

RECORDATION NO 28270 FILED

JAN 04 '10

2-01 PM



# FIRST UNION RAIL

One O'Hare Centre  
6250 River Road, Suite 5000  
Rosemont, IL 60018

Tel 847.318.7575  
Fax 847.318.7588  
www.firstunionrail.com

SURFACE TRANSPORTATION BOARD

VIA UPS 2<sup>nd</sup> DAY AIR

December 30, 2009

Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Suite 100  
Washington, DC 20423-0001  
Attn: Documents for Rail Recordation

**Re: Memorandum of Lease Agreement**

Dear Section Chief:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) originals and one (1) copy of a Memorandum of Lease Agreement, dated November 10, 2009, a primary document as defined in the Board's Rules for the Recordation of Documents. Please file this Memorandum of Lease as a primary document since a Master Lease has not been filed with the Surface Transportation Board. The names and addresses of the parties to the enclosed document are:

Lessor/Manager: First Union Rail Corporation  
One O'Hare Centre  
6250 River Road, Suite 5000  
Rosemont, IL 60018

Lessee: The David J. Joseph Company  
300 Pike Street  
Cincinnati, OH 45202

Owner of cars in Group 2: ATEL Leasing Corporation  
600 California Street, 6<sup>th</sup> Floor  
San Francisco, California 94108

A description of the railroad equipment covered by the enclosed document is for one hundred ninety nine (199) gondola cars, having NDYX and AFCX marks (see Exhibit A for car numbers).

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

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee. Kindly return one (1) stamped original of the enclosed document to the undersigned along with the additional copies.

If you have any questions regarding the above-referenced matter, please contact me at (847) 384-5397. Thank you for your cooperation in this matter.

Sincerely,

Marcia Dunne  
Senior Rail Documentation Specialist

Enclosures

(DAJJ001A/B)

ASSGN. NO. DAJ001A/B

MEMORANDUM OF LEASE

SURFACE TRANSPORTATION BOARD

THIS MEMORANDUM OF LEASE (the "Memorandum") is made and entered into as of this the 10th day of November, 2009, by and between First Union Rail Corporation, a North Carolina corporation, ("Lessor") as Lessor of Cars listed on Exhibit A in Group 1, and as Manager, acting in its capacity as independent contractor for ATEL Leasing Corporation ("ATEL"), Owner of Cars listed on Exhibit A in Group 2, and The David J. Joseph Company, ("Lessee"), a Delaware corporation.

**WITNESSETH:**

The undersigned Lessor and Lessee have entered into that certain Lease Agreement (the "Master Lease"), dated as of November 10th, 2009, whereby Lessor has agreed to lease to Lessee certain railcars pursuant to Rider No. 1 to the Lease (the "Rider"), which Rider incorporates by reference the terms and conditions of the Lease and is a separate and independent lease, (the "Lease"), effective as of July 1st, 2009 and subject to the terms, conditions and provisions of the above-mentioned Lease. Certain of the Cars in Group 2 as specifically described on Exhibit A attached hereto, are owned by ATEL and are managed by Lessor for ATEL pursuant to a Railcar management Agreement dated as of April 1, 2002, as amended, (the "ATEL Cars"). The Cars in Group 1 are owned by other parties.

Lessor hereby assigns and transfers to ATEL all of its right, title and interest as Lessor in and to the Lease with respect to the ATEL Cars, excluding from such assignment only its rights as manager of the Lease with respect to the ATEL Cars in Group 2 under the Railcar Management Agreement.

IN WITNESS WHEREOF, the parties hereto have each caused this Memorandum to be duly executed under seal by their respective officers duly authorized as of the date and year first above written.

**LESSOR:**

FIRST UNION RAIL CORPORATION,  
as Lessor of Cars in Group 1, and as Manager for  
ATEL Leasing Corporation of Cars in Group 2

ATTEST

By: Richard F. Seymour

Name: RICHARD E. SEYMOUR  
VICE PRESIDENT SALES & MARKETING

By: Georgia Freiburger  
Name: GEORGIA FREIBURGER

Title: \_\_\_\_\_

Title: Manager of Documentation

Executed on this 5th day of November, 2009.

[CORPORATE SEAL]

STATE OF ILLINOIS

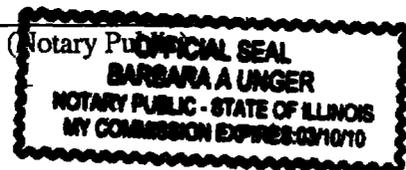
COUNTY OF DU PAGE

I, BARBARA A. UNGER, a Notary Public of the County and State aforesaid, certify that RICHARD F. SEYMOUR personally appeared before me this day and acknowledged his due execution of the foregoing Memorandum of Lease.

WITNESS my hand and official stamp or seal, this 5th day of NOVEMBER, 2009

Barbara A. Unger  
Notary Public

My Commission Expires:



**LESSEE:**

THE DAVID J. JOSEPH COMPANY

By: Kelly C. Poellein

Name: Kelly C. Poellein

Title: VP Finance, Brokerage

**ATTEST:**

By: Barbara A. Brzezicki

Name: Barbara A. Brzezicki

Title: Contract Manager

Executed on this 10<sup>th</sup> day of November, 2009.

[CORPORATE SEAL]

STATE OF Ohio

COUNTY OF Hamilton

I, Barbara A. Brzezicki, a Notary Public of the County and State aforesaid, certify that Kelly C. Poellein personally appeared before me this day and acknowledged his/her due execution of the foregoing Memorandum of Lease.

WITNESS my hand and official stamp or seal, this 10<sup>th</sup> day of November, 2009.

Barbara A. Brzezicki  
Notary Public

Commission Expires:

2-20-11  
(Notary Public)



BARBARA A. BRZEZICKI  
Notary Public, State of Ohio  
My Commission Expires 02-20-11

**EXHIBIT A**  
to  
**MEMORANDUM OF LEASE**

**NUMBER OF CARS:** One hundred ninety-nine (199)

**DESCRIPTION OF CARS:** 195 Cars-52'6" Gondola Cars with 5'0" sides, 268,000 GRL.  
4 Cars-52'6" Gondola Cars with 8'0" inside height, 263,000 GRL.

**CAR NUMBERS:**

**Group 1 – First Union Rail Corporation, Lessor**

NDYX	315102	NDYX	315169	NDYX	315267	NDYX	315321	NDYX	320535
NDYX	315104	NDYX	315170	NDYX	315271	NDYX	315322	NDYX	320536
NDYX	315105	NDYX	315171	NDYX	315273	NDYX	315323	NDYX	320538
NDYX	315109	NDYX	315172	NDYX	315274	NDYX	315325	NDYX	320539
NDYX	315110	NDYX	315173	NDYX	315275	NDYX	315326	NDYX	320542
NDYX	315112	NDYX	315174	NDYX	315276	NDYX	315328	NDYX	320543
NDYX	315116	NDYX	315176	NDYX	315277	NDYX	315329	NDYX	320546
NDYX	315117	NDYX	315177	NDYX	315278	NDYX	315330	NDYX	320547
NDYX	315120	NDYX	315178	NDYX	315279	NDYX	315331	NDYX	320548
NDYX	315122	NDYX	315179	NDYX	315280	NDYX	315332	NDYX	320549
NDYX	315123	NDYX	315180	NDYX	315282	NDYX	315334	NDYX	320553
NDYX	315124	NDYX	315181	NDYX	315283	NDYX	315335	NDYX	320554
NDYX	315125	NDYX	315182	NDYX	315284	NDYX	315336	NDYX	320555
NDYX	315127	NDYX	315183	NDYX	315285	NDYX	315337	NDYX	320558
NDYX	315128	NDYX	315184	NDYX	315286	NDYX	315604	NDYX	320559
NDYX	315129	NDYX	315185	NDYX	315288	NDYX	315605	NDYX	320560
NDYX	315130	NDYX	315186	NDYX	315289	NDYX	315606	NDYX	320561
NDYX	315132	NDYX	315187	NDYX	315290	NDYX	315607	NDYX	320563
NDYX	315134	NDYX	315188	NDYX	315291	NDYX	315608	NDYX	320564
NDYX	315135	NDYX	315193	NDYX	315292	NDYX	315609	NDYX	320565
NDYX	315143	NDYX	315195	NDYX	315293	NDYX	315610	NDYX	320567
NDYX	315144	NDYX	315196	NDYX	315294	NDYX	315611	NDYX	320568
NDYX	315145	NDYX	315197	NDYX	315295	NDYX	315612	NDYX	320570
NDYX	315148	NDYX	315198	NDYX	315296	NDYX	315613	NDYX	320571
NDYX	315149	NDYX	315199	NDYX	315297	NDYX	315826	NDYX	320573
NDYX	315150	NDYX	315200	NDYX	315298	NDYX	315833	NDYX	320575
NDYX	315151	NDYX	315201	NDYX	315299	NDYX	316175	NDYX	320576
NDYX	315152	NDYX	315203	NDYX	315300	NDYX	320509	Count:	195
NDYX	315153	NDYX	315204	NDYX	315301	NDYX	320510		
NDYX	315154	NDYX	315205	NDYX	315302	NDYX	320511		
NDYX	315155	NDYX	315206	NDYX	315303	NDYX	320512		
NDYX	315156	NDYX	315207	NDYX	315304	NDYX	320513		
NDYX	315157	NDYX	315251	NDYX	315305	NDYX	320514		
NDYX	315158	NDYX	315253	NDYX	315306	NDYX	320519		
NDYX	315159	NDYX	315254	NDYX	315309	NDYX	320520		
NDYX	315161	NDYX	315256	NDYX	315312	NDYX	320523	*AFCX	319996
NDYX	315162	NDYX	315257	NDYX	315314	NDYX	320524	AFCX	319997
NDYX	315163	NDYX	315258	NDYX	315315	NDYX	320526	AFCX	319998
NDYX	315164	NDYX	315260	NDYX	315316	NDYX	320528	AFCX	319999
NDYX	315165	NDYX	315262	NDYX	315317	NDYX	320529	Count:	4
NDYX	315166	NDYX	315263	NDYX	315319	NDYX	320530		
NDYX	315167	NDYX	315264	NDYX	315320	NDYX	320532		

\* Group 2 ATEL  
Leasing Corporation,  
Owner

\*AFCX 319996  
AFCX 319997  
AFCX 319998  
AFCX 319999  
Count: 4