F attached and with such insurers as are reasonably satisfactory to Lessor, and such insurance policies shall also name Lessor as an additional insured as Lessor's interest may appear, and shall provide for at least thirty (30) days prior written notice of cancellation or modification to Lessor. Lessee shall furnish certificates of insurance to Lessor as proof of such insurance.

12. RISK OF LOSS

Lessee assumes all risk of loss, damage, theft, condemnation or destruction of the Units. Except as provided in this Section 12, no such loss, damage, theft, condemnation or destruction of the Units, or any Unit, in whole or in part, shall impair the obligations of Lessee under this Lease, all of which shall continue in full force and effect. Whenever any Unit shall be or become lost, stolen, destroyed or damaged, from negligence, abuse, fire, the elements or any other cause (such occurrences being hereinafter called "Casualty Occurrences") during the Term of this Lease, Lessee shall, promptly after it shall have been determined that such Unit has suffered a Casualty Occurrence, but

in any event within thirty (30) days after such Casualty Occurrence or within such shorter times as may be required by any applicable rules or regulations of the Association of American Railroads, notify Lessor in writing of such Casualty Occurrence. In the event any of the Units suffer a Casualty Occurrence, Lessee, at Lessor's option, shall either (i) place the affected Units in good repair, condition and working order, in which case Lessor shall reimburse Lessee for the cost of such repairs to the extent of the recovery, if any, actually received by Lessor from insurance or otherwise for such Casualty Occurrence; (ii) replace the affected Units with like equipment in good repair, condition and working order, in which case Lessor shall reimburse Lessee for the cost of such replacement to the extent of the recovery, if any, actually received by Lessor from insurance or otherwise for such Casualty Occurrence; or (iii) pay to Lessor an amount equal to the accrued Gross Rental for such Units to the date the party responsible for the Casualty Occurrence requests to pay Lessor the settlement value of such Units plus a sum equal to the settlement value of such Units, as determined pursuant to Rule 107 of the Interchange Rules of the Association of American Railroads, in which case such Units shall thereafter be deleted from this Lease. The balance of any recovery received by Lessor from insurance or otherwise for such Casualty Occurrence shall belong solely to Lessor.

13. LESSEE DEFAULT

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

(a) If Lessee fails to pay any sum required to be paid hereunder on or before the due date and such failure continues for a period of ten (10) consecutive days;

(b) If Lessee fails at any time to procure or maintain any insurance coverage required by this Lease;

(c) If Lessee fails to observe or perform any of the covenants, conditions and agreements on the part of Lessee to be observed or performed and contained herein (other than the payment of any sums required to be paid hereunder and other than the obligation to procure and maintain any insurance coverage required by this Lease) or any schedule or any supplement or rider hereto, and such default shall continue for thirty (30) days after receipt by Lessee of written notice of such default;

(d) If Lessee consents to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking

reorganization in a proceeding under any bankruptcy law (now or hereafter in effect) or any answer admitting the material allegations of a petition filed against Lessee in any such proceedings, or Lessee shall by voluntary petition, answer or consent seek relief under the provisions of any now existing or future bankruptcy or other similar law providing for the reorganization or winding up of a business, or providing for an agreement, composition, extension or adjustment with its creditors;

(e) If an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent to Lessee, a receiver, trustee or liquidator of Lessee or of any substantial part of its property, or sequestering any substantial part of the property of Lessee, or granting any other relief in respect of Lessee under the federal bankruptcy laws, any any other such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of thirty (30) days after the date of entry thereof;

(f) If a petition against Lessee in a proceeding under the federal bankruptcy laws or other similar insolvency laws (as now or hereafter in effect) shall be filed and shall not be withdrawn or dismissed within thirty (30) days thereafter, or if, under the provisions of any law providing for reorganization or winding up of corporation which may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of thirty (30) days;

(g) If Lessee shall make or permit any unauthorized assignment or transfer of this Lease, the Units or any interest therein; or

(h) If any representation or warranty of Lessee contained in this Lease shall prove to be untrue or incorrect.

14. LESSOR'S REMEDIES

(a) Upon the occurrence of any one or more of the Events of Default specified in Section 13 above, and at any time thereafter (unless such Event of Default shall have been waived in writing by Lessor), Lessor may without any further notice exercise any one or more of the following remedies:

(i) Declare all unpaid Gross Rental under this lease to be immediately due and payable;

(ii) Terminate this Lease as to any or all Units without relieving Lessee of any of its obligations hereunder;

(iii) Take possession of the Units and for this purpose enter upon any premises of Lessee and remove the Units, without any liability or suit, action or other proceeding by Lessee and without relieving Lessee of any of its obligations hereunder;

(iv) Cause Lessee, at its sole expense, to promptly return the Units to Lessor in accordance with the terms and provisions of Section 15 hereof;

(v) Use, hold, sell, lease or otherwise dispose of the Units or any Unit on the premises of Lessee or any other location without affecting the obligations of Lessee as provided in this Lease;

(vi) Sell or lease the Units or any Unit at public auction or by private sale or lease at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by law, any notice in writing of any such sale or lease by Lessor to Lessee not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Lessee;

(vii) Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(viii) Exercise any other right accruing to Lessor any applicable law or in equity.

(b) If any Unit is sold, leased or otherwise disposed of pursuant to this Section 14, Lessee shall be liable to Lessor for and Lessor may recover from Lessee, as damages for the breach of this Lease, and not as a penalty, the amount by which the proceeds of such lease, sale or other disposition is less than the sum of:

(i) All due, unpaid and accrued Gross Rentals for such Unit as of the date of the Event of Default;

(ii) The actual value of such Unit as of the date of default by Lessee as determined by an independent appraiser to be appointed by Lessor;

(iii) An amount equal to accrued Assessments and other amounts payable hereunder by Lessee with respect to such Unit; and

(iv) All costs, expenses, losses and damages incurred or sustained by Lessor by reason of such default including, without limitation, attorney's fees and appraisal fees. If on the date of termination or repossession pursuant

to this Section 14, any Unit is damaged, lost, stolen or destroyed, or subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the damages set forth in this Section 14 (b), less the amount of any insurance recovery received by Lessor in connection therewith.

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

(d) Lessee, for and in consideration of and as an inducement to Lessor to enter into this Lease hereby voluntarily and knowingly waives, to the extent permitted by law, any and all rights to notice and/or hearing prior to any retaking of possession or replevy of the Units by Lessor, its agents or assigns. Lessor may require Lessee to deliver the Units, at Lessee's sole expense, to Lessor pursuant to the provisions of Section 15 hereof.

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

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

15. RETURN OF UNITS

At the expiration of this Lease, or at the direction of Lessor pursuant to Section 14 of this Lease, Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit returned to the Lessor pursuant to this Section 15 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the

standards then in effect under the Interchange Rules of the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation, and any other legislative, administrative, judicial, regulatory or governmental body having jurisdiction in the matter. For the purpose of delivering possession of the Units to the Lessor as above required, Lessee, at its own cost, expense and risk, unless otherwise specified herein, shall:

(a) Transport the Units by diverting the Units off of their last loaded move under the lease term and deliver, for the marshalling and inspection of the Units, to any location as directed by Lessor, or

(b) Transport the Units to any place on the lines of any railroad operated by Lessee or any of its affiliates, selected by Lessor, for marshalling and inspection;

(c) Promptly upon request of Lessor remove any markings which indicate that Lessee has any interest in the Units and remark (or pay for such removal and remarking of) the Units in accordance with Lessor's instructions;

(d) Place the Units upon such storage tracks of Lessee as Lessor may reasonably designate and permit Lessor to store such Units on such tracks at the risk of Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor, provided, however, that Lessor shall not be entitled to free storage of such Units on such tracks for more than thirty (30) days after the termination of this Lease; and

(e) Transport the Units to any place on the lines of any railroad operated by Lessee or any of its affiliates for shipment, all as directed by Lessor and at the risk of Lessor.

The assembly, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense of Lessee and are of the essence of this Lease. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of the Units or any Unit, to inspect the same, however, Lessee is not responsible for the loss, theft or damage of the Units or any Unit during such storage period. Any charges for the movement of the Units from a railroad operated by Lessee onto any connecting carrier after such storage period shall be at the expense of Lessor.

Without in any way limiting the obligation of Lessee under the provisions of this Section 15, Lessee agrees that as car owner Lessor has full power and authority, at any time, while the Lessee is obligated to deliver possession of any of the Units to Lessor, to demand and take possession of such Units in the name and on

behalf of Lessee from whomsoever shall be at the time in possession of such Units. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

16. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be in writing and shall be deemed given when sent by United States Certified or Registered Mail, Return Receipt Requested, postage prepaid, addressed as follows:

TO LESSOR: The David J. Joseph Company
RELM Division
300 Pike Street
Cincinnati, Ohio 45202
Attention: Vice President

TO LESSEE: RailTex, Inc.
4040 Broadway, Suite 200
San Antonio, Texas 78209
Attention: Roberta R. Flurry

or at such other place as the parties hereto may from time to time designate by notice, each to the other. If the term "Lessee" as used in this Lease refers to more than one person or entity, any notice, consent, approval, request, bill demand or statement given as aforesaid to any one of such persons or entities shall be deemed to have been duly given to Lessee.

17. INVALID PROVISIONS

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

18. MISCELLANEOUS PROVISIONS

(a) This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and Lessee.

(b) This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

(c) The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. Sec. 11303 and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

(d) No recourse shall be had in any respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer (past, present or future) of the Lessor.

(e) Lessee may not, by operation of law or otherwise, assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest herein, or sublet any of the Units, without Lessor's prior written consent, provided, however, that Lessee may assign this Lease to a wholly owned subsidiary without prior consent of Lessor; however, such assignment shall not relieve Lessee of any of its obligations under this Lease. This Lease is freely assignable by Lessor, and upon delivery to Lessee of notice of any assignment, the term "Lessor" as used herein shall refer to such assignee, and The David J. Joseph Company shall thereafter be relieved of all of its liabilities and obligations under this Lease.

(f) Nothing contained herein shall give or convey to Lessee any right, title or interest in and to the Units leased hereunder except as a lessee thereof, and the Units are and shall at all times be and remain the sole and exclusive property of Lessor.

(g) Any cancellation or termination of this Lease by Lessor, pursuant to the terms and provisions hereof, or any schedule, supplement, rider or amendment hereto, or any termination of the Term by lapse of time, shall not release Lessee from any then outstanding obligations and/or duties to Lessor hereunder.

(h) Time is of the essence of this Lease.

(i) Notwithstanding anything contained in this Lease to the contrary, Lessor shall not be liable for its failure to perform any obligations of Lessor herein contained by reason of labor disturbances (including strikes and lockouts), war, riots or civil commotion, acts of God, fires, floods, explosions, storms, accidents, governmental regulations or interference, or any cause whatsoever beyond Lessor's reasonable control.

(j) It is expressly understood and agreed by the parties hereto that this instrument constitutes a lease of the Units only, and that no joint venture or partnership is being created.

(k) To the extent there exists any conflict between the terms and provisions of this Lease and the terms and provisions of the Interchange Rules or the Codes of Car Hire and Car Service Rules of the Association of American Railroads, this Lease shall control.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the day and year first above written.

Signed and acknowledged
in the presence of:

Suzan L. Hardinbaugh
(As to Lessor)
[Signature]
(As to Lessor)

LESSOR:

THE DAVID J. JOSEPH COMPANY

BY: Larry K. Bart
NAME: L. K. BARTON
TITLE: DIVISIONAL VICE PRESIDENT

Signed and acknowledged
in the presence of:

Roberta R. Flury
(As to Lessee)
Felix E. Wright
(As to Lessee)

LESSEE:

RAILTEX, INC.

BY: D. P. Valentine
NAME: D. P. Valentine
TITLE: Vice President - Rail Division

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this -
21st day of June, 1991, by
Larry K. Barton, the VP-Finance of The David
J. Joseph Company, a Delaware corporation, on behalf of the
corporation.

Carolyn A. Trainor
Notary Public

CAROLYN A. TRAINOR
Notary Public, State of Ohio
My Commission Expires March 8, 1993

EXHIBIT A

DESCRIPTION OF UNITS

Twenty-five (25) 100 ton open top hopper railcars (ballast cars) built in 1966 and 1967 by Gunderson and bearing the following reporting marks:

TRAX 1300
TRAX 1302
TRAX 1303
TRAX 1304
TRAX 1308
TRAX 1313
TRAX 1314
TRAX 1316
TRAX 1318
TRAX 1322
TRAX 1329
TRAX 1333
TRAX 1336
TRAX 1339
TRAX 1344
TRAX 1350
TRAX 1353
TRAX 1355
TRAX 1356
TRAX 1357
TRAX 1362
TRAX 1363
TRAX 1364
TRAX 1365
TRAX 1371

EXHIBIT C

POINTS OF TENDER

At the Austin and Northwestern Railroad interchange point in McNeil, Texas.

EXHIBIT D

ACCEPTANCE CERTIFICATE

The undersigned, _____, the duly authorized representative of RailTex, Inc. (the "Company"), has inspected the 100 ton open top hopper railcar bearing the car initial and number _____ (the "Car"), has found this Car to be in conformance with the requirements of the Interchange Rules of the Association of American Railroads, and hereby certifies to The David J. Joseph Company ("DJJ") that the Car is in all respects acceptable to the Company. This certificate is being delivered pursuant to Section 3 of that certain Lease Agreement dated June _____, 1991 by and between the Company and DJJ.

IN WITNESS WHEREOF, the undersigned, being the _____ of the Company, does hereunto set his hand as of this _____ day of June, 1991 on behalf of the Company.

RAILTEX, INC.

By: _____

Print Name: _____

Print Title: _____