

FEB 17 '10

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SURFACE TRANSPORTATION BOARD



February 17, 2010

Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Dear Chief:

Please find attached, one (1) copy of the Memorandum of Assignment and Assumption Agreement dated January 28, 2010 between the following parties:

Assignor: Fifth Third Bank  
38 Fountain Square Plaza  
Cincinnati, OH 45263

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

Please see Schedule 1, attached hereto, for the equipment, (121) railcars, involved in this transaction.

This filing is to appear in the index as follows: Memorandum of Assignment and Assumption Agreement dated January 28, 2010 related to one hundred twenty-one (121) railcars bearing reporting marks: MVRV 7299 – 79240, sporadic.

Please file this as a secondary document under Recordation Number 25436-C as it relates to documents previously filed with the Surface Transportation Board under Recordation Numbers 25436 through 25436-B. The filing fee in the amount of \$41.00 can be charged to our account.

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

Sincerely,

A handwritten signature in cursive script that reads 'Julie Woodard'.

Julie Woodard  
Documentation Coordinator

Enclosures

**MEMORANDUM OF  
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Memorandum of Assignment and Assumption Agreement ("Memorandum of Assignment Agreement") made and entered into as of January 28, 2010, by and between **FIFTH THIRD BANK**, a national banking corporation ("Assignor") and **THE DAVID J. JOSEPH COMPANY**, a Delaware Corporation ("Assignee").

**WITNESSETH:**

1. ASSIGNOR has agreed to assign to ASSIGNEE that certain lease agreement dated January 4, 2005, as subsequently amended by agreement dated January 28, 2005 between The David J. Joseph Company, as Lessor, and Ohio Central Railroad, Inc., as Lessee (the "Lease"), for one hundred twenty-one (121) railcars bearing the railroad reporting markings set forth on Schedule I. Such Lease was originally assigned by ASSIGNEE to ASSIGNOR pursuant to that certain Purchase and Sale Agreement dated January 31, 2005, by and between The David J. Joseph Company ("Seller") and Fifth Third Bank.

2. This Memorandum of Assignment Agreement shall be effective as of the date first set forth below.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Assignment Agreement to be executed and delivered by their duly authorized representatives as of the date set forth above, and shall be effective as of the Closing Date set forth in the Purchase and Sale Agreement by and between ASSIGNOR and ASSIGNEE dated as of January 28, 2010.

**FIFTH THIRD BANK**

By: *James A. Merz*  
Name: James A. Merz  
Title: Vice President

**THE DAVID J. JOSEPH COMPANY**

By: *Kelly C. Poellein*  
Name: Kelly C. Poellein  
Title: Vice President, Brokerage - Finance

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

On this 28 day of January, 2010, before me the subscriber, Elaine Ellis, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named James A. Mezz, to me personally known, who stated and acknowledged that he is the VEE. PRESIDENT of Fifth Third Bank, a national banking 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 28 day of January, 2010.

Elaine Ellis  
(Notary Signature)

My commission expires:

9-14-12

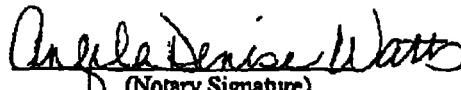
**ELAINE ELLIS**  
Notary Public, State of Ohio  
My Commission Expires Sept. 14, 2012



STATE OF OHIO                    )  
  ) SS  
COUNTY OF HAMILTON        )

On this 28<sup>th</sup> day of January, 2010 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 Kelly C. Poellein, to me personally known, who stated and acknowledged that she is the Vice President, Brokerage – Finance 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 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 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 28<sup>th</sup> day of January, 2010.

  
(Notary Signature)

My commission has no expiration.

**ANGELA DENISE WATTS**  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Date Section 147.03 O.R.C.

**SCHEDULE I  
TO  
MEMORANDUM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**CARS:**

One hundred twenty-one (121) railcars bearing reporting marks: **MVRY**

7299  
79000-79001, inclusive  
79004  
79006-79007, inclusive  
79011-79014, inclusive  
79016  
79019  
79021-79022, inclusive  
79024  
79028  
79031-79032, inclusive  
79034  
79037-79038, inclusive  
79041-79042, inclusive  
79047  
79049  
79051-79055, inclusive  
79058  
79062-79066, inclusive  
79068-79069, inclusive  
79072  
79075-79076, inclusive  
79080  
79082  
79085-79086, inclusive  
79091  
79093  
79095  
79097  
79100-79101, inclusive  
79107-79109, inclusive  
79112  
79115  
79118-79120, inclusive  
79122  
79127  
79130-79131, inclusive  
79133  
79136-79137, inclusive  
79140-79141, inclusive  
79143  
79148  
79153-79157, inclusive  
79159  
79161-79162, inclusive  
79170-79174, inclusive

79176  
79181  
79186-79187, inclusive  
79190  
79192  
79194-79196, inclusive  
79199  
79201  
79203  
79206  
79208-79210, inclusive  
79214-79215, inclusive  
79217-79219, inclusive  
79221-79222, inclusive  
79224-79228, inclusive  
79230-79238, inclusive  
79240

**LEASE:** Railroad Equipment Lease dated January 4, 2005, as subsequently amended by agreement dated January 28, 2005, between The David J. Joseph Company, as Lessor, and Ohio Central Railroad, Inc., as Lessee, (the "Lease"). Such Lease was originally assigned by ASSIGNEE to ASSIGNOR pursuant to that certain Purchase and Sale Agreement dated January 31, 2005, by and between The David J. Joseph Company and Fifth Third Bank.