

TAFT, STETTINIUS & HOLLISTER

2-279A035

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

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

September 28, 1992

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

COVINGTON, KENTUCKY OFFICE  
SUITE 340 — 1717 DIXIE HIGHWAY  
COVINGTON, KENTUCKY 41011-2783  
606-331-2838  
513-381-2838  
FAX 513-381-6613  
17964

Interstate Commerce Commission  
12th Street & Constitution Ave., N.W.  
Washington, D.C. 20423  
Attn: Mildred Lee  
Room 2303

OCT 5 1992 - 2:52 PM  
INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

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, a primary document, dated July 22, 1992.

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: Southern Illinois Railcar Company  
120 West Market  
P.O. Box 288  
Troy, Illinois 62294  
Attention: Fred L. Parsons

The equipment covered by the enclosed document is thirty-six (36) covered hopper railcars currently bearing the reporting marks set forth in Exhibit A hereto.

A fee of \$16.00 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

OCT 5 1992 - 2:52 PM  
INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee  
September 28, 1992  
Page 2

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

Railroad Equipment Lease from Southern Illinois Railcar Company, 120 West Market, P.O. Box 288, Troy, Illinois, to The David J. Joseph Company, 300 Pike Street, Cincinnati, Ohio 45202 dated July 22, 1992 and covering thirty-six (36) covered hopper railcars.

Please call me if you should have any questions.

Yours truly,



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

PFS/lsc  
Enclosure

iccf112.djj

**EXHIBIT A**

**DESCRIPTION OF UNITS**

Up to thirty-six (36) 100 ton covered hopper railcars currently bearing the reporting marks listed below as "OLD NUMBER":

	<u>OLD NUMBER</u>	<u>NEW NUMBER</u>
Group A:	BO 831009	(TO BE DESIGNATED BY LESSEE)
Steel body type	ACL 089139	
	BO 603947	
	BO 603979	
	BO 603915	
	CSXT 203107	
	CO 002416	
	BO 603917	
	CO 002471	
	CO 002417	
	CO 002432	
	CO 002472	
	SBD 245000	
Group B:	SBD 246478	
Steel body type	CO 002766	
	WM 004690	
	BO 837018	
	CSXT 203150	
	CO 002765	
	CSXT 203151	
	CSXT 248319	
Group C:	SCL 835083	
Aluminum body type	SCL 835036	
	SAL 035167	
	SAL 035224	
	SCL 835204	
	SBD 248768	
	SAL 035192	
	SBD 249125	
	CSXT 249082	
	SAL 035138	
	LN 250002	
	SBD 249088	
	SAL 035166	
	CSXT 249118	
	SBD 249159	

Interstate Commerce Commission  
Washington, D.C. 20423

10/7/92

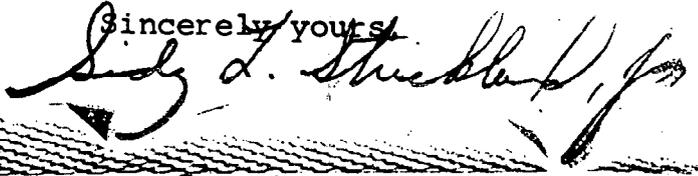
OFFICE OF THE SECRETARY

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

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/5/92 at 2:50pm, and assigned re-  
recording number(s). 17964, 17965, 17966, 17967

Sincerely yours,



Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

OCT 5 1992 -2 50 PM

CERTIFICATE

INTERSTATE COMMERCE COMMISSION

The undersigned, Stephen M. Griffith, Jr., 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



STEPHEN M. GRIFFITH, JR., Attorney at Law  
 NOTARY PUBLIC - STATE OF OHIO  
 My Commission has no expiration  
 date. Section 147.03 O.R.C.

17964

REGISTRATION NO. FILED 1992

OCT 5 1992 - 2 50 PM

INTERSTATE COMMERCE COMMISSION

**RAILROAD EQUIPMENT LEASE**

**(NET)**

**BY AND BETWEEN**

**THE DAVID J. JOSEPH COMPANY**

**AND**

**SOUTHERN ILLINOIS RAILCAR COMPANY**

**DATED AS OF:**

**JULY 22, 1992**

**TABLE OF CONTENTS**

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
1. Lease of Units	1
2. Base Rental	1
3. Delivery and Acceptance of Units	2
4. Maintenance and Repair	3
5. Disclaimer of Warranties	3
6. Use of Units	4
7. Filings	5
8. Taxes and Other Assessments	6
9. Indemnification	7
10. Lessor's Performance of Lessee's Obligations	7
11. Insurance	8
12. Risk of Loss	9
13. Annual Reports	9
14. Lessee Default	10
15. Lessor's Remedies	11
16. Return of Units	13
17. Notices	15
18. Invalid Provisions	15
19. Miscellaneous Provisions	15
<b>Exhibit A - Description of Units</b>	
<b>Exhibit B - Base Rental</b>	
<b>Exhibit C - Points of Tender</b>	
<b>Exhibit D - Repair and Acceptance Certificate</b>	
<b>Exhibit E - Insurance</b>	
<b>Exhibit F - Casualty Settlement Value</b>	

## RAILROAD EQUIPMENT LEASE

THIS RAILROAD EQUIPMENT LEASE (the "Lease"), is entered into as of this 22nd day of July, 1992, by and between The David J. Joseph Company, a Delaware corporation (hereinafter referred to as "Lessor") and Southern Illinois Railcar Company, an Illinois 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 (the "Term") commencing on the date upon which Lessee accepts or uses the Units, or any Unit, as provided in Section 3 below (the "Commencement Date"), and ending on the later of the last day of the eighty-fourth (84) full calendar month following the acceptance of the last Unit under this Lease (the "Expiration Date") or the date upon which all of the Lessee's obligations hereunder have been met (the "Termination Date").

### 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, in coin or currency which at the time of payment is legal tender for payment of public and private debts in the United States of America, 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 in equal monthly installments in advance on the first day of each calendar month during the Term of this Lease, without demand or setoff. 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, such installment or installments so pro-rated shall be paid on or before the Commencement Date. All past due installments of Gross Rental shall bear interest from date due until paid at the greater of (a) fourteen percent (14%) per annum or (b) the annual rate of five percent (5%) plus the prime rate

announced from time to time by the Chemical Bank of New York during the period of delinquency, but in no event greater than the maximum rate permitted by applicable law.

This Lease is a "Net Lease" and Lessee shall not be entitled to any abatement of rent, reduction thereof 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, (iv) any failure by the Lessor to perform any of its obligations herein contained, unless such failure by Lessor violates Lessor's covenant of quiet enjoyment, including, but not limited to, any lien or encumbrance created by Lessor after the date on which the title to the Units or any Unit is transferred by Lessee to Lessor, and interferes with Lessee's right to quiet enjoyment of the Units, 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

Prior to the Commencement Date, Lessee shall sell the Units to Lessor pursuant to that certain Purchase and Sale Agreement dated July 20, 1992, by and between Lessee and Lessor covering the Units (the "Agreement") and Lessee shall arrange and have performed repairs to the Units pursuant to that certain Repair Contract dated July 20, 1992, by and between Lessee and Lessor covering the Units (the "Repair Contract"). Prior to said sale and repair of the Units, Lessee shall provide to Lessor the executed certification provided as Exhibit D hereto (the "Repair and Acceptance Certificate"). Lessor shall cause each Unit to be delivered under this Lease to be tendered to the Lessee at such point or points as are set forth on Exhibit C attached hereto. The executed Repair and Acceptance Certificate is effective as of the date on which Lessor approves the repairs made to the Units, as provided for in the Repair Contract, as Lessee's acknowledgment of 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.

**4. MAINTENANCE AND REPAIRS**

Lessee, at its sole expense, shall (i) keep and maintain the Units leased hereunder in good 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, at Lessee's option, new manufacturer made, reconditioned or secondhand parts which comply with the requirements of the AAR Interchange Rules and that conform to the construction 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. In addition to repairs and maintenance otherwise required pursuant to this Section 4, Lessee shall, at its sole expense, 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.

Except as otherwise provided in Section 6 hereof, Lessee shall not make alterations or modifications in any Unit without the prior written consent of Lessor thereto. 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, there shall immediately be vested in the Lessor the same interest in such accessions as the interest of the Lessor in such Unit.

**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, as provided in Section 3 hereto, shall be conclusive evidence as between Lessor and Lessee that each such accepted Unit 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 or more 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 its own expense 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, provided, however, that if such alterations, changes, modifications or enhancements in the aggregate exceed Five Hundred Dollars (\$500.00) for any Unit, Lessee may terminate this Lease and return the Units to Lessor in accordance with all terms and conditions of this Lease, unless the Lessor elects, at its sole discretion, to undertake repairs and pay for the additional expense for such alterations, changes, modifications or enhancements with Lessee reimbursing Lessor for \$500.00 per Unit so repaired.

During the Lease Term, Lessee shall be permitted, at Lessee's sole cost and expense, including but not limited to all costs of restencilling and UMLER reporting, to install all required parts to articulate the Units, provided that Lessee properly reflect such changes in UMLER. At the termination of this Lease, Lessee shall remove all parts from all Units used to articulate the Units and replace with with AAR approved standard couplers and all other required appurtenant parts and shall restencil Units and properly reflect such changes in UMLER, unless Lessor and Lessee mutually agree at that time to an amount Lessor shall pay Lessee should Lessor desire the Units to remain articulated. Any damage incurred

to a Unit caused by installation, use or removal of appurtenant parts for articulation of the Unit shall be the responsibility of Lessee. The articulation of any Units during the Lease Term shall in no respect effect Lessee's obligation to pay rental for each and every Unit subject to this Lease.

Lessee agrees not to use any Unit outside the United States of America for more than 180 days in any consecutive twelve (12) month period. Lessee agrees to use the Units in a careful and prudent manner, solely in the use, service and manner for which the Units were designed. Lessee shall not use the Units, or any Unit, for the loading, storage or hauling of any corrosive, hazardous, toxic or radioactive substance or material.

Lessee shall be permitted to place the Units in interchange service, provided, however, that Lessee shall not suffer or permit the use of the Units in a manner or for a purpose that is prohibited by or inconsistent with the terms and provisions of this Lease, and Lessee shall in all events continue to be fully liable and responsible in accordance with the terms and provisions of this Lease for the possession, use, condition and operation of such Units, notwithstanding that such Units are being used in interchange by any third party.

#### **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, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising from events occurring during the Lease Term with respect to the possession, use, condition (including but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, leasing or return of the Units or any Unit, regardless of where, how and by whom operated, regardless of when the Claim (as herein defined) may be asserted, and regardless of any failure on the part of Lessor to perform or comply with any conditions of this Lease (collectively the "Claims"). 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. Lessee is an independent contractor and 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 assume responsibility for, 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 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 name Lessor as loss payee and shall be reasonably satisfactory to Lessor as to form and insurer, in such amounts as described in Exhibit E, and shall provide for at least ten (10) days prior written notice of cancellation or modification to Lessor. Lessee shall furnish certificates, policies or endorsements to Lessor as proof of such insurance. Lessor may act as attorney for Lessee in making, adjusting or settling any claims under any insurance policies insuring the Units. Lessee assigns to Lessor all of its right, title and interest to any insurance policies insuring the Units, including all rights to receive the proceeds of insurance, and directs any insurer to pay all such proceeds directly to Lessor and authorizes Lessor to endorse Lessee's name on any draft for such proceeds. The proceeds of any fire, theft and extended coverage insurance with respect to the Units shall be payable solely to Lessor and shall be applied by Lessor 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 E and with such insurers as are reasonably satisfactory to Lessor, and such insurance policies shall also name Lessor as an additional insured thereunder, and shall provide for at least ten (10) days prior written notice of cancellation or modification to Lessor. The proceeds of any public liability or property damage insurance shall be payable first to Lessor to the extent of its liability, if any, and the balance to Lessee.

## **12. RISK OF LOSS**

Lessee assumes all risk of loss, damage, theft, condemnation or destruction of the Units, whether direct, indirect, incidental or consequential, including, but not limited to, damages caused by or arising from cornering, sideswiping, derailment, improper or abusive loading or unloading methods, negligent or unfair usage, or similar occurrences while under this Lease. 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 worn out, lost, stolen, destroyed or damaged, from ordinary use, neglect, abuse, fire, the elements or any other cause whatsoever, or taken or requisitioned by condemnation or otherwise (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 shall pay Lessor an amount equal to the accrued rental for such Units to the date of the Casualty Occurrence plus a sum equal to the Casualty Settlement Value of such Units, as specified on Exhibit F attached hereto, in which case such Units shall thereafter be deleted from this Lease and Lessor shall reimburse Lessee for the amount of recovery, if any, received by Lessor from insurance or otherwise for such Casualty Occurrence; provided, however, that in the event that Lessee does not pay the accrued rental and Casualty Settlement Value for such Units within sixty (60) days of the date of the Casualty Occurrence, rental will continue to be payable with respect to the Units until the date of payment of the Casualty Settlement Value of the Units by Lessee to Lessor, and such Units shall not be deleted from this Lease until such payment is received by Lessor.

## **13. ANNUAL REPORTS**

On or before February 15 of each year during the Term of this Lease, Lessee will furnish to Lessor, in such number of counterparts or copies as may reasonably be requested by Lessor, a Lessee's certificate, as of the preceding December 31, (i) showing the amount, description and reporting marks of Units then leased hereunder and the amount, description and reporting marks of all Units that may have suffered a Casualty Occurrence during the preceding twelve (12) months (or since the Commencement Date in the case of the first such Lessee's certificate), and such other information regarding the condition and state of repair of the Units

as Lessor may reasonably request, (ii) stating that, in the case of all Units repaired or repainted during the period covered thereby, the markings required by Section 7 hereof have been preserved or replaced, (iii) reporting total miles travelled by all Units during the preceding calendar year summarized by state, and (iv) containing all other information in the possession of Lessee that is required to be filed by Lessor with any division 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. Lessor shall have the right, but not the obligation, by its authorized representatives, to inspect the Units and the records of Lessee with respect thereto at such times as shall reasonably be necessary to confirm to Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

#### 14. 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 fifteen (15) 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, or if such default can be cured but cannot reasonably be cured with the exercise of diligence within said thirty (30) day period, Lessee shall have a period of ninety (90) days after receipt of said notice of such default (but expressly excluding any default that can be cured by the payment of money to Lessor or to any third party) within which to cure such default, provided Lessee commences to cure such default within ten (10) days after receipt of said notice and thereafter diligently prosecutes such cure to completion;

(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.

#### **15. LESSOR'S REMEDIES.**

(a) Upon the occurrence of any one or more of the Events of Default specified in Section 14 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 16 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 15, 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) An amount equal to accrued Assessments and other amounts payable hereunder by Lessee with respect to such Unit; and

(iii) All costs, expenses, losses and damages incurred or sustained by Lessor by reason of such default including, without limitation, attorney's fees. If on the date of termination or repossession pursuant to this Section 15, 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 15 (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 16 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.

#### **16. RETURN OF UNITS**

At the expiration of this Lease, or at the direction of Lessor pursuant to Section 15 of this lease, Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit returned to the Lessor pursuant to this Section 16 shall (i) be empty and free from residue and be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (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, and (iii) be jointly inspected by representatives of Lessor and Lessee. In the event that any Unit is not delivered to Lessor in compliance with this Section 16 on or before the Expiration Date, the Unit shall remain on rental and obligations of Lessee under this Lease with respect to such Unit shall remain in full force and effect until such Unit is so delivered to Lessor and jointly inspected, provided, however, in the event that any Unit is not delivered to Lessor in compliance with this Section 16 within thirty (30) calendar days after the Expiration Date, the Base Rental for such Unit shall, upon the expiration of such thirty (30) day period, be set at one and one-half times the Base Rental. Nothing in this Section 16 shall be construed as Lessor's authorization of the Lessee's use of the Units, or any Unit, after the Expiration Date.

For the purposes of delivery of possession of the Units to the Lessor as above required, Lessee shall, at its own cost, expense and risk: (a) place the Units upon such storage tracks to be arranged by Lessee as Lessor may reasonably designate for marshalling and joint inspection; and (b) correct all defects found on the Units, return all repaired Units to such storage tracks, at which time Lessor's free storage period shall commence. Lessee shall permit Lessor to store such Units on such tracks free of charge to Lessor for ninety (90) calendar days after the Termination Date and at the risk of Lessor until such Units have been sold, leased or otherwise disposed of by Lessor, and at Lessor's option, either prior to or after the movement(s) of the Units from storage, with Lessor arranging for the restencilling of the Units, reimburse Lessor for the costs of such restencilling. Lessee's obligations in this Section 16 shall survive the Termination Date of this Lease. The assembly, repair, and delivery into storage of the Units as hereinbefore provided shall be at the cost, expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the matter, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of the Units or any Unit, to inspect the same.

Without in any way limiting the obligation of Lessee under the provisions of this Section 16, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with 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.

**17. 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  
300 Pike Street  
Cincinnati, Ohio 45202  
Attention: Vice President  
Rail Equipment Leasing & Marketing Division

**TO LESSEE:** Southern Illinois Railcar Company  
120 West Market  
P.O. Box 288  
Troy, Illinois 62294  
Attention: Mr. Fred Parsons

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.

**18. 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.

**19. 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) 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, except that Lessee may sublease any of the Units without Lessor's prior written consent provided that:

(i) the sublessee acknowledges in writing the existence of this Lease and further acknowledges in writing that such sublease is subject and subordinate to this Lease and the rights of the Lessor hereunder;

(ii) Lessee furnishes Lessor with a true and correct copy of the written acknowledgment of the sublessee referred to in clause (i) above promptly upon execution thereof;

(iii) the term (including any renewal or extension options) of any such sublease shall not extend beyond the remaining term of this Lease;

(iv) Lessee furnishes Lessor reporting as of each calendar quarter end for each Unit, due within 15 calendar days of such quarter's end, of Lessee's then-current sublessee of that Unit and the expiration date of the corresponding sublease; and

(v) such sublease shall not permit the sublessee to assign any of its rights under the sublease or further sublease any Unit or to use the Units in any manner prohibited by this Lease.

No such sublease shall relieve Lessee of any of its obligations hereunder. This Lease is freely assignable by Lessor, in whole or in part, 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.

(e) 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.

(f) 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.

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

(h) 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.

(i) 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.

(j) 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:

Susan Hardinburgh  
(As to Lessor)  
[Signature]  
(As to Lessor)

Signed and acknowledged  
in the presence of:

[Signature]  
(As to Lessee)  
Jackie Logan  
(As to Lessee)

LESSOR:

THE DAVID J. JOSEPH COMPANY

BY: [Signature]

NAME: DOUGLAS F. McMillan

TITLE: VICE PRESIDENT

LESSEE:

SOUTHERN ILLINOIS RAILCAR COMPANY

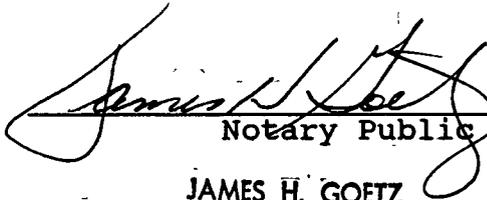
BY: [Signature]

NAME: Fred L. Pearson

TITLE: President

STATE OF OHIO )  
                  ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this 3<sup>RD</sup> day of August, 1992, by Douglas F. McMillan, the VICE PRESIDENT of The David J. Joseph Company, a Delaware corporation, on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public  
JAMES H. GOETZ  
Notary Public, State of Ohio  
My Commission Expires July 10, 1995



**EXHIBIT A**

**DESCRIPTION OF UNITS**

Up to thirty-six (36) 100 ton covered hopper railcars currently bearing the reporting marks listed below as "OLD NUMBER":

	<u>OLD NUMBER</u>	<u>NEW NUMBER</u>
Group A:	BO 831009	(TO BE DESIGNATED BY LESSEE)
Steel body type	ACL 089139	
	BO 603947	
	BO 603979	
	BO 603915	
	CSXT 203107	
	CO 002416	
	BO 603917	
	CO 002471	
	CO 002417	
	CO 002432	
	CO 002472	
	SBD 245000	
Group B:	SBD 246478	
Steel body type	CO 002766	
	WM 004690	
	BO 837018	
	CSXT 203150	
	CO 002765	
	CSXT 203151	
	CSXT 248319	
Group C:	SCL 835083	
Aluminum body type	SCL 835036	
	SAL 035167	
	SAL 035224	
	SCL 835204	
	SBD 248768	
	SAL 035192	
	SBD 249125	
	CSXT 249082	
	SAL 035138	
	LN 250002	
	SBD 249088	
	SAL 035166	
	CSXT 249118	
	SBD 249159	

**EXHIBIT B**

**BASE RENTAL**

\$██████ per Unit per month, payable in advance monthly

**EXHIBIT C**

**POINTS OF TENDER**

The repair shop at which Lessee repairs the Units prior to Lease Commencement.

EXHIBIT D

REPAIR AND ACCEPTANCE CERTIFICATE

Southern Illinois Railcar Company ("Seller" or "Lessee") hereby certifies to The David J. Joseph Company ("Buyer" or "Lessor"), pursuant to that certain Purchase and Sale Agreement dated July 20, 1992 (the "Agreement") by and between Buyer and Seller, that the Car identified below has been delivered to the repair shop of American Boat, Inc., Railcar Division, National City, Illinois (the "Shop") and that Seller has inspected the Car and determined that the Car is repairable to the condition under the Technical Specifications of that certain Repair Contract between Buyer and Seller dated July 20, 1992 covering the Car (the "Repair Contract") for acceptance by Buyer after completion of repairs.

Additionally, Lessee hereby certifies to Lessor, pursuant to Section 3 of that certain Railroad Equipment Lease between Lessee and Lessor dated July 22, 1992 covering the Unit (the "Lease"), that after completion of repairs to the Unit as arranged by the Lessee in accordance with the Repair Contract and that effective as of the date the Lessor approves the repairs made to the Car (as provided for under the Repair Contract), the Lessee acknowledges that the Unit has been delivered by Lessor to Lessee, has been inspected and meets all regulatory requirements and is in all respects acceptable to Lessee under the Lease.

IN WITNESS WHEREOF, the undersigned, being the \_\_\_\_\_, a duly authorized representative of the Seller/Lessee, does hereunto set his hand on behalf of the Seller/Lessee as of the date below.

Reporting Mark: \_\_\_\_\_ ("Car" or "Unit")

SOUTHERN ILLINOIS RAILCAR COMPANY

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT E**

**INSURANCE**

- Property Insurance - for each Unit covered under this Lease the minimum amount shall be equal to the corresponding Casualty Settlement Value of each Unit in effect during the Term of the Lease as set forth on Exhibit F to and in accordance with the Lease.
- Liability Insurance - a minimum of  per occurrence.

EXHIBIT F

CASUALTY SETTLEMENT VALUE

The Casualty Settlement Value for the equipment covered under this Lease on a per Unit basis shall be as follows in accordance with the following Groups of Units as defined on Exhibit A to the Lease:

<u>Period</u>	<u>AMOUNT</u>		
	<u>Group A</u>	<u>Group B</u>	<u>Group C</u>
Month 1 through 12	[REDACTED]	[REDACTED]	[REDACTED]
Month 13 through 24	[REDACTED]	[REDACTED]	[REDACTED]
Month 25 through 36	[REDACTED]	[REDACTED]	[REDACTED]
Month 37 through 48	[REDACTED]	[REDACTED]	[REDACTED]
Month 49 through 60	[REDACTED]	[REDACTED]	[REDACTED]
Month 61 through 72	[REDACTED]	[REDACTED]	[REDACTED]
Month 73 through 84	[REDACTED]	[REDACTED]	[REDACTED]