0100481079

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
1101 PENNSYLVANIA AVE. N.W., SUITE 1035
WASHINGTON, D. C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-6947

101 S.W. MAIN ST. SUITE 1100
PORTLAND, OREGON 97204 3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058

RECORDATION NO. 19174 FILED 1425

JAN 11 1995 -2 PM

INTERSTATE COMMERCE COMMISSION

January 11, 1995

Louis E. Gitomer
Direct Dial: (202)466-6532

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Secretary Williams:

I have enclosed duplicate originals of the document described below, to be recorded pursuant to 49 U.S.C. § 11303.

The document is an Equipment Lease Agreement, a primary document, dated as of April 1, 1994. We request that this document be recorded under a new Recordation Number.

The names and addresses of the parties to the Equipment Lease Agreement are as follows:

Lessor:

GATX Third Aircraft Corporation
Four Embarcadero Center
San Francisco, CA 94111

Lessee:

Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613

A description of the equipment covered by the document consists of 141 2774 cu. ft. 70-ton hopper cars with the specific car numbers in the Attachment.

A fee of $21.00 is enclosed. Please return one original to:

Louis E. Gitomer
Of Counsel
Ball, Janik & Novack
Suite 1035
1101 Pennsylvania Avenue, N.W.
Washington, DC 20004

A short summary of the document to appear in the index follows: an Equipment Lease Agreement, dated as of April 1, 1994, between GATX Third Aircraft Corporation, Four Embarcadero Center, San Francisco, CA 94111, and Wheeling & Lake Erie Railway Company, 100 East First Street, Brewster, OH 44613, covering 141 2774 cu. ft. 70-ton hopper cars with the specific car numbers in the Attachment.

Very Truly Yours,

Louis E. Gitomer
Counsel for GATX Third
Aircraft Corporation

Enclosure

Interstate Commerce Commission
Washington, D.C. 20423-0001

January 11, 1995

Office Of The Secretary
Louis E. Gitomer
Ball, Janik & Novack
1101 Pennsylvania Ave., N.W. Suite 1035
Washington, DC 20004

Dear Mr. Gitomer:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/11/95 at 2:35PM, and assigned recordation number(s). 19174

Sincerely yours,

Vernon A. Williams
Secretary

Enclosure(s)

$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature Jackie Cambridge

SCHEDULE I TO EQUIPMENT LEASE AGREEMENT
DATED APRIL 1, 1994

WE	548850	WE	548898	WE	548951
	548851		548899		548952
	548852		548901		548953
	548853		548902		548954
	548854		548903		548955
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	548896		548949		548998
	548897		548950		548999

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SCHEDULE 2
TO
EQUIPMENT LEASE AGREEMENT
DATED APRIL 1, 1994

Monthly Rent

$105 per Car.

Purchase Option
Purchase Price

$500 per Car.

s:\mml\w&le\sched2.001

RECORDATION NO. 19174 FILED 1425
JAN 11 1995 -2 22 PM
INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

This EQUIPMENT LEASE AGREEMENT (this "Agreement"), is dated as of April 1, 1994, between GATX Third Aircraft Corporation, a Delaware corporation ("Lessor"), and Wheeling & Lake Erie Railway Company, a Delaware corporation ("Lessee").

The parties hereto agree as follows:

SECTION 1

LEASE OF CARS

Lessor hereby leases one hundred forty-one (141), 2774 cu. ft., 70-ton hopper cars more fully described in Schedule 1 hereto (each a "Car" and collectively, the "Cars") to Lessee, and Lessee hereby leases the Cars from Lessor for a term commencing with the date hereof and continuing up through March 15, 1999 (the "Term"). The Term may be extended in accordance with Section 8 or earlier terminated pursuant to Section 11. Lessee confirms that each Car is in a serviceable condition, free of broken or missing parts, is suitable for Lessee's purposes and meet applicable interchange and safety standards as prescribed by the "Interchange Rules" and the "FRA" (each as defined in Section 6).

SECTION 2

RENTAL PAYMENTS

2.1 Lessee shall pay Lessor monthly rent, in advance, in the amount set forth on the attached Schedule 2 ("Rent"), to the following address or such other address as Lessor shall direct:

GATX Capital Corporation
P.O. Box 71316
Chicago, IL 60694

2.2 (a) Rent shall be paid, in advance, on the first day of each calendar month commencing with the date hereof and shall continue through and including the last month of the Term.

(b) Lessor shall use reasonable efforts to invoice Lessee each month for the next Rent payment due hereunder. However, Lessee's nonreceipt of an invoice shall not relieve Lessee of its obligation to make any Rent payment payable hereunder when due.

(c) This is a net lease and shall constitute a "finance lease" under the California Uniform Commercial Code ("UCC"). Lessee's obligation to pay Rent and all other amounts payable under this Lease shall be absolute and unconditional and shall not be affected by, and such payment shall be made without abatement, suspension, deferment or diminution by reason of any circumstance or occurrence whatsoever (other than a breach by Lessor of the covenant of quiet enjoyment set forth in Section 3.3) including, without limitation, any offset, counterclaim, recoupment, defense or other right which Lessee may now or hereafter have against Lessor or any person controlled by it, in control of it, or under common control with it, directly or indirectly, or any assignee of Lessor.

(d) Lessee waives any and all rights and remedies conferred upon Lessee by UCC Sections 10508 through 10522, including (without limitation) Lessee's rights to (i) cancel or repudiate this Lease, (ii) reject or revoke acceptance of the Cars, (iii) recover damages from Lessor for breach of warranty or for any other reason, (iv) claim a security interest in any rejected property in Lessee's possession or control, (v) deduct from Rent payments all or any part of any claimed damages resulting from Lessor's default under this Lease, (vi) accept partial delivery of the Cars, (vii) "cover" by making any purchase or lease of other property in substitution for property due from Lessor, (viii) recover from the Lessor any general, special, incidental or consequential damages, for any reason whatsoever, and (ix) seek specific performance, replevin or the like for any of the Cars.

2.3 If any Rent or other payment hereunder is not paid when due, Lessee shall pay interest thereon at a rate equal to the rate of interest publicly announced by The Chase Manhattan Bank, N.A., or its successor, as its prime or other comparable rate, as such rate may change from time to time (the "Prime Rate"), plus 3%, or if lower, the highest rate permitted by applicable law.

SECTION 3

REPRESENTATIONS AND WARRANTIES OF LESSOR

3.1 Lessor represents and warrants that it has the lawful right to lease the Cars to Lessee in accordance with the terms hereof.

3.2 THE LEASE OF EACH CAR IS "AS IS, WHERE IS." THE WARRANTY SET FORTH IN SECTION 3.1 HEREOF IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF LESSOR WHETHER WRITTEN, ORAL OR IMPLIED, AND LESSOR SHALL NOT BY VIRTUE OF HAVING LEASED THE CARS BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY. LESSEE ACKNOWLEDGES AND AGREES THAT: (A) LESSOR IS NOT A MANUFACTURER OF OR A DEALER IN PROPERTY OF

SUCH KIND AS THE CARS; (B) LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO THE DESIGN, OPERATION, MERCHANTABILITY, DESCRIPTION, CONDITION, QUALITY OR DURABILITY OF THE CARS, THEIR SUITABILITY FOR THE PARTICULAR PURPOSES AND USES OF LESSEE, THE PRESENCE OR ABSENCE OF ANY DEFECTS (WHETHER LATENT OR PATENT), THE POSSIBLE INFRINGEMENT OF ANY PATENT OR TRADEMARK, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE CARS; AND (C) LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY CAR OR ANY INADEQUACY THEREOF FOR ANY PURPOSE, ANY DEFICIENCY OR DEFECT THEREIN, THE USE OR MAINTENANCE THEREOF, ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO, OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS OR FOR ANY DAMAGE WHATSOEVER OR HOWSOEVER CAUSED, as all such risks are to be borne by Lessee. Lessor makes no representation as to the treatment of this Lease, the Cars or the Rent for financial reporting or tax purposes. Lessee hereby waives any claim Lessee may have or acquire in the future against Lessor for any loss, damage or expense caused by any Car or any defect therein or the use or maintenance thereof.

3.3 Lessor represents that except as provided in this paragraph, no other party has any rights arising by, through or under Lessor that might affect Lessee's sole possession and quiet enjoyment of the Cars. If Lessor subjects any of the Cars to a mortgage, deed of trust, equipment trust, pledge or assignment or similar security arrangement, hereinafter jointly referred to as the "Instrument," Lessor will use reasonable efforts to advise Lessee as contemplated by Section 5.4 below. Lessor will give Lessee notice if the holder of the Instrument asserts that Lessor is in default of the Instrument if such default in any manner results in a third party attempting to acquire title to or possession of the Cars.

SECTION 4

REPRESENTATIONS AND WARRANTIES OF LESSEE

Lessee represents and warrants as of the date hereof that:

4.1 Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation.

4.2 Lessee has the full power, authority and legal right to execute and deliver this Lease and perform the terms hereof. This Lease has been duly authorized,

executed and delivered and constitutes or will constitute, as the case may be, the valid and binding obligations of Lessee enforceable in accordance with its terms.

4.3 Neither the execution and delivery of this Lease nor the performance of the terms hereof by Lessee contravene any law, regulation, judgment, order or permit affecting Lessee or result in any breach of, or constitute an event of default under, any contract or agreement, corporate charter or by-law or other instrument to which Lessee or any of its subsidiaries is a party or by which Lessee or any such subsidiary or any of its or their properties may be bound.

4.4 No consent of the shareholders or the trustee or holder of any indebtedness or obligation of Lessee is a condition to the performance of the terms hereof by Lessee or the validity of this Lease.

4.5 No notice to, filing with, or approval of, any governmental agency or commission is or will be required for the performance of the terms hereof by Lessee or for the validity or enforceability of this Lease (other than recordings with the Interstate Commerce Commission (the "ICC")).

4.6 Except as expressly disclosed to Lessor in writing prior to the date hereof, there is no action or proceeding pending or, insofar as Lessee knows, threatened against Lessee or any of its subsidiaries before any court or administrative agency which might have a materially adverse effect on the business, condition or operations of Lessee or the performance by Lessee of the terms of this Lease.

4.7 No one acting by, through or under Lessee will have or be entitled to a lien, mortgage, charge, encumbrance, security interest or other adverse claim on or in respect of any Car or this Lease (individually a "Lien" and collectively "Liens").

SECTION 5

POSSESSION AND USE OF CARS; ASSIGNMENT

5.1 At all times during the Term, title to the Cars shall be vested in Lessor to the exclusion of Lessee, and the delivery of the Cars to Lessee and Lessee's possession thereof shall constitute a letting only.

5.2 Lessee shall not directly or indirectly, create or incur or suffer to be created or incurred or to exist any Lien of any kind on any Car (other than Liens which Lessee is contesting in good faith and for which reserves approved by Lessor have been set aside on Lessee's books and records) or on any of its rights under this Lease, and if

any such Lien shall come to exist, Lessee shall, at its sole cost and expense, promptly remove the same and provide Lessor such written evidence of such removal as Lessor may reasonably request.

5.3 Lessee shall not add, remove or alter the current reporting marks or identification on the Cars except as requested by Lessor. Lessee may, at its expense, stencil its own identification marks on each Car. Unless Lessee exercises its purchase option, upon expiration or termination of this Lease, Lessee shall at its expense restencil each Car as directed by Lessor.

5.4 Lessee acknowledges and agrees that Lessor may, subject to the terms of this Lease, including, without limitation, Section 3.3 above, sell, assign, grant a security interest in, or otherwise transfer all or any part of its rights, title and interest in this Lease and the Cars. Upon Lessor's written notice, Lessee shall, if requested, pay directly to such assignee without abatement, deduction or set-off all amounts which become due hereunder. Lessee waives and agrees it will not assert against such assignee any counterclaim or set-off in any action for Rent or any other amounts due hereunder. Such assignee shall have and be entitled to exercise any and all rights and remedies of Lessor hereunder, and all references herein to Lessor shall include Lessor's assignee. Lessor acknowledges that such a sale, assignment, grant or transfer would neither materially change Lessee's duties nor materially increase the burdens or risks imposed on Lessee under this Lease and will not alter Lessee's purchase option as set forth in Section 12.

5.5 Lessee may not, without Lessor's prior written consent, (i) sublease, transfer, dispose of or assign its rights in respect of any Car or its obligations under this Lease (except to a successor in interest to all or substantially all of the business of Lessee to which the Car relates, provided, that such successor has a net worth and financial condition greater than or equal to that of Lessee at the time of execution of this Lease as determined in good faith by Lessor prior to such transfer), or (ii) assign, grant a security interest in, or otherwise transfer all or any part of its rights in and to this Lease or the Cars.

SECTION 6

MAINTENANCE OF CARS

6.1 Lessee shall, at its sole cost and expense, maintain the Cars in serviceable condition, free of broken, damaged or missing parts, suitable for the commercial use originally intended, substantially in the same condition as when received by Lessee, normal wear and tear excepted, and meeting applicable standards as prescribed by the Association of American Railroads Interchange Rules ("Interchange Rules") and the Federal Railroad Administration ("FRA") rules and regulations in effect

during the Term. Notwithstanding the foregoing, neither Lessee nor Lessor shall have to pay for any AEI tags for the Cars.

6.2 Lessee agrees to comply, at its sole cost and expense, with all applicable laws, regulations, directives, statutes, ordinances and rules, including, without limitation, the rules of the FRA, the ICC and the Interchange Rules and the rules and regulations of the Environmental Protection Agency (including state agencies thereof or other agencies serving a similar purpose), with respect to the use and maintenance of each Car. If any Part (as defined below), equipment or appliance in or on any Car is altered, added to, replaced, changed or otherwise modified (each, a "Modification" or collectively, "Modifications") on any Car in order to comply with any such laws, regulations, directives, statutes, ordinances or rules, Lessee shall make such Modifications at its own cost and expense and notwithstanding any other provision of this Lease, title thereto shall thereupon immediately vest in Lessor.

6.3 Lessee shall not use or permit any Car to be used in an improper or unsafe manner, in violation of any contract of insurance applicable to the Car or in violation of any applicable law, regulation, directive, statute, ordinance or rule or manufacturers' warranty. Lessee shall not use or permit any Car to be used for the transportation or storage of any Hazardous Material (as defined in Section 7.2(b) below).

6.4 Lessee shall pay for any and all materials and other supplies required for the operation of the Cars.

6.5 Lessee shall keep and maintain and make available to Lessor all records of Lessee's use, operation, inspection, repairs and maintenance of the Cars. Lessor may inspect any Car at any reasonable time on request to Lessee.

6.6 (a) Lessee may make Modifications to the Cars with new or newly rebuilt parts and materials necessary to the continued use by Lessee of the Cars for their original intended purpose; provided, however, that Lessee shall seek Lessor's prior written consent to any such Modifications with a cost exceeding $5,000 per Car. No other Modifications shall be made without Lessor's prior written consent, except to comply with Sections 6.1 and 6.2 hereof.

(b) Lessee may remove from any Car any part, addition, accession or other improvement (collectively "Parts") added or made to the Cars by Lessee which: (i) is not required to maintain such Car in accordance with Sections 6.1 and 6.2 hereof, (ii) may be so removed without damage to such Car, and (iii) does not materially reduce the value, utility, marketability or residual value of such Car in Lessor's reasonable judgment (which judgment Lessee shall request in writing before removing any Part). Lessee shall retain title to such removed Parts. Title to all other Parts (including any Parts not removed from a Car on return thereof to Lessor) shall irrevocably vest in Lessor when initially added to or made a part of any Car without any

cost or expense to Lessor.

SECTION 7

INDEMNIFICATION; TAXES

7.1 Lessee shall indemnify, reimburse and hold Lessor and its successors, assigns, agents and employees harmless from and against all liabilities, costs, expenses (including attorneys' fees and expenses), fines, penalties (and other charges of applicable governmental authorities), damages to property of Lessee or others (including, without limitation, consequential damages), loss of use of property (including, without limitation, any Car) or injury to or death of persons, including, without limitation, agents and employees of Lessee (each a "Claim") which result from the use, leasing, ownership, operation, possession, replacement, maintenance, control, storage, loading, unloading, delivery, redelivery or condition of any Car from the date hereof until such Car is returned to Lessor in accordance with Section 8 hereof. The foregoing indemnity shall cover, without limitation, (i) any Claim in connection with a design or other defect (latent or patent) in any Car, (ii) any Claim resulting from the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from any Car of any Hazardous Materials (as defined in Section 7.2 below), including, without limitation, any Claims asserted or arising under any Environmental Law (as defined in Section 7.2 below), or (iii) any Claim for negligence or strict or absolute liability in tort; provided, however, that Lessee shall not indemnify Lessor for any liability incurred by Lessor as a direct and sole result of Lessor's gross negligence or wilful misconduct. Such indemnities shall continue in full force and effect, notwithstanding the expiration or termination of this Lease. Upon Lessor's written demand, Lessee shall assume and diligently conduct, at its sole cost and expense, the entire defense of Lessor and its agents, employees, successors and assigns against any indemnified Claim described in this Section 7. Lessee shall not settle or compromise any Claim against or involving Lessor without first obtaining Lessor's written consent thereto, which consent shall not be unreasonably withheld.

7.2 For purposes of this Lease, the following capitalized terms shall have the following meanings:

(a) "Environmental Law" means the Resource Conservation and Recovery Act of 1987, the Comprehensive Environmental Response, Compensation and Liability Act, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree (in each case having the force of law) regulating or imposing liability or standards of conduct concerning any Hazardous Materials as now or at any time hereafter in effect.

(b) "Hazardous Material" means any hazardous or toxic substance,

material, pollutant or other hazardous, toxic or dangerous waste, constituent, or other substance, whether solid, liquid or gas, which is, or during the Term may be, regulated by any Federal, state or local governmental authority.

7.3 Lessee shall pay, or cause to be paid, or shall reimburse Lessor for all taxes, including, but not limited to use, rental, withholding, gross income, excise and property taxes (except net income taxes of Lessor) as may be levied or assessed against Lessor or Lessee in connection with this Lease, or arising out of any sale, lease, rental, use operation, ownership, payment, shipment, or delivery of any Cars hereunder. Lessee shall have no obligation to pay any taxes or other charges for which it is responsible hereunder so long as Lessee in good faith and by appropriate legal or administrative proceedings is contesting the validity or amount thereof and the nonpayment of such amount will not, in Lessor's reasonable judgment, adversely affect the title, property or rights or Lessor in or to any Car. Such contest will be brought in the name of Lessee, if permissible; if not permissible, Lessor, at Lessee's sole cost and expense, will bring the contest in Lessor's own name. Lessor will use its best efforts to reasonably cooperate with Lessee and take any actions reasonably required to permit and pursue such a contest. Notwithstanding the foregoing, Lessee shall not be permitted to contest the amount or validity of any taxes or other charges if an Event of Default has occurred and is continuing hereunder.

Lessee and Lessor shall each reasonably cooperate with the other in providing necessary tax information to the other party relating to the Cars and the use thereof.

SECTION 8

RETURN OF CARS

8.1 On the expiration or termination of the Term, Lessee shall assemble all the Cars at safe and accessible locations on storage tracks on the lines of the Lessee. Lessee shall store such Cars at such locations for up to 90 days from the date the last Car arrives for storage at its sole expense and risk. Lessor and Lessee shall jointly inspect the fully assembled Cars during the first 30 days of commencement of the storage period of the last Car to be so assembled to determine if each Car is clean and free of commodities or residue and complies with the standards set forth in Sections 6.1 and 6.2 hereof. At any time during such storage period, and thereafter, within a reasonable period, Lessee shall provide, at its sole risk or expense, transportation of the Cars from its tracks to any location on the lines of Lessee or any of its affiliates as directed by Lessor.

8.2 If any Car is not clean and free of commodities or residue, or does not comply with the standards set forth in Sections 6.1 and 6.2 hereof, Lessee shall promptly correct any such deficiency, at Lessee's sole cost and expense, and Lessor and

Lessee shall jointly reinspect the Cars promptly.

8.3 Any Car delivered to Lessor hereunder shall have all accessories and parts installed thereon as were installed at the commencement of the Term and shall be equipped with all other required or permitted Modifications made thereto during the Term and not retained by Lessee in accordance with Section 6 hereof.

8.4 Lessee shall assemble and repair the Cars pursuant to Sections 8.1, 8.2 and 8.3 hereof. However, any Car not available for inspection and in the condition required by Section 8.1 on the expiration or termination of the Term shall be subject to holdover rentals starting five days after the applicable expiration or termination date at a rate equal to the higher of (i) monthly Rent due under Section 2 or (ii) the fair market rental value for the Cars, as reasonably determined by Lessor. Such holdover rent shall then continue until the subject Cars are available for inspection and in the condition required by Section 8.1. Such holdover rent shall be paid on demand or otherwise on the first day of each calendar month, in arrears, until such inspection and proper return of all Cars are completed.

SECTION 9

INSURANCE

9.1 Lessee shall obtain and maintain for the Term, at its own expense, (i) "all risk" insurance against loss or damage to the Cars, (ii) commercial general liability insurance (including contractual liability and completed operations coverage) reasonably satisfactory to Lessor, and (iii) such other insurance against such other risks of loss and with such terms, as shall in each case be reasonably satisfactory to or reasonably required by Lessor (as to carriers, amounts and otherwise).

9.2 The amount of the "all risk" insurance shall be the greater of the $10,000 per Car or the "Depreciated Value" specified in Section 10. The self-insured retention with respect to "all-risk" insurance required by the clause shall not exceed $350,000; otherwise there shall be no deductible with respect to any insurance required to be maintained hereunder.

9.3 The amount of commercial general liability insurance required by clause (a) above shall be at least $10,000,000 per occurrence.

9.4 Each "all risk" policy shall: (i) name Lessor as sole loss payee with respect to the Cars, (ii) provide for each insurer's waiver of its right of subrogation against Lessor and Lessee, and (iii) provide that such insurance (A) shall not be invalidated by any action of, or breach of warranty by, Lessee of a provision of any of its insurance policies, and (B) shall waive set-off, counterclaim or offset against Lessor.

Each liability policy shall (w) name Lessor as an additional insured and (x) provide that such insurance shall have cross-liability and severability of interest endorsements (which shall not increase the aggregate policy limits of Lessee's insurance). All insurance policies shall (y) provide that Lessee's insurance shall be primary without a right of contribution of Lessor's insurance, if any, or any obligation on the part of Lessor to pay premiums of Lessee, and (z) shall contain a clause requiring the insurer to give Lessor at least 30 days' prior written notice of its cancellation (other than cancellation for nonpayment for which 10 days' notice shall be sufficient). Lessee shall on or prior to the date hereof and prior to each policy renewal, furnish to Lessor certificates of insurance or other evidence satisfactory to Lessor that such insurance coverage is in effect. Lessee further agrees to give Lessor prompt notice of any damage to, or loss of, the Cars, or any part thereof.

SECTION 10

CASUALTIES AND REPORTS; FINANCIAL INFORMATION

10.1 Lessee shall be solely responsible for any loss, theft, condemnation, governmental seizure or damage to any Car. If a Car is lost, stolen, condemned, seized by a governmental authority or damaged beyond repair or is otherwise not useful for any purpose (each event being an "Event of Loss"), then Lessee shall, not later than the next Rent payment after any such occurrence, or if this Lease has expired or been terminated, on demand, but in, either case, no later than 30 days after such expiration or termination, as the case may be, pay Lessor or cause Lessor to be paid the Depreciated Value as defined in Rule 107 of the Field Manual of the AAR Interchange Rules in effect on the date of the Event of Loss ("Depreciated Value"), computed as of the Rent payment date immediately prior to such Event of Loss for each such Car. On receipt of such payment and all other amounts due under this Lease, Rent shall cease with respect to such Car. On payment of all such payments and amounts to Lessor under this Lease, Lessor shall convey to Lessee title to the hulk "AS IS, WHERE IS", WITHOUT REPRESENTATION OF, OR RECOURSE TO, LESSOR, its agents, servants, employees or representatives.

10.2 Lessee shall, without demand, immediately notify Lessor in reasonable detail of any Event of Loss or other accident involving actual or potential damages in excess of $5,000 relating to any Car or all the Cars.

10.3 Lessee agrees to furnish to Lessor during the Term:

(a) as soon as possible and in any event within ten (10) days after the occurrence of an Event of Default, a certificate of Lessee, signed by its chief executive officer or any responsible financial officer, setting forth in detail the nature of such Event of Default and the action which the Lessee proposes to take with respect

thereto;

(b) as soon as available, and in any event within sixty (60) days after the end of each of the first three quarters of Lessee's fiscal year, an unaudited consolidated and consolidating balance sheet of Lessee as of the end of such quarter and related unaudited consolidated and consolidating statements of income and retained earnings and changes in financial position of Lessee for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, setting forth in each case in comparative form the corresponding figures for the corresponding period of the preceding fiscal year, all in reasonable detail and duly certified (subject to year-end audit adjustments) by a responsible financial officer of Lessee as having been prepared in accordance with generally accepted accounting principles, consistently applied;

(c) as soon as available, and in any event within one hundred twenty (120) days after the end of each fiscal year of Lessee, a financial report for Lessee for such year, including therein a consolidated and consolidating balance sheet of Lessee as of the end of such fiscal year and related consolidated and consolidating statements of income and retained earnings and changes in financial position of Lessee for such fiscal year, setting forth in each case in comparative form corresponding figures for the preceding fiscal year, all in reasonable detail and accompanied by an opinion thereon of Lessee's independent public accountants; and

(d) from time to time such information as Lessor may request with respect to the financial condition and operations of Lessee (and Lessor shall have the right to discuss the finances and accounts of Lessee with the principal officers of Lessee, at such times as Lessor may reasonably request) in order to determine whether the covenants, terms and provisions of this Lease have been and will be complied with by Lessee.

SECTION 11

DEFAULT

11.1 Each of the following events shall constitute an "Event of Default" for purposes of this Lease:

(a) Lessee shall fail to make any Rent payment or other payment required hereby on the date such payment is due and such failure shall continue for three days after the date of Lessors notice to Lessee of such failure to pay;

(b) Lessee shall fail to procure or maintain any insurance coverage required hereby;

(c) Lessee shall fail or be unable to observe or perform any covenant, condition or agreement of Lessee contained herein, other than such as are referred to in clause (a) and (b) above, and such failure shall continue for 30 days after the giving of notice thereof by Lessor;

(d) Any representation or warranty of Lessee contained herein or any representation or warranty contained in any document or certificate furnished to Lessor in connection herewith or pursuant hereto shall be untrue or incorrect in any material respect when made;

(e) Lessee shall apply for or consent to the appointment of, or the taking of possession by, a custodian, receiver, trustee or liquidator of itself or a substantial part of its property, shall become insolvent, shall fail or be unable to pay its debts generally as they become due, or shall cease to conduct its business in its ordinary course;

(f) Lessee shall file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any other federal or state bankruptcy, insolvency or other law relating to the relief of debtors, the readjustment, composition or extension of indebtedness or reorganization; file an answer admitting the material allegations of a petition filed against it in a case under Title 11 of the United States Code or in proceedings relating to the relief of debtors, the readjustment, composition or extension of indebtedness or reorganization; or taking corporate action for the purpose of effecting any of the foregoing; or

(g) Without the application, approval or consent of Lessee, a proceeding shall be instituted in any court of competent jurisdiction, seeking in respect of Lessee an order for relief under the aforesaid Title 11, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a custodian, receiver, trustee or liquidator of Lessee, any substantial part of its property or any of the Cars, or other such like relief in respect of Lessee under any bankruptcy, insolvency or other similar law, and the same shall continue undismissed or unstayed for any period of 60 days.

11.2 Upon the occurrence of an Event of Default, Lessor shall have the right to exercise one or more of the following remedies:

(a) proceed by appropriate court actions, at law or in equity, to enforce performance by Lessee of the terms hereof and to recover damages for Lessee's breach thereof; and

(b) by giving notice to Lessee specifying the Event of Default, terminate this Lease effective on the date specified in such notice (hereinafter, the "Date of Termination"), and on the Date of Termination, this Lease shall expire and terminate

and all rights of Lessee under this Lease shall absolutely cease (but Lessee shall remain liable as herein set forth), and Lessee shall deliver possession of the Cars to Lessor in accordance with Section 8 hereof or Lessor may enter upon the premises where the Cars are located and remove all or any of the Cars. Lessor shall not be liable for, and shall be held harmless by Lessee from any liability for, damage caused to real or personal property during any such removal; provided that Lessor exercises its rights in a reasonable manner to mitigate any damage to the interests and property of Lessee by selling or re-leasing the Cars. Lessee shall, without further demand, within five days of the Date of Termination pay to Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Date of Termination, (i) plus all Default Costs (as hereinafter defined), (ii) plus an amount equal to present value (calculated at a rate of 12% per annum and determined as of the date Lessor is paid in full) of the Rent which would have been due for the Cars after the Date of Termination up through March 15, 1999, and (iii) plus all other sums due Lessor hereunder. Interest at the rate specified in Section 2.3 hereof shall be paid on all amounts due hereunder, including, without limitation, such Default Costs, until paid in full; and

(c) in addition to all other legal and equitable rights of Lessor, upon notice to Lessee, Lessor may following an Event of Default lease the repossessed Cars to any third party upon such terms and conditions as Lessor may determine. The total proceeds of such lease or leases for the same number of months as would then remain in this Lease but for the Event of Default, less expenses of Lessor (including attorneys' and other professional advisor's fees and expenses), to the extent actually received and retained by Lessor, shall be applied to the total amount due to Lessor as provided herein and Lessee shall immediately pay to Lessor any deficiency, when such deficiency is actually determined.

11.3 Lessee shall, upon demand, reimburse Lessor for all losses (including loss of profit), expenses, charges, damages, costs and commissions (including reasonable attorneys' fees and expenses) which Lessor may sustain or reasonably incur directly or indirectly, as a result of such Event of Default, including without limitation, of, disassembling, overhauling, repairing, maintaining, transporting, insuring, storing or modifying the Cars determined by Lessor to be required to place such Cars in condition suitable for sale, re-lease or use of the Cars (such expenses, charges, costs and commissions sometimes being herein called "Default Costs"). Amounts recoverable under this Section 11.3 shall include Default Costs incurred after the Date of Termination.

11.4 Each and every power and remedy hereby specifically given to Lessor shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, including, without limitation, under the UCC, and each and every power and remedy may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. All such powers and remedies shall be cumulative and the exercise of one shall not be

deemed a waiver of the right to exercise any others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of time with regard to any payment due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or any acquiescence therein.

SECTION 12

PURCHASE OPTION

Unless an Event of Default or event which with notice or lapse of time or both would become an Event of Default has occurred and is continuing uncured, Lessee shall have the option to purchase all, but not less than all, of the Cars on the last day of the Term for the purchase price set forth on Schedule 2. To exercise such option, Lessee shall provide Lessor with notice on or before January 15, 1999 of its intent to purchase the Cars and shall pay to Lessor on or before such date a deposit of at least 10% of the total purchase price for the Cars. On the last day of the Term, Lessee shall pay to Lessor the balance of the purchase price for the Cars and Lessor shall deliver to Lessee a bill of sale, transferring the Cars to Lessee on an "as-is," "where-is" basis, and title to the Cars free and clear of all liens, claims, and encumbrances except Liens for which Lessee is responsible under this Lease or any successor lease, but without any further representations.

SECTION 13

MISCELLANEOUS

13.1 All demands, notices and other communications hereunder shall be in writing, and shall be deemed to have been duly given when delivered, if personally delivered; or when sent, if mailed certified or registered mail, postage prepaid, or when sent, if transmitted by telecopy (with electronic evidence of receipt); in each case addressed to the parties at the locations specified below, or such other location(s) as may hereafter be furnished in writing by either party to the other:

To Lessee: Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
Attention: Larry Parsons, President
Telecopy Number: (216) 767-4327

To Lessor: GATX Third Aircraft Corporation
Four Embarcadero Center, Suite 2200
San Francisco, California 94111
Attention: Rail Portfolio Management
Telecopy Number: (415) 955-3416

13.2 This Lease shall be binding upon and shall inure to the benefit of Lessee, Lessor and, to the extent assignment hereof is permitted hereby, their respective successors and assigns.

13.3 This Lease constitutes the entire agreement between the parties hereto.

13.4 Lessee's obligations hereunder shall survive the expiration or termination of this Lease.

13.5 The captions set forth herein are for convenience only and shall not define or limit any of the terms hereof. The language in this Lease and the related documents is to be construed as to its fair meaning and not strictly for or against any party. All payments shall be paid to the address designated by Lessor in the applicable Schedule or otherwise in a writing signed by Lessor.

13.6 Lessee's and Lessor's obligations hereunder shall survive the expiration and termination of the Term to the extent required for full performance and satisfaction thereof.

13.7 **ALL MATTERS INVOLVING THE CONSTRUCTION, VALIDITY, PERFORMANCE AND ENFORCEMENT OF THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW OR CHOICE OF LAW.**

13.8 This Lease may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and same instrument; provided, however, that to the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the UCC), no security interest in this Lease may be created through the transfer or possession of any counterpart of this Lease other than the original executed counterpart of this Lease, which shall be identified as such counterpart.

13.9 If any provision of this Agreement shall be held unenforceable or void, such unenforceability or invalidity shall not affect the validity or enforceability of other provisions hereof.

13.10 Lessee and Lessor shall from time to time do and perform such other and further acts and execute and deliver any and all such other and further instruments as may be required by law or reasonably requested by the other to establish, maintain and protect their respective rights and remedies and to carry out and effect the intents and purposes of this Lease.

13.11 If, after reasonable notice (except with respect to Lessees obligations under Section 9 which shall require no notice), Lessee fails to perform any of its obligations under this Lease, Lessor may perform such obligation for Lessee and Lessee shall, on Lessor's written demand, repay Lessor for all costs and expenses incurred by Lessor in satisfying such obligation.

13.12 None of the provisions of this Lease may be amended, modified or waived except in a writing signed by Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the date first above written.

GATX THIRD AIRCRAFT CORPORATION

By _____
James F. Earl

Title: Vice President

WHEELING & LAKE ERIE RAILWAY COMPANY

By _____

Title: President and CEO

State of California)
)
County of San Francisco)

On January 6, 1995 before me, A.C. Gaul, Notary Public, personally appeared James F. Earl, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

A.C. GAUL
COMM. # 1023528
Notary Public — California
SAN FRANCISCO COUNTY
My Comm. Expires APR 17, 1998

A C Gaul
Notary Public

Capacity Claimed by Signer:
☐ Individual ☐ Corporate Officer _____ ☐ Partner ☐ Limited
☐ Attorney-in-fact ☐ Trustee Title(s) ☐ General
☐ Other _____
Signer is Representing _____

State of Ohio)
)
County of Stark)

On Dec. 15, 1994 before me, Sheryl L. Durant, Notary Public, personally appeared Larry R. Parsons, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

Sheryl L. Durant
Notary Public

Capacity Claimed by Signer:
☐ Individual ☒ Corporate Officer President + CEO ☐ Partner ☐ Limited
☐ Attorney-in-fact ☐ Trustee Title(s) ☐ General
☐ Other _____
Signer is Representing _____