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MILES & STOCKBRIDGE

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WASHINGTON, D.C. 20005

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CAMBRIDGE, MARYLAND 21613

101 BAY STREET
EASTON, MARYLAND 21601

11350 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030

18355
AUG 3 1993 10:05 AM

18355
AUG 3 1993 10:05 AM

JOHN A. STALFORD
410-385-8424

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

August 2, 1993

3-215A007

via FEDERAL EXPRESS

Interstate Commerce Commission
12th and Constitution Avenues, N.W.
Washington, D.C. 20423

RECORDATION NO. 18355

RECORDATION NO. 18355

AUG 3 1993 10:05 AM

INTERSTATE COMMERCE COMMISSION

Attention: Mildred Lee, Room 2303

INTERSTATE COMMERCE COMMISSION

Re: Purchase and Sale Agreement between Southern
Illinois Railcar Co. and The First National
Bank of Maryland

Dear Mrs. Lee:

N

Enclosed please find one executed original and one notarized
copy of each of the following documents for the above-referenced
matter:

1. Purchase and Sale Agreement by and between Southern
Illinois Railcar Co. and The First National Bank of Maryland;
2. Bill of Sale in favor of The First National Bank of
Maryland;
3. Railcar Lease Agreement between Southern Illinois
Railcar Company and Blue Circle Inc.; and
4. Assignment of Lessor's Interest in Lease by Southern
Illinois Railcar Co. and The First National Bank of Maryland.

Please record these documents among the records of the ICC.
I have enclosed a check in the amount of \$64.00 to cover the
costs of recordation.

AUG 3 9 56 AM '93
MOTOR OPERATING UNIT

August 2, 1993
Page 2

MILES & STOCKBRIDGE

When these documents have been recorded, please return the originals to:

John A. Stalfort, Esquire
Miles & Stockbridge
10 Light Street - 10th Floor
Baltimore, Maryland 21202

If you have any questions or comments in connection with these documents, please call me immediately at (410) 385-3424.

Sincerely,


John A. Stalfort

JAS:mes
Enclosures

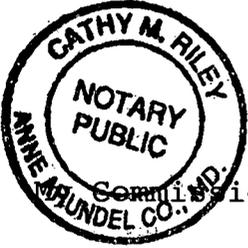
RECORDATION NO. 1835 FILED 1425 ^C

AUG 3 1993 10:00 AM

INTERSTATE COMMERCE COMMISSION

I HEREBY CERTIFY that the attached Assignment of Lessor's Interest in Lease is a true and complete copy of said Assignment of Lessor's Interest in Lease.

AS WITNESS my hand and Notarial Seal.



Cathy M. Riley

Notary Public

AUG 3 1993 10:05 AM

ASSIGNMENT OF LESSOR'S INTEREST IN LEASE

INTERSTATE COMMERCE COMMISSION

THIS ASSIGNMENT OF LESSOR'S INTEREST IN LEASE (this "Agreement") is made as of this 8th day of July, 1993 by SOUTHERN ILLINOIS RAILCAR CO., an Illinois corporation (the "Assignor"), in favor of THE FIRST NATIONAL BANK OF MARYLAND, a national banking association (the "Assignee").

RECITALS

A. The Assignor has entered into that certain Railcar Lease Agreement dated June 7, 1993 (the "Lease") between Assignor and Blue Circle, Inc. (the "Lessee").

B. The Assignor has, pursuant to the Purchase and Sale Agreement of even date herewith, sold to the Assignee all of the Assignor's right, title and interest in and to the railcars which are the subject of the Lease.

C. In connection with such sale of the railcars, Assignor desires to assign to the Assignee all of the Assignor's right, title and interest in and to the Lease.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt of which is hereby acknowledged, the Assignor hereby agrees with the Assignee as follows:

1. Assignment. The Assignor hereby assigns to the Assignee all of the Assignor's right, title and interest in and to the Lease.

2. Representations and Warranties. The Assignor hereby represents and warrants to the Assignee the following:

(a) there are no defaults or events of defaults under the Lease;

(b) the Lease is presently in full force and effect;

(c) no rent under the Lease has been paid in advance;

(d) The Assignee has not assigned, encumbered or transferred in any way its interest in the Lease; and

(e) a complete copy of the Lease is attached hereto as Exhibit A.

3. Additional Instruments. The Assignor shall execute and deliver such further instruments and take such actions as shall be reasonably required in order to carry out the transactions contemplated by this Agreement.

4. Miscellaneous Provisions.

(a) Entire Agreement. This Agreement comprises the complete understanding of the parties and there are no understandings, either written or oral, except as specifically set forth in this Agreement. No changes may be made in this Agreement unless specifically reduced to writing and accepted by both parties. All prior negotiations and understandings of the parties are deemed merged into this Agreement.

(b) Amendment and Waiver. This Agreement may be amended, or any portion of this Agreement may be waived, provided that such amendment or waiver shall be in writing, executed by the parties to which any particular provision specifically relates and all such amendments and waivers made shall be binding upon the parties. No course of dealing between or among any persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any person under or by reason of this Agreement.

(c) Inurement to Benefit of Assigns. All of the terms and provisions of this Agreement shall be binding upon, apply and inure to the benefit of the parties, their respective successors and assigns.

(d) Severability. Each of the terms and provision of this Agreement, except for the payment of the purchase price to Seller, is and is deemed to be severable, in whole or in part, and, if any term or provision or their application in any circumstance should be invalid, illegal or unenforceable, the remaining terms and provisions or their application, to circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected and shall remain in full force and effect.

(e) Exhibits and Schedules. All exhibits and schedules attached to this Agreement are incorporated and made a part of this Agreement by reference.

(f) Paragraph Headings. All paragraph and subparagraph headings are for convenience only and do not in any way limit to construe the contents of the paragraphs.

(g) Rights and Remedies. All rights and remedies granted any of the parties under this Agreement shall be cumulative.

(h) Survival of Representatives and Warranties. All representations, warranties and indemnifications shall survive the closing of the transactions contemplated by this Agreement.

(i) Governing Law. The law of the State of Maryland shall govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

(j) Construction. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural. This Agreement and all instruments executed to consummate the transactions contemplated shall be deemed to have been mutually negotiated, prepared and drafted, and in the event of its interpretation no consideration shall be given to the issue of which party prepared, drafted or requested any term, condition or agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Assignor has executed this Agreement under seal by its duly authorized officers as of the day and year first written above.

ATTEST:

SOUTHERN ILLINOIS RAILCAR CO.

[Signature]

By: [Signature] (SEAL)
Name: Barry S. McEwale
Title: VP - CONTRACTOR

STATE OF ILLINOIS, County OF Madison, TO WIT:

I HEREBY CERTIFY, that on this 8th day of July, 1993, before me, the undersigned, a Notary Public of the State of Illinois, personally appeared Barry S. McEwale, who acknowledged himself to be the VP - CONTRACTOR of Southern Illinois Railcar Co., an Illinois corporation, known (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized VP - CONTRACTOR of said corporation by signing the name of the corporation by himself as VP - CONTRACTOR.

AS WITNESS my hand and Notarial Seal.

Christine M. Middleton
Notary Public

(SEAL)

My Commission Expires:



The undersigned hereby acknowledges the foregoing Assignment of Lessor's Interest in Lease.

BLUE CIRCLE, INC.

By: Mark T. Newhart
Name: **MARK T. NEWHART**
Title: **DIRECTOR OF DISTRIBUTION**
Date: July 9th, 1993

STATE OF Georgia, County Cobb OF Cobb, TO WIT:

I HEREBY CERTIFY, that on this 9th day of July, 1993, before me, the undersigned, a Notary Public of the State of Georgia, personally appeared Mark T. Newhart, who acknowledged himself to be the Director of Distribution of Blue Circle, Inc., an Alabama corporation, known (~~or satisfactorily proven~~) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Agent of said corporation by signing the name of the corporation by himself as Director of Distribution.

AS WITNESS my hand and Notarial Seal.

Patsy M. Danner
Notary Public
Georgia, State at Large

(SEAL)

My Commission Expires: 3-24-97

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RAILCAR LEASE AGREEMENT

THIS RAILCAR LEASE AGREEMENT ("Lease") is made as of June 7, 1993 between SOUTHERN ILLINOIS RAILCAR COMPANY, an Illinois corporation ("Lessor") (as owner or agent for the owner of the Cars [defined below]) and Blue Circle Inc., an Alabama Corporation, ("Lessee").

WHEREAS, Lessor is the owner of, or agent for the owner of the railcars more particularly described on the attached Schedule A (the "Cars" or singularly, a "Car"); and

WHEREAS, Lessor desires to lease the Cars to Lessee upon the terms of this Lease and Lessee desires to lease and accept the Cars from Lessor upon the terms of this Lease.

NOW, THEREFORE, in consideration of the covenants, promises and undertakings of the parties hereto, as hereinafter set forth, the parties hereby agree as follows:

1. Lease of Cars.

(a) **Grant of Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Cars. The Cars provided hereunder shall include Twenty (20) 4000 cubic foot capacity covered hopper cars.

(b) **Schedules.** The terms of any schedule attached hereto which shall have been signed by Lessor and Lessee (a "Schedule" or "Schedules") shall control as to the Cars covered by such Schedule over any inconsistent terms contained in this Lease.

2. Term.

(a) **Commencement, Renewal and Expiration.** The term of this Lease with respect to any Car, and lessee's obligation to pay rent for such Car, shall commence on the Delivery Date (as defined below). The Lease term with respect to all Cars shall expire on February 28, 1998. Upon 90 days written notice prior to the Expiration of the initial term, Lessee has the option to renew this Lease under the same terms and conditions through February 28, 2000. The last day of the initial term or the renewal term is herein referred to as the "Expiration Date."

(b) **Delivery.** Each Car shall be deemed delivered to Lessee on the date (the "Delivery Date") it arrives at the delivery point designated by Lessee to Lessor in writing. Lessor shall use

its best efforts to deliver the Cars during the months of July and August of 1993. Lessor's obligation to furnish the Cars shall be subject to all causes beyond Lessor's control.

(c) **Acceptance.** Each Car shall be deemed accepted unless Lessee reasonably rejects such Car after inspection and Lessee notifies Lessor in writing within fourteen (14) days of the Delivery Date and, in any event, a Car shall be deemed accepted if Lessee loads such Car. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect upon delivery to Lessee shall be conclusively deemed to be accepted and meet all requirements of Lessee. The specifications and marks for the Cars shall be set out on the Schedules describing such Cars.

3. **Charges and AAR Agreements.**

(a) **Charges.** Lessor shall pay all expenses and charges for the movement of each Car to the delivery point. From and after the acceptance of the Cars, Lessee shall pay, and shall defend and indemnify Lessor against, all switching, transportation, freight (including freight charges to and from a repair facility), demurrage and other charges assessed by any railroad or other entity with respect to such Car (including its movement, use or operation) and shall pay all expenses and charges for the movement of each Car to a delivery point designated by Lessor upon the expiration or termination of this Lease.

(b) **AAR Agreements.** Lessee agrees to abide by the Association of American Railroads ("AAR") Car Service and Car Hire Agreements with respect to the Cars.

4. **Rent.**

(a) **Rent Payments.** Lessee shall pay to Lessor as monthly rent for each Car during the term, the sum of Three Hundred, Eighty-Five (\$385.00). Such rent shall become due for each Car upon the applicable Delivery Date unless such Car is reasonably rejected by Lessee and shall continue throughout the term, subject to Subsection 12(c), until such Car is redelivered to Lessor in accordance with the terms of this Lease. Lessee shall pay rent monthly in advance on the first day of each month without any deduction or offset whatsoever, except as provided for under this Section 4(a). Rent for any partial months shall be prorated based upon the actual number of days elapsed and the actual number of days in the month. Notwithstanding anything herein to the contrary, in the event Lessor shall fail to perform any maintenance required to be performed under Section 6(b) below within a

reasonable period of time (based upon the extent and nature of the requested repairs) following written notice from Lessee specifying such repairs, Lessee may, but shall not be obligated to, make any such repairs on behalf of Lessor and may, commencing from and after the date Lessee commences such repairs, offset against the rents due hereunder the maximum sum of Seventy-Five Dollars (\$75.00) per month per Car until Lessee has been reimbursed for all direct expenses associated with making such repairs. Lessee shall promptly following receipt, furnish Lessor with copies of all invoices, bills and other documentation relating to any maintenance, repairs or replacements required to be performed or made by Lessor under Section 6(b) below, but which were performed or made by Lessee.

(b) Allowances. Insofar as applicable laws and regulations permit, and unless an event of default hereunder shall have occurred and be continuing, Lessee shall be entitled to a refund of monthly rent payable hereunder in an amount equal to all allowances received by Lessor from railroads for the use of the Cars, but such refund shall not exceed the sum of Lessee's rent payment obligations. All refunds of rent payable to Lessee shall be paid to Lessee by Lessor within thirty (30) days after the date Lessor has received payment of such car allowances from the railroads. All Cars bearing lessor's private marks that are leased by Lessee from Lessor on the date such computation is made shall be combined into a single account.

(c) Allowance Administration. Lessee agrees, upon request by Lessor, to report promptly to Lessor each movement of the Cars. Such report shall contain the date, car number, origin, destination and routing of the movement.

(d) Equalization. Lessee agrees to use the Cars so that their total mileage under load will be equal or exceed their mileage empty for each calendar year. If the empty mileage of the Cars for any calendar year exceeds their loaded mileage, Lessee shall equalize such excess empty mileage within the time limit allowed or pay Lessor for such excess empty mileage based on the rate established by the governing tariff, rule or regulation. The calculations and payments set forth herein shall be prorated for any fractional part of a year.

(e) Excess Mileage Calculation. After the end of each calendar year during any term of this Lease, Lessor shall determine the total number of miles each Car traveled during such year, loaded and empty. If any Car traveled more than thirty-six thousand (36,000) miles during such year, Lessee agrees to pay

Lessor as additional rent for such Car for such year the sum of Three Cents (\$.03) multiplied by the number of miles in excess of thirty-six thousand (36,000) that such Car traveled during such year. The determination of the total number of miles traveled by each Car during any year shall be made by multiplying the total number of miles such Car traveled while loaded by two (2), unless Lessor can determine the exact mileage traveled by such Car. The calculations and payments set forth herein shall be prorated for any fractional part of a year.

5. Rent Abatement.

(a) Non-Railroad Shop. In the event any Car is damaged but not damaged beyond repair, and if the repair of such damage is not Lessee's responsibility under this Lease, then if Lessor requests such Car be moved to a non-railroad owned shop for repair, rent shall abate as of 5th day after such Car is switched onto the property of such repair shop and shall be reinstated effective as of the day following the date Lessee is notified that such Car has been repaired and is ready for redelivery to Lessee.

(b) Railroad Shop. If such Car is delivered to a railroad owned shop for repairs and is not released for shipment to Lessee within five (5) days after such delivery, rent shall abate as of the fifth day after the date such Car is switched onto the property of such railroad owned shop and shall be reinstated as of the date such Car is released from such shop.

(c) Rent Abatement. For any Car that is repaired where Lessor and Lessee are each responsible under this Lease for a portion of the repairs, rent shall only abate for the time that repairs for which Lessor is responsible are being performed.

(d) Derailment. If any Car is derailed and such derailment was not caused by Lessee and such Car is not rerailed within five (5) days following such derailment, rent shall abate as of the date of such derailment and shall be reinstated as of the date of rerailment. However, if such Car requires repairs, sections 5(a) and 5(b) above shall control the date on which rent reinstatement shall occur.

(e) Limitations. Notwithstanding the foregoing provisions of this Section 5, the provisions of Section 4(a) with respect to the amount of rent abatement shall control as to the actual amount of rent to be abated under this Section 5.

6. Maintenance.

(a) Definitions. "Interchange Rules" mean collectively the Field Manual of the AAR Interchange Rules and the Office Manual of the AAR Interchange Rules. References herein to the Interchange Rules provide performance standards and criteria for the condition of the Cars and their maintenance and repair. However, as between Lessor and Lessee, this Lease, not the Interchange Rules, governs who is responsible for performing and paying for maintenance and repairs. "Lessee Maintenance Items" mean all hatch covers, outlet gates and removable parts or attachments.

(b) Maintenance By Lessor. Lessor shall, at its expense, maintain each Car in good working order and repair and in accordance with the standards set by the Interchange Rules and by the rules of any other applicable regulatory body, provided that Lessor has been notified by Lessee that such Car is in need for repairs. However, Lessor shall not be responsible for maintaining Lessee Maintenance Items or for repairs for which the Interchange Rules place responsibility upon third parties or for maintenance, repair or replacement that is Lessee's responsibility pursuant to Subsection 6(c) below.

(c) Maintenance By Lessee. (i) Lessee shall, at its expense, maintain all Lessee Maintenance Items in good condition and repair, including renewal necessitated by repair to other portions of the Cars. If any Lessee Maintenance Item is removed, broken off or altered for any reason, or is missing, damaged, altered or replaced with a non-standard item, Lessee shall repair or replace it unless Lessor has performed such removal or modification or has approved it in writing or Lessor has caused such damage, or responsibility for such repair has been assumed in writing by a third party; (ii) if Lessee has applied any interior and/or exterior protective coating to the Cars, the application, maintenance, renewal and removal thereof shall be performed by Lessee at its expense; (iii) all maintenance, repairs and replacements performed by Lessee shall be performed in accordance with the Interchange Rules and the rules of any other applicable regulatory body; (iv) Lessee shall not make any repairs without Lessor's prior written consent except the repairs described in clauses (i) and (ii) of the subsection; (v) whenever any Car is released for delivery to a repair facility for any reason, regardless of who is responsible for the repairs or maintenance being performed, Lessee, at its sole expense, shall clean such Car so that it is empty and free from any residue; (vi) Lessee shall reimburse Lessor for all repairs necessitated by Lessee's negligence or by improper loading of the Cars; and (vii) Lessee

shall, within thirty (30) days of notification that Lessor has paid a bill for maintenance, repair or cleaning for which Lessee is responsible, reimburse Lessor for such payment.

7. Use of Cars.

(a) **Corrosion and Similar Damage.** Lessee shall use the Cars for the transportation of bulk products and Lessee shall not use the Cars for any other purpose, including, without limitation, any use of the Cars for the loading or shipping of commodities which contain active or passive chemicals or physical properties which may result in damage or deterioration to the Cars, or to their linings, paint, coatings, sealants or similar items. Upon the initial delivery of any Car, Lessor will, if requested by Lessee, arrange a joint inspection of the car in St. Louis, Missouri or a mutually agreeable location. Unless prior to the first loading of the car, a joint inspection report setting forth the nature and amount of any then existing damage is signed by both parties, it shall be conclusively presumed that the Car was free of corrosion and all other commodity-related damage on the date such Car was delivered to Lessee. If any Car suffers corrosion or similar deterioration or damage due to any commodity placed or allowed to accumulate in or on the Car, or to which the Car is exposed during any term of this Lease, Lessee shall be liable for the cost of correcting such deterioration or damage at the time the Car is returned to Lessor, regardless of whether or not such condition is due to Lessee's negligence. Such corrosion, deterioration or damage shall not be considered "normal wear and tear." Lessee agrees to defend, indemnify and hold harmless Lessor from any liability, losses, damages, injuries, claims, and demands and expenses, including actual attorney's fees and expenses, arising out of, or as a result of, the loading and/or shipping in the Cars of commodities which contain active or passive chemicals or physical properties which may result in corrosion, deterioration or damage to the Cars, their lining, paint, coatings, sealants, or similar items. Lessee shall ensure that all commodities loaded in the Cars comply with the terms of this Lease and all applicable tariffs, laws, rules and regulations.

(b) **Liability for Loss of Use of Cars and Damage to Commodities.** Lessor is not liable for and Lessee hereby waives any claims for any loss of, or damage to, commodities loaded or shipped in the Cars, regardless of the cause. Except as provided in Section 5, Lessor is not liable for loss of use of any Car regardless of the cause. Notwithstanding anything herein to the contrary, Lessor grants to Lessee any warranties granted to Lessor by the manufacturer or repair facility.

8. Modifications.

(a) **Consent to Modifications.** Except for applying protective coatings referred to in Section 6, Lessee will not modify or alter the physical structure of any Car without Lessor's prior written consent; provided, however, that this shall not relieve Lessee of its maintenance obligations.

(b) **Required Modifications.** If any equipment or appliance on any Car is required to be changed or replaced or any additional equipment or appliance is required to be installed on any Car or any Car is required to be modified or altered, in each case in order to comply with changes to any applicable law, regulation, requirement or rule (a "Modification"), Lessor may elect to either (i) terminate this Lease, effective as of the date on which such Modification is required to be made, or (ii) make such Modification, pay the cost thereof, and increase the monthly rent. The amount of such monthly rent increase shall be an amount that will recover the cost of such Modification over its useful life using an implicit cost of capital of 2% over the prime rate announced by The Boatmen's National Bank of St. Louis (the "Boatmen's Prime Rate") in effect at the time such Modification is made. (To the extent the remaining lease term is shorter than such useful life, Lessee will only be paying increased rent through the end of the applicable Expiration Date.) If Lessor elects to terminate this Lease, Lessee may void such termination by paying Lessor the full cost of such Modification and Lessor shall have such Modification, and all components thereof, shall be considered to be accessions to the Car and title thereto shall be immediately vested in Lessor.

9. Casualty Substitution.

(a) **Casualty While Not in Lessee's Possession.** If any Car is destroyed or damaged to the extent that the cost to repair such damage exceeds the Depreciated Value ("DV") as provided in the Interchange Rules ("Damaged Beyond Repair") while not in the possession, custody or control of Lessee or Lessee's agent and such destruction or damage has been reported in accordance with the Interchange Rules, such Car will be removed from the rental calculations of this Lease on the date such Car was destroyed or Damaged Beyond Repair. Lessor shall be entitled to all casualty proceeds from the Car.

(b) **Casualty While in Lessee's Possession.** If any Car, while in the possession, custody or control of Lessee or Lessee's agent, is destroyed or Damaged Beyond Repair, Lessee shall promptly

notify Lessor in writing and remit to Lessor an amount equal to the DV of such Car as governed by AAR Rule #107, within thirty (30) days date of casualty. Such Car shall remain subject to the terms of this Lease, including the rental terms, until the date on which Lessor has received an amount equal to the DV of such Car.

(c) **Substitution of Car.** Lessor may at its expense replace any Car that has been destroyed or Damaged Beyond Repair with equipment of similar age, type and capacity upon prior written notice to Lessee. Lessor may also, at its expense and upon prior written notice to Lessee, replace any Car, with equipment of similar age, type and capacity, that Lessor determines is uneconomic for Lessor to repair or maintain such Car. Notwithstanding anything herein to the contrary, Lessor may, for any reason whatsoever upon written notice to Lessee, replace and substitute any Cars, with railcars of similar age, type and capacity and Lessee and Lessor shall execute new Schedules covering such new railcars and subjecting them to the terms of this Lease.

10. Possession and Use.

(a) **Subordination: Use.** Lessee acknowledges that the Cars contained herein may be subject to certain covenants of Lessor's financial institutions, or subject to the provisions of Lessor's Lease with the actual owner (or agent for the owner) of the Cars. Lessee specifically acknowledges the existence of these provisions and agrees to be bound by same. This Lease and Lessee's rights are subject and subordinate to the rights and remedies of any lender, owner, or other party which finances the cars. Lessor warrants that nothing in said covenants shall interfere with Lessee's peaceful enjoyment of the cars.

(b) **Compliance.** Lessee agrees that while the Cars are in Lessee's possession, custody or control the Cars shall be used in compliance with all applicable laws, regulations and AAR rules. Lessee further agrees to comply with the load limitations stencilled on each car.

(c) **Marks to Show Ownership or Security Interests.** Lessor may mark Cars to indicate the rights of Lessor or of any financing party. Lessee shall maintain such marks. Lessee shall not place any marking or lettering without the prior written consent of Lessor; except that Lessee may, without the consent of Lessor, board, placard or stencil the Cars with letters no larger than 2" high for the limited purpose of showing that the Cars are operated in Lessee's service.

(d) Lessee Liens. Lessee shall not directly or indirectly allow to exist encumbrances of any kind on or with regard to any Cars or this Lease arising by, though or under it except those created for the benefit of Lessor or any financing party. Lessee shall within five (5) days notify Lessor in writing if any such encumbrance arises and shall immediately at its expense cause it to be discharged and removed.

11. Default.

(a) Events of Default. The occurrence of any of the following events shall be an Event of Default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date such payment is due and upon written notice by Lessor,

(ii) The breach by Lessee of any other term or condition of this Lease which is not cured within thirty (30) days after written notice from Lessor specifying such breach;

(iii) Lessee makes a general assignment for the benefit of creditors or fails to pay, or states that it is unable to pay, or is unable to pay its debts generally as they become due;

(iv) In the event that Lessee becomes the debtor in a Chapter 11 proceeding under the Bankruptcy Code, the failure of such entity to assume this Lease within sixty (60) days of the commencement of the Chapter 11 proceeding; or

(v) Any action; event or existence of any condition the effect of which would be to materially impair Lessee's collective ability to perform its obligations under this Lease.

(b) Lessor Remedies. Upon the occurrence of any Event of Default, Lessor at its option may exercise any or all of the following rights and remedies and any additional rights and remedies permitted by law and shall be entitled to recover all its costs and expenses including actual attorneys' fees and expenses in enforcing its rights and remedies:

(i) Terminate this Lease and recover damages; and/or

(ii) Proceed by any lawful means to enforce performance by Lessee of this Lease and/or to recover damages for any breach thereof; and/or

(iii) Terminate this Lease by written notice, and retake the Cars and thereafter recover as liquidated damages (and not as a penalty), it being acknowledged by the parties that actual damages are difficult or impossible to estimate and that the following is a reasonable estimate of the probable loss, any and all costs and expenses of termination, retaking and reselling or re-leasing (including, without limitation, actual attorney's fees and expenses) in addition to the present value (using a discount rate of two percent [2%] over the Boatmen's Prime Rate) of all rental for the unexpired balance of the Lease term then in effect unpaid as of said date of termination, reduced by the present value (using a discount rate of two percent [2%] over the Boatmen's Prime Rate) of the fair market rental value of the Cars for the unexpired balance of the Lease term as of said date (such fair market rental value to equal zero for any Car not returned by Lessee). Lessor may sell the Cars at public or private sale, with or without notice, advertisement, or publication, as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Cars as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto; or

(iv) Without terminating this Lease, repossess the Cars, but in the event the Cars are delivered to Lessor or are repossessed, Lessor shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including actual attorney's fees and expenses) of retaking, repairing (if necessary) and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. The election by Lessor to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained, including, without limitation, the obligation to pay rent.

The obligation to pay any deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars. The remedies in this Lease shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies existing at law or in equity.

12. Expiration or Other Termination.

(a) Return of Cars. Upon the expiration or other termination of this Lease with respect to any Car, Lessee, at its expense, shall return such Car to Lessor at such shop, storage yard, terminal facility or other interchange point designated by Lessor (the "Return Location").

(b) Condition Upon Return.

(i) Except for normal wear and tear that is Lessor's responsibility under Section 6, each Car shall be returned to Lessor (A) in as good condition, order and repair as when delivered to Lessee; (b) in interchange condition in accordance with the standards set by the Interchange Rules and by any other applicable AAR and Federal Railroad Administration ("FRA") rules and regulations, interchange condition to include the replacement of missing materials; (C) free of Rule 95 damage; (D) in condition suitable for loading grain, however, if the next Lessee of the cars loads cement, Lessee's obligation to clean the car shall extend only to the extent suitable for cement loading; (E) free of all accumulations or deposits from commodities; and (F) free of corrosion and any other commodity-related damage. Any item that is damaged or worn beyond what is considered to be normal by the original component manufacturer shall be deemed to have been damaged beyond normal wear and tear and shall be Lessee's responsibility. In addition, if Lessor has permitted Lessee to place any logos or special paint on any Car, Lessee shall have such logos or special paint removed.

If, and only if, Lessee elects to renew the Lease per Section 2a., Lessee's obligation to clean the cars will extend only to extent that the cars be suitable for the reloading of cement.

(ii) Lessor may inspect any Car which is returned to it, within a reasonable time after such return and Lessee shall be entitled to participate in any such inspection. Lessee agrees to pay Lessor, within thirty (30) days of receipt of an invoice, for all repairs, replacements and cleaning for which Lessee is responsible but which were performed by Lessor.

(c) Holdover Rent. Until any Car is returned to Lessor, Lessee shall continue to pay rent for such Car and Lessee shall make all other payments and perform all other obligations under this Lease as though the expiration or other termination had not occurred. If Lessor requests the return of any Car and such Car has not been returned within 30 days, Lessee upon notice from

Lessor, shall pay two hundred percent (200%) of the rent in effect immediately prior to expiration or termination. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or other termination of this Lease with respect to such Car.

13. Record Keeping.

Lessee agrees to furnish Lessor promptly, at Lessor's request, with complete and accurate information reasonably requested by Lessor pertaining to the Cars, their movement, repairs and maintenance in accordance with AAR format.

14. Inspection: Financial Statements.

Lessee shall permit Lessor reasonable access to Lessee's property during normal business hours to examine the Cars or Lessee's records relating to the Cars. Lessee shall upon notice from Lessor, within one hundred twenty (120) days after the close of each of their respective fiscal years during the initial term and any renewal term of this Lease, provide Lessor with such entities' balance sheets and profit and loss statements certified by such entities' respective chief financial officers. Such financial statements may be disclosed to Lessor's lenders. Upon request of Lessee, such lender shall execute a confidentiality statement.

15. Insurance.

Lessee shall at its expense carry and maintain on the Cars while on Lessee's property or under Lessee's custody or control (i) all risk, physical loss and damage insurance and (ii) public liability insurance. Insurance policies shall be in such amounts and against risks customarily insured against by Lessee, and includes self-insured retention, and in no event shall provide less coverage (in terms of type, risks insured and amount) than Five Million Dollars (\$5,000,000). Lessee's policies shall name Lessor and any owner of the Cars and any lender holding a lien on such Cars as additional insurers and Lessor and any such lender shall be named as co-loss payees. Upon execution hereof, and annually upon lessor's request, Lessee shall provide Lessor and any such lender with insurance certificates from Lessee's insurance carrier evidencing the insurance required hereunder. Lessee's insurance shall be primary without right of contribution from any insurance carried by Lessor.

16. Taxes.

Lessor shall pay, and shall defend and indemnify Lessee against, all property taxes assessed against or levied upon the Cars and shall file all property tax returns. Lessee shall forward to Lessor upon receipt of copies of any correspondence, notifications of proposed assessments and tax bills it may receive with respect to such property taxes. Lessee shall be liable for, and shall defend and indemnify Lessor against, all other taxes, duties or government impositions with respect to the Cars.

17. Indemnities.

Lessee agrees to defend, indemnify and hold harmless Lessor from any and all claims, losses, damages, liabilities, costs and expenses (including actual attorney's fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted against Lessor arising out of Lessee's, its consignee's or shipper's use, lease, possession or operation of the Cars or out of the loading, unloading, storage, transportation, or movement of the contents of such Cars. The indemnities contained in this Lease shall survive the expiration or termination of this Lease.

18. Miscellaneous.

(a) **No Assignment Without Lessor Consent.** This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns; PROVIDED, HOWEVER, THAT LESSEE MAY NOT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR PLEDGE OR ASSIGN THIS LEASE OR ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER. SUCH CONSENT SHALL NOT BE UNREASONABLY WITHHELD. ANY PURPORTED ASSIGNMENT IN VIOLATION HEREOF SHALL BE VOID.

(b) **Subleases.** Lessee may sublease the Cars provided that: (i) Lessee shall notify Lessor of any sublease and the terms thereof; (ii) Lessee shall continue to remain liable to Lessor under this Lease; (iii) any sublease shall contain language which expressly makes such sublease subject and subordinate to this Lease and to the rights of the financing parties described in Subsection 10(a); (iv) no Car shall be subject to a sublease more than twelve (12) months of any calendar year; and (v) such sublease shall provide that the Cars may be used only within the boundaries of permitted use set forth in Subsection 10(a) and in accordance with all of the terms and conditions set forth herein.

(c) **Assignment by Lessor.** All rights and obligations of Lessor under this Lease, and Lessor's interest in the Cars and in the rents, may be assigned, pledged, or transferred in whole or in part without consent by Lessee, but upon written notice of Lessor. If requested by Lessor, Lessee shall acknowledge in writing said assignment.

(d) **Additional Documents.** Both parties agree to execute the documents contemplated by this transaction and such other documents may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition, financing or use of the Cars.

(e) **Parties.** Lessee expressly acknowledge and agree that they are jointly and severally liable for the payment of rent and performance of all obligations to be paid or performed by Lessee hereunder.

(f) **No Waiver.** No delay, waiver, indulgence or partial exercise by Lessor of any right power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power or remedy.

(g) **No Warranties.** Lessor's obligations with respect to the Cars are expressly limited to those set forth in this Lease, and LESSOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, LESSOR MAKES NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OF OTHERWISE, NOR SHALL LESSOR HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS LEASE OR THE BREACH OF ANY WARRANTY OR OTHER PROVISION HEREUNDER BY LESSOR OR IN CONNECTION WITH THE LEASE, USE, POSSESSION OR OPERATION OF ANY CAR OR ARISING BY REASON OF ANY IMPERFECTION OR DEFECT IN THE CARS, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN TORT OR IN CONTRACT.

(h) **Notices.** Any notices required or permitted to be given hereunder shall be deemed given when sent by telecopy with verification of transmission or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessee:Blue Circle Inc.
Attention: Corporate Distribution Manager
Two Parkway Center
1800 Parkway Place
Suite 1200
Marietta, GA. 30067
Fax Number: (404) 423-4738

Lessor:Southern Illinois Railcar Company
Attention: President
1 Mark Twain Plaza - SUITE 225
Edwardsville, IL 62025
Fax Number: (618) 656-2369

or to such other addresses as Lessor and Lessee may from time to time designate.

(i) **Applicable Law.** The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois without regard to Illinois' choice of law doctrine.

(j) **Survival.** The obligations of Lessor and Lessee to make any payments hereunder shall survive the expiration or other termination of this Lease.

(k) **Entire Lease.** This Lease and any Schedules attached hereto represent the entire agreement. This Lease may not be modified, altered, or amended, except by an agreement in writing signed by Lessor and Lessee.

(l) **Counterparts.** This Lease may be executed in any number of counterparts, and such counterparts together shall constitute one contract.

(m) **Binding Upon Parties.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

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

SOUTHERN ILLINOIS RAILCAR CO.

BLUE CIRCLE INC.

BY: *Paul M. C.*

BY: *Frederick H. King* *JM*

TITLE: *Vice President - Controller*

TITLE: *Vice President*