The David J. Joseph Company

RECORDATION NO. 26024-B FILED

MAY 10 '06

4-45 PM

SURFACE TRANSPORTATION BOARD

MAY 10 2006
RECEIVED

May 8, 2006

Mr. Vernon Williams
Recordations Unit
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0006

Dear Mr. Williams:

Please find enclosed, two (2) originals of the Memorandum of Options, Rights of First Refusal and Remarketing Rights dated February 9, 2006, between the following parties:

Buyer: MacQuarie Rail, Inc.
100 Wellington Street West
Toronto, ON M5K1J3

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

Please see Schedule 1 attached hereto for the equipment, (96) railcars, involved in this transaction.

This filing is to appear in the index as follows: Memorandum of Options, Rights of First Refusal and Remarketing Rights dated February 9, 2006 related to ninety-six (96) railcars bearing reporting marks: CNW 471700 – 471797, sporadic.

Please file this as a secondary document under Recordation Number 26024-B as it relates to documents previously filed with the Surface Transportation Board under Recordation Number 26024. The filing fee for this document in the amount of $33.00 is included on the enclosed check No. 579886. Please return a stamped original to my attention.

Should you have any questions or need further information, please do not hesitate to contact me at (513) 419-6062.

Sincerely,

The David J. Joseph Company

Julie M Woodard

Julie M. Woodard
Documentation Coordinator

Enclosures

Rail Equipment Group

300 Pike Street
Cincinnati, OH 45202-4214
Phone (513) 419-6200
Fax (513) 419-6221

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SURFACE TRANSPORTATION BOARD

MEMORANDUM OF OPTIONS, RIGHTS OF FIRST REFUSAL AND REMARKETING RIGHTS

This Memorandum of Options, Rights of First Refusal and Remarketing Rights (the "Memorandum of Rights") is entered into as of the 9 day of February, 2006, by and between **THE DAVID J. JOSEPH COMPANY**, a Delaware Corporation, ("Seller") and **MACQUARIE RAIL, INC.**, a Delaware corporation ("Buyer").

W I T N E S S E T H:

WHEREAS, Buyer and Seller are parties to that certain Purchase and Sale Agreement dated as of February __, 2006 (the "Agreement"), pursuant to which the Buyer purchased Seller's entire right, title and interest in and to the railroad cars identified on Schedule I attached hereto (collectively, the "Cars");

WHEREAS, the Cars are subject to the Lease identified on Schedule I (the "Lease");

WHEREAS, in connection with the transactions contemplated by the Agreement, Buyer granted Seller certain options, rights of first refusal and remarketing rights, which the parties intend will operate as a lien on the Cars;

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions contained herein and in the Agreement, the parties do hereby confirm that the options, rights of first refusal and remarketing rights granted Seller by Buyer pursuant to the Agreement shall operate as a lien on said Cars and said Cars shall not be sold, leased or otherwise transferred by Buyer except in accordance with and subject to the terms and provisions of said options, rights of first refusal and remarketing rights.

Upon expiration or termination of said options, rights of first refusal and remarketing rights referred to herein, Seller and Buyer shall file an instrument with the Surface Transportation Board of the U.S. Department of Transportation terminating said options, rights of first refusal and remarketing rights of record.

This Memorandum of Rights, being further documentation of the sales, conveyances and transactions contemplated by the Agreement, neither expands upon nor limits the rights and obligations of the parties under the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Rights to be executed and delivered by their duly authorized representatives as of the date set forth above, but shall be effective as of the Closing Date specified in the Agreement.

THE DAVID J. JOSEPH COMPANY

By: _____

Name: Everett N. Martin

Title: Asst. Corp. Secretary

MACQUARIE RAIL, INC.

By: _____

Name: Smellar David Coors

Title: Director

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this 7th day of February, 2006, before me the subscriber, Angela Denise Watts, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Everett N. Martin, to me personally known, who stated and acknowledged that he is the Asst. Corp. Secretary of The David J. Joseph Company, a Delaware corporation, and duly authorized by authority of the Board of Directors or By-laws of said corporation in his capacity as such officer to execute and acknowledge this document for and in the name and on behalf of said corporation and further stated and acknowledged that he has so signed, executed and delivered this document as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 7th day of February, 2006.

Angela Denise Watts
(Notary Signature)

My commission expires:

_____

ANGELA DENISE WATTS
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Date Section 147 03 O.R.C.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On April 6, 2006 (Date) before me, Marcella Radovich, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))
personally appeared Bruce Mellor and David Coons (Name(s) of Signer(s)),

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he/she/~~they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Marcella Radovich
Signature of Notary Public

MARCELLA RADOVICH
COMM. # 1620207
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXP. DEC. 7, 2009

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Options, Rights of First Refusal and Remarketing Rights

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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STATE OF)
) SS:
COUNTY OF)

On this __ day of _____, 2006, before me the subscriber, _____, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____, to me personally known, who stated and acknowledged that he/she is the _____ of MacQuarie Rail, Inc., a Delaware corporation, and duly authorized by authority of the Board of Directors or By-laws of said corporation in his/her capacity as such officer to execute and acknowledge this document for and in the name and on behalf of said corporation and further stated and acknowledged that he/she has so signed, executed and delivered this document as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this __ day of _____, 2006.

_____
(Notary Signature)

My commission expires:

_____

SCHEDULE I
TO
MEMORANDUM OF OPTIONS, RIGHTS OF FIRST REFUSAL AND REMARKETING RIGHTS

CARS

Ninety-six (96) railcars bearing reporting marks as follows:

CNW 471700 – CNW 471731, inclusive
CNW 471733 – CNW 471748, inclusive
CNW 471750 – CNW 471797, inclusive

LEASE: Dated April 15, 1998 by and between DJJ Transportation Services, Inc. (n/k/a The David J. Joseph Company) and Union Pacific Railroad Company, and Schedule No. 005 dated November 29, 2005.