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1971 - 1996
25TH ANNIVERSARY

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DAVID B. HERBERT
WILLIAM H. CRAWFORD, JR.
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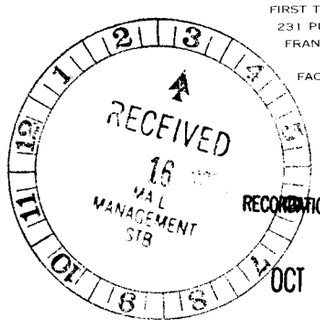
October 12, 2000




RECORDATION NO. 23087-A FILED

OCT 17 '00 12-43 PM

TS

SURFACE TRANSPORTATION BOARD

**SURFACE TRANSPORTATION BOARD**
Attention: Taledia Stokes
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423

**RE: First Commerce Leasing Corporation to First Tennessee Bank National Association**

Dear Ms. Stokes:

Pursuant to your telephone request, a separate letter is being submitted for each document forwarded under my letter of September 29, 2000, the originals of which you are currently holding. Accordingly, please accept for recording an Assignment of Lease, as a secondary document, dated as of August 30, 2000 between First Commerce Leasing Corporation as Lessor and First Tennessee Bank National Association as Lessee. The recordation reference number for the Lease, the primary document, is Recordation No. 23087 filed September 6, 2000. The names and addresses of the parties to this document are as follows:

| | |
|---|---|
| Lessor: | First Commerce Leasing Corporation<br>2496 Rocky Ridge Road<br>Birmingham, AL 35243 |
| Assignee | First Tennessee Bank National Association<br>511 Union Street<br>Nashville, TN 37219 |
| Lessee: | Xavier Chemical Company<br>3020 Roswell road, NE, Suite 200<br>Marietta, GA 30062 |

A description of the equipment covered by this documents is attached as Exhibit "A". A fee of $26.00 for recording this document has been previously forwarded to you.

A summary of the document to appear in the index is as follows:

> An Assignment of Lease between First Commerce Leasing Corporation, 2496 Rocky Ridge Road, Birmingham, AL 35243 as Lessor and First Tennessee Bank National Association, 511 Union Street, Nashville, TN 37219 as Assignee, dated August 30, 2000 covering forty-seven (47) 1984 railroad tank cars and connected to an Equipment Lease Agreement between First Commerce Leasing Corporation, 2496 Rocky Road, Birmingham, AL 35243 as Lessor and Xavier Chemical Company, 3020 Roswell Road, NE, Suite 200, Marietta, GA 30062 as Lessee.

If you have any questions or need additional information, please contact the undersigned.

Very truly yours,

**ORTALE, KELLEY, HERBERT & CRAWFORD**

Douglas A. Brace

DAB:maf
Enclosures

cc: Jimmy Green

F:\DAB\Surfrace Transportation - 2nd ltr.doc

# Exhibit A

**DESCRIPTION OF EQUIPMENT**

| Manufacturer/Vendor | Quantity | Make & Model of Equipment | Description |
|---|---|---|---|
| | 47 | | **Railroad Cars, Described as Follows**:<br><br>1984 Trinity Industries Molten Sulfer Tankcars, 13,500 gallons, 64,500 pounds. Car Type DOT11A100W3, numbered as follows:<br>TILX 135170, TILX 135172, TILX 135173, TILX 135174, TILX 135175 , TILX 135176,TILX 135179, TILX 135180, TILX 135184, TILX 135185, TILX 135186, TILX 135190, TILX 135192, TILX 135196, TILX 135197, TILX 135201, TILX 135203, TILX 135205, TILX 135207, TILX 135209, TILX 135210, TILX 135212, TILX 135213, TILX 135214, TILX 135215, TILX 135217, TILX 135220, TILX 135221, TILX 135222, TILX 135225, TILX 135227, TILX 135228, TILX 135230, TILX 135231, TILX 135232, TILX 135233, TILX 135234, TILX 135237, TILX 135240, TILX 135241, TILX 135244, TILX 135251, TILX 135255, TILX 135256, TILX 135261, TILX 135263, TILX 135264 |

RECORDATION NO. 23087-A FILED

OCT 17 '00 12-43 PM

SURFACE TRANSPORTATION BOARD

## ASSIGNMENT OF LEASE

**THIS ASSIGNMENT OF LEASE** (the **"Assignment of Lease"**) made and entered into as of the 30th day of August, 2000 by and between **FIRST COMMERCE LEASING CORPORATION,** an Alabama corporation (the **"Borrower"**) and **FIRST TENNESSEE BANK NATIONAL ASSOCIATION,** (the **"Lender"**), a national banking association with offices at Nashville, Tennessee .

**W I T N E S S E T H:**

**FOR AND IN CONSIDERATION** of the sum of Ten Dollars ($10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure the indebtedness and other obligations of the Borrower hereinafter set forth, the Borrower does hereby grant, transfer, and assign, to the Lender, its successors, successors-in-title, and assigns, all of the right, title and interest of the Borrower in, to and under that certain Lease Agreement dated the 18th day of August, 2000, by and between the Borrower as Lessor, and Xavier Chemical Company as Lessee, and any and all extensions, renewals, and modifications thereof (the **"Lease"**), and in, to and under all leases, subleases and rental agreements hereafter existing, including any and all extensions, renewals, and modifications thereof and guaranties of the performance or obligations of any lessees or sublessees, thereunder (said lessee, and any subsequent lessees and sublessees being herein called collectively, the **"Lessee"**) which Lease covers all the equipment being more particularly described in **Exhibit "A"** (the **"Equipment"**), which is attached hereto and incorporated herein as fully as though copied; together with all of the right, title and interest of the Borrower in and to all rents, issues, and profits from the Lease and from the Equipment.

**TO HAVE AND TO HOLD** unto the Lender, its successors and assigns forever, subject to and upon the terms and conditions set forth herein.

**THIS ASSIGNMENT OF LEASE** is made for the purpose of securing: **(a)** the full and prompt payment when due, whether by redemption or otherwise, with such interest as may accrue thereon, and premiums, if any, either before or after maturity thereof, of that certain Amended and Restated Promissory Note (the **"Promissory Note"**), of even date herewith, from the Borrower to the Lender, in the original principal amount of Two Million Fifty Four Thousand Seven Hundred Seventy Seven and 50/100 ($2,054,777.50) Dollars, together with any renewals, modifications, and extensions thereof; **(b)** the full and prompt payment and performance of any and all obligations of the Borrower to the Lender under the terms of the Collateral Documents securing the indebtedness evidenced by the Promissory Note; **(c)** the full and prompt payment and performance of any and all other obligations of the Borrower to the Lender under any other documents or instruments now or hereafter evidencing, securing, or otherwise relating to the indebtednesses evidenced by the Promissory Note (the Collateral Documents, and said documents or other instruments being hereinafter called, collectively, the **"Loan Documents"** and said indebtedness being hereinafter called, the **"Indebtedness"**).

## ARTICLE I
## WARRANTIES AND COVENANTS

**Section 1.01. Warranties of the Borrower.** The Borrower hereby warrants and represents that:

**(a)** The Borrower is the sole holder of the Lessor's interest under the Lease heretofore or concurrently herewith executed, and will be the sole holder of the Lessor's interest under any and all leases or subleases hereafter executed, and, as such, is and will continue to be, as to the Lease heretofore executed, and will be, entitled to receive the rents, issues, and profits from the Lease and from the Equipment, and has good right to sell, assign, transfer and set over the same and to grant to, and confer upon, the Lender the rights, interest, powers, and authorities herein granted and conferred;

**(b)** The Borrower has not made any assignment other than this Assignment of Lease of any of the rights of the Borrower under the Lease or with respect to any of said rents, issues or profits to anyone other than the Lender;

**(c)** The Borrower has not done any act nor omitted to do any act which might prevent the Lender from, or limit the Lender in, acting under any of the provisions of this Assignment of Lease;

**(d)** The Lease provides for the rental to be paid monthly, in advance and the Borrower has not accepted, and will not accept, payment of rental under the Lease for more than one (1) month in advance of the due dates thereof;

**(e)** To the best of the knowledge of the Borrower, there exists no default or event of default or any state of facts which would, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of the Borrower or by any Lessee, under the terms of the Lease;

**(f)** Neither the execution and delivery of this Assignment of Lease or any subsequent leases, the performance of each and every covenant of the Borrower under this Assignment of Lease or the Lease, nor the meeting of each and every condition contained in this Assignment of Lease, conflicts with, or constitutes a breach or default under any agreement, indenture, or other instrument to which the Borrower is a party, or any law, ordinance, administrative regulation or court decree which is applicable to the Borrower;

**(g)** No action has been brought or, to the best of the knowledge of the Borrower, is threatened, which would interfere in any way with the right of the Borrower to execute this Assignment of Lease and perform all of the obligations of the Borrower contained in this Assignment of Lease or in the Lease; and

**(h)** The Lease is valid, enforceable and in full force and effect in accordance with its respective terms.

**Section 1.02. Covenants of the Borrower.** The Borrower hereby covenants and agrees with the Lender that:

**(a)** The Borrower shall: **(i)** fulfill, perform and observe each and every condition and covenant of the Lessor contained in the Lease; **(ii)** give prompt notice to the Lender or its assigns of any claim of default under the Lease, whether given by the Lessee to the Borrower, or given by the Borrower to the Lessee, together with a complete copy of any such notice; **(iii)** at no cost or expense to the Lender, enforce, or cause to be enforced, short of termination, the performance and observance of each and every covenant and condition of the Lease to be performed or observed by the Lessee thereunder; and, **(iv)** appear in and defend, or cause to appear in and be defended, any action growing out of, or in any manner connected with, the Lease or the obligations or liabilities of the Borrower as the landlord thereunder or of the Lessee or any guarantors thereunder;

**(b)** The Borrower will not, without the prior written consent of the Lender or its assigns: **(i)** modify the Lease; **(ii)** terminate the term or accept the surrender of the Lease; **(iii)** waive or release the Lessee from the performance or observance by the Lessee of any obligation or condition of the Lease; **(iv)** reduce the rents nor permit the prepayment of any rents under the Lease for more than one (1) month prior to the accrual thereof; **(v)** give any consent to any assignment or sublease by the Lessee under the Lease; or, **(vi)** assign its interest in, to, or under the Lease or the rents, issues, and profits from the Lease and from the Equipment to any person or entity other than the Lender;

**(c)** The Borrower hereby agrees to protect, indemnify and save harmless the Lender and its assigns from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by the Lender and/or its assigns by reason of this Assignment of Lease and any claim and demand whatsoever which may be asserted against the Lender and/or its assigns by reason of any alleged obligation or undertaking to be performed or discharged by the Lender and/or its assigns under this Assignment of Lease. In the event the Lender and/or its assigns incur any liability, loss or damage by reason of this Assignment of Lease, or in the defense of any claims or demands arising out of or in connection with this Assignment of Lease, the amount of such liability, loss or damage shall be added to the Indebtedness, shall bear interest at the highest maximum rate allowed by applicable law from the date incurred until paid, and shall be payable on demand.

**Section 1.03. Covenants of the Lender.** The Lender hereby covenants and agrees with the Borrower that:

**(a)** So long as there shall exist no Event of Default, as defined in Section 2.01, below, on the part of the Borrower, the Borrower shall have the right to collect, but not more than one (1) month prior to accrual, all rents, issues and profits from the Equipment and to retain, use and enjoy the same; and

**(b)** Upon the payment in full of the Indebtedness, as evidenced by the satisfaction of the Promissory Note, this Assignment of Lease shall be terminated and be of no further force or effect.

## ARTICLE II
## DEFAULT

**Section 2.01. Event of Default.** The term **"Event of Default"**, wherever used in this Assignment of Lease, shall mean any one or more of the following events:

**(a)** The occurrence of any **"default"** or **"event of default"** under the Promissory Note, the Collateral Documents or any other Loan Documents;

**(b)** The failure by the Borrower duly and fully to comply with any covenant, condition or agreement of this Assignment of Lease; or

**(c)** The breach of any warranty by the Borrower contained in this Assignment of Lease.

**Section 2.02. Remedies.** Upon the occurrence of any Event of Default, the Lender may at its option, with or without notice or demand of any kind, exercise any or all of the following remedies:

**(a)** Declare any part or all of the Indebtedness to be, and thereupon the same shall become, immediately due and payable;

**(b)** Perform any and all obligations of the Borrower under the Lease or this Assignment of Lease and exercise any and all rights of the Borrower therein as fully as the Borrower itself could, including, without limiting the generality of the foregoing: enforcing, modifying, extending, or terminating the Lease; collecting, modifying, compromising, waiving, or increasing any of the rents payable thereunder; and, obtaining new lessees and entering into new leases on the Equipment on any terms and conditions deemed desirable by the Lender; and, to the extent the Lender shall incur any costs or any monies in connection with the performance of any obligations of the Borrower, including costs of litigation, then all such costs shall become a part of the Indebtedness, shall bear interest at the highest maximum rate allowed by applicable law, and shall be due and payable on demand;

**(c)** In the name of the Borrower or the Lender, institute any legal or equitable action which the Lender, in its sole discretion, deems desirable to collect and receive any or all of the rents, issues and profits assigned herein;

**(d)** Collect the rents, issues and profits and any other sums due under the Lease with respect to the Equipment and apply the same as follows:

**(i)** First, against all costs and expenses, including reasonable attorneys' fees, incurred in connection with the operation of the Equipment, the performance of the obligations of the Borrower under the Lease and the collection of the rents thereunder;

**(ii)** Second, to the costs and expenses, including reasonable attorneys' fees, incurred in the collection of any or all of the Indebtedness, including all costs, expenses and attorneys' fees, incurred in seeking to realize on any other collateral securing any or all of the Indebtedness;

**(iii)** Third, to any or all unpaid principal and interest on the Indebtedness; and

**(iv)** Fourth, to the Borrower, or to the person or entity lawfully entitled thereto;

**(e)** The Lender shall have full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the Indebtedness, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee; and

**(f)** The Lender shall have full right to take possession of, use and operate the Equipment which the Lender, in its sole discretion, deems desirable to effectuate any or all of the foregoing remedies, it being expressly understood and agreed, however, that: **(i)** the Lender shall not be deemed a **"mortgagee in possession"** unless the Lender takes actual possession of the Equipment pursuant to the terms of this Assignment of Lease or any of the Loan Documents; **(ii)** prior to actual taking possession of the Equipment, this Assignment of Lease shall not operate to impose any responsibility or obligation whatsoever upon the Lender; and **(iii)** the Lender shall be liable only for such cash as it actually receives under the terms hereof.

## ARTICLE III
## GENERAL PROVISIONS

**Section 3.01. Successors and Assigns.** This Assignment of Lease shall inure to the benefit of, and be binding upon, the Borrower and the Lender and their respective legal representatives, successors and assigns. Whenever a reference is made in this Assignment of Lease to the **"Borrower"** or to the **"Lender"**, such reference shall be deemed to include a reference to the legal representatives, successors and assigns, respectively, of the Borrower and the Lender.

**Section 3.02. Terminology.** All personal pronouns used in this Assignment of Lease, whether used in the masculine, feminine or neuter gender shall include all other genders; and, the singular shall include the plural and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Assignment of Lease itself.

**Section 3.03. Severability.** If any provision of this Assignment of Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this

Assignment of Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 3.04. Applicable Law.** This Assignment of Lease has been executed and delivered in the State of Tennessee and it is the intention of the parties hereto that such Assignment of Lease shall be interpreted, construed and enforced according to the laws of such State.

**Section 3.05. No Third Party Beneficiaries.** This Assignment of Lease is made solely for the benefit of the Lender and its assigns. No tenant under the Lease nor any other person shall have standing to bring any action against the Lender as the result of this Assignment of Lease or to assume that the Lender will exercise any remedies provided herein, and no persons other than the Lender and its assigns shall under any circumstances be deemed to be a beneficiary of any provisions of this Assignment of Lease.

**Section 3.06. No Oral Modifications.** Neither this Assignment of Lease nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

**Section 3.07. Cumulative Remedies.** The remedies herein provided shall be in addition to, and not in substitution for, the rights and remedies vested in the Lender in any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by the Lender. The remedies herein provided or otherwise available to the Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof; nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided for otherwise available to the Lender shall continue and be each and all available to the Lender until all of the Indebtedness shall have been paid in full.

**Section 3.08. Cross-Default.** An Event of Default by the Borrower under this Assignment of Lease shall constitute a default or an event of default under all other Loan Documents.

**Section 3.09. Counterparts.** This Assignment of Lease may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Assignment of Lease by signing any such counterpart.

**Section 3.10. Further Assurances.** At any time and from time to time, upon request by the Lender, the Borrower will make, execute, and deliver and/or cause to be made, executed, and delivered to the Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender, any and all such other and further assignments, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of the Lender, be necessary or desirable in order to

effectuate, complete, or perfect, or to continue and preserve: **(a)** the obligations of the Borrower under this Assignment of Lease; and **(b)** the security interest created by this Assignment of Lease as a first and prior security interest upon the Lease and the rents, issues, and profits from the Equipment. Upon any failure by the Borrower so to do, the Lender may make, execute, record, file, re-record and/or refile any and all such assignments, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do.

**Section 3.11. Instructions to Lessee.** The Borrower does hereby specifically and unconditionally authorize and instruct each and every present and future Lessee of the whole or any part of the Equipment to pay all rent to the Lender upon receipt of demand from the Lender to so pay the same.

**Section 3.12. Notices.** Any and all notices, elections or demands permitted or required to be made under this Assignment of Lease shall be in writing, signed by the party giving such notice, election or demand and shall be delivered personally, or sent by registered or certified mail, to the other party at the address set forth below, or at such other address as may be supplied in writing. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice, election or demand. For the purposes of this Assignment of Lease:

The address of the Lender is:

**FIRST TENNESSEE BANK NATIONAL ASSOCIATION**
511 Union Street
P.O. Box 28100
Nashville, TN 37202
ATTENTION: Jimmy Green, Commercial Loan Officer

With a copy to:

Douglas A. Brace, Esq.
ORTALE, KELLEY, HERBERT & CRAWFORD
200 Fourth Avenue North, 3rd Floor
P.O. Box 198985
Nashville, TN 37219-8985

The address of the Borrower is:

First Commerce Leasing Corporation
2496 Rocky Ridge Road
Birmingham, AL 35243
ATTENTION: Warren Hawkins, President

With a copy to:

Michael J. Brandt, Esq.
WALLACE, JORDAN, RATLIFF & BRANDT, L.L.C.
800 Shades Creek Parkway, Suite 400
Birmingham, AL 35209

**Section 3.13.** **Modifications, etc.** The Borrower hereby consents and agrees that the Lender may, upon the occurrence of an Event of Default and the continuance thereof, without notice to or further consent from the Borrower, either with or without consideration; **(a)** surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm, or corporation on its behalf or for its account, securing the Indebtedness; **(b)** substitute for any collateral so held by it, other collateral of like kind, or of any kind; **(c)** extend or renew the Promissory Note or any of the Loan Documents for any period; **(d)** grant releases, compromises, and indulgences with respect to the Promissory Note, or the Loan Documents and to any persons or entities now or hereafter liable thereunder or hereunder; **(e)** release any guarantor or endorser of the Promissory Note, collateral Documents, or any other Loan Documents; or, (f) take or fail to take any action of any type whatsoever; and no such action which the Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the Indebtedness or for the performance of any obligations or undertakings of the Borrower, nor any course of dealing with the Borrower or any other person, shall release the obligations hereunder of the Borrower, affect this Assignment of Lease in any way, or afford the Borrower any recourse against the Lender. The provisions of this Assignment of Lease shall extend and be applicable against the Lender. The provisions of this Assignment of Lease shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Loan Documents and the Lease, and any and all references herein to the Loan Documents or the Lease shall be deemed to include any such renewals, extensions, amendments, consolidations or modifications thereof.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement the day and date first above written.

**BORROWER:** **FIRST COMMERCE LEASING CORPORATION**

**BY:** _____
**Warren Hawkins, President**

**LENDER:** **FIRST TENNESSEE BANK NATIONAL ASSOCIATION**

**BY:** _____
**Jimmy Green, Commercial Loan Officer**

**STATE OF TENNESSEE ]**
**COUNTY OF DAVIDSON ]**

Before me, the undersigned, a Notary Public of the State and County aforesaid, duly commissioned and qualified, personally appeared **Jimmy Green,** with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be a Commercial Loan Officer of **First Tennessee Bank National Association**, the within named bargainor, a national banking association, and that he as such Commercial Loan Officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the banking association as said Commercial Loan Officer.

**WITNESS** my hand and official seal of office in Nashville, Tennessee, this 27th day of September, 2000.

NOTARY PUBLIC

My commission expires:

DOUGLAS A. BRACE NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TENN.

NOTARY PUBLIC
AT LARGE
Douglas A. Brace
My Commission Expires
November 24, 2001
STATE OF TENNESSEE

**STATE OF TENNESSEE ]**
**COUNTY OF DAVIDSON ]**

Personally appeared before me, **Warren Hawkins,** with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the president of **First Commerce Leasing Corporation,** and is authorized by the maker to execute this instrument on behalf of the maker.

**WITNESS** my hand and seal of office in Nashville, Tennessee, this 27 day of September, 2000.

Linda Barnett
NOTARY PUBLIC

My commission expires: 12/10/01

# Exhibit A

**DESCRIPTION OF EQUIPMENT**

| Manufacturer/Vendor | Quantity | Make & Model of Equipment | Description |
|---|---|---|---|
| | 47 | | **Railroad Cars, Described as Follows:**<br><br>1984 Trinity Industries Molten Sulfer Tankcars, 13,500 gallons, 64,500 pounds. Car Type DOT11A100W3, numbered as follows:<br>TILX 135170, TILX 135172, TILX 135173, TILX 135174, TILX 135175 , TILX 135176,TILX 135179, TILX 135180, TILX 135184, TILX 135185, TILX 135186, TILX 135190, TILX 135192, TILX 135196, TILX 135197, TILX 135201, TILX 135203, TILX 135205, TILX 135207, TILX 135209, TILX 135210, TILX 135212, TILX 135213, TILX 135214, TILX 135215, TILX 135217, TILX 135220, TILX 135221, TILX 135222, TILX 135225, TILX 135227, TILX 135228, TILX 135230, TILX 135231, TILX 135232, TILX 135233, TILX 135234, TILX 135237, TILX 135240, TILX 135241, TILX 135244, TILX 135251, TILX 135255, TILX 135256, TILX 135261, TILX 135263, TILX 135264 |