

LAWYERS

RECORDATION NO. 27666-B FILED



Davis Wright Tremaine LLP

OCT 22 '08

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SURFACE TRANSPORTATION BOARD

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October 21, 2008

VIA FEDERAL EXPRESS

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E. Street, SW
Washington, DC 20024

Attention: Recordation

Re: Memorandum of Partial Assignment of Lease Agreement ~ Secondary Document to
Recordation No. 27666

Dear Ms. Quinlan:

Enclosed please find a check in the amount of \$41.00 to cover the E-Filing Recordation for the Memorandum of Partial Assignment of Lease Agreement, dated as of October 20, 2008, filed on October 20, 2008, filed as a secondary document to the Memorandum of Lease Agreement filed under Recordation No. 27666. A copy is enclosed for your reference.

Thank you for your assistance in this matter.

Very truly yours,

Davis Wright Tremaine LLP

Richard J. Schroeder

RJS:mtk
Enclosures

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SURFACE TRANSPORTATION BOARD



MEMORANDUM OF PARTIAL ASSIGNMENT OF LEASE AGREEMENT

(SCHEDULE NO. 9)

between

NATIONAL CITY COMMERCIAL CAPITAL COMPANY, LLC,
("ASSIGNOR")

and

THE FIFTH THIRD LEASING COMPANY,

("ASSIGNEE")

OCTOBER 17, 2008

Filed with the Surface Transportation Board pursuant to
49 U.S.C. § 11301 on _____, _____, 2008, at _____ a.m./p.m.
Recordation Number _____

MEMORANDUM OF PARTIAL ASSIGNMENT OF LEASE AGREEMENT

THIS MEMORANDUM OF PARTIAL ASSIGNMENT OF LEASE AGREEMENT is made and entered into as of October 17, 2008, by and between **NATIONAL CITY COMMERCIAL CAPITAL COMPANY, LLC** ("Assignor") and **THE FIFTH THIRD LEASING COMPANY** ("Assignee").

1. Assignor as lessor and Dakota, Minnesota & Eastern Railroad Corporation, as lessee ("Lessee") have heretofore entered into that certain Memorandum of Lease Agreement dated as of September 30, 2008 (the "Memorandum of Lease Agreement") pertaining to the locomotives described therein (the "Locomotives") leased pursuant to that certain Railcar Lease Agreement dated as of December 22, 2004 ("Master Lease"), and Schedule No. 9 thereto dated September 30, 2008 ("Schedule No. 9").

2. The Memorandum of Lease Agreement was filed and recorded as Recordation No. 27666 with the Surface Transportation Board pursuant to 49 U.S.C. § 11301 and 49 CFR 1177 on September 30, 2008, at 4:00 p.m.

3. Assignor has assigned to Assignee all right, title and interest of Assignor in and to Schedule No. 9 and the thirteen (13) Locomotives identified on Exhibit No. 3 to the Memorandum of Lease Agreement (the Assigned Locomotives, as defined below).

4. Assignor and Assignee desire to confirm of record the assignment to Assignee of the rights of Assignor in and to the Assigned Locomotives and Schedule No. 9.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby confirm and agree that Assignor has assigned to Assignee all right, title and interest of Assignor in, to and under Schedule No. 9 and the eleven (11) Model #SD40-2 locomotives with marks and numbers ICE6448 through ICE6454, inclusive, ICE6456 through ICE6459, inclusive, and one (1) model SD40-3 locomotive with mark and number DME6055, and one (1) model GP38-3 locomotive with mark and number DME3835 (collectively, "Assigned Locomotives"), leased thereunder, and Assignee has accepted such assignment.

This Memorandum of Partial Assignment of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but altogether only one Memorandum of Partial Assignment of Lease Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Partial Assignment of Lease Agreement to be executed as of the date first above written.

ASSIGNEE:

THE FIFTH THIRD LEASING COMPANY

By: *Scott D. Kiley*
Name: **SCOTT D. KILEY**
Title: **Vice President**

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

On this 16th day of October, 2008, before me appeared Scott D. KILEY, the person who signed this instrument, who acknowledged that (s)he is the VP of THE FIFTH THIRD LEASING COMPANY, and that, being duly authorized, (s)he signed such instrument as a free act on behalf of said corporation.

Elaine Ellis
NOTARY PUBLIC for the State of
Ohio Residing at Hamilton County

My Commission Expires: **ELAINE ELLIS**
Notary Public, State of Ohio
My Commission Expires Sept. 14, 2012



[Assignee signature page]

[Schedule No. 9/STB]