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19381

May 1, 1995

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation in your office pursuant to the provisions of 49 U.S.C. §11303 are two original counterparts of a Rail Equipment Lease Agreement dated as of April 1995 ("Lease"), a primary document as defined in the Interstate Commerce Commission's Rules for the Recordation of Documents, 49 CFR §1177.

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

Lessor: Akron Barberton Cluster Railway Company
100 East First Street
P.O.Box 96
Brewster, Ohio 46613

Lessee: Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 46613

The railroad equipment covered by the enclosed document is designated with particularity in Schedule I to the Lease being transmitted by this letter.

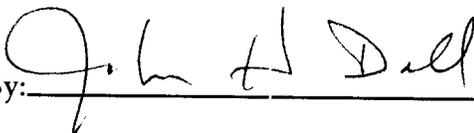
Enclosed is a check payable to the order of the Interstate Commerce Commission covering the recordation fee.

Part
Counterpart -

A short summary of the enclosed primary document to appear in the Interstate Commerce Commission's files is as follows:

Rail Equipment Lease Agreement dated as of April 1995, by and between Akron Barberton Cluster Railway Company, lessor, and Wheeling & Lake Erie Railway Company, lessee, covering rail equipment.

McLachlan, Rissman & Doll

By:  _____



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

5/1/95

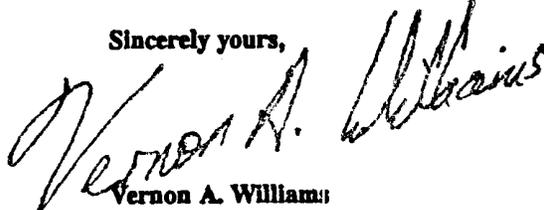
cc Secretary

John H. Doll
McLachlan, Rissman & Doll
6 W. Hubbard Street, Ste. 500
Chicago, Illinois 60610

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/1/95 at 11:20AM, and assigned recordation number(s). 19381 and 18907-A.

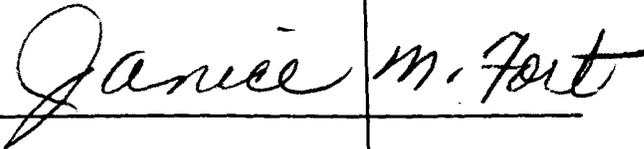
Sincerely yours,


Vernon A. Williams
Secretary

Enclosure(s)
(0100610012)

\$ 42.00 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



RAIL EQUIPMENT LEASE AGREEMENT

This Rail Equipment Lease Agreement (as amended or supplemented from time to time, the "Agreement") is made as of this 28th day of April, 1995 by and between AKRON BARBERTON CLUSTER RAILWAY COMPANY, an Ohio corporation ("Owner"), the WHEELING & LAKE ERIE RAILWAY COMPANY, a Delaware corporation ("Lessee"). Owner and Lessee agree as follows:

1. LEASE, ACCEPTANCE AND DELIVERY OF THE LOCOMOTIVES.

(a) On the terms and subject to the conditions contained in this Agreement, Owner leases to Lessee and Lessee leases from Owner the rail equipment identified on *Schedule I* attached to this Agreement (the units of equipment shall be referred to in this Agreement individually as a "Unit" and collectively as the "Units").

(b) Lessee has inspected each Unit and has found that, each Unit is in good order and repair and conforms to the specifications applicable to the Unit and to all applicable requirements and specifications of the United States Department of Transportation (including those of the Federal Railroad Administration ("FRA")) and the Interstate Commerce Commission ("ICC"). Lessee will accept delivery of each of the Units in its current condition.

(c) Owner and Lessee acknowledge that the Units are in the possession of Lessee. For purposes of this Agreement, each of the Units will be considered delivered to Lessee as of the date specified in attached *Schedule I*. On or prior to that date, Lessee will execute and deliver to Owner a Certificate of Acceptance, in substantially the form attached to this Agreement as *Exhibit A*.

(d) Additional equipment may be made subject to this Agreement from time to time by execution and delivery by both Owner and Lessee of an appropriate Supplement to Schedule I and delivery of a Certificate of Acceptance with respect to such additional equipment.

2. RENTAL PAYMENTS.

(a) Lessee agrees to pay to Owner, during the lease term for each Unit, as rent for the Unit, the amount per month for such Unit set forth on attached *Schedule I*. Rent shall be payable in arrears on the last day of each month during the lease term for the Units. If the last day of any month during the term of this Agreement is not a business day, the rent otherwise payable on such date shall be payable on the immediately preceding business day.

(b) Except as otherwise requested by Owner, all rent and other payments to be made under this Agreement shall be made by wire transfer of immediately available funds to a bank account or accounts specified in writing by Owner.

(c) If any rent or other amount due under this Agreement is not paid within five (5) calendar days of its due date, Lessee shall pay Owner interest on the overdue amount from the date due until paid at the lesser of (i) the corporate base rate announced from time to time by The First National Bank of Chicago, which rate shall change as and when the base rate changes, or (ii) the maximum permissible legal rate of interest.

(d) This Agreement is a net lease, and Lessee's obligation to pay all rent and other amounts as they become due is unconditional. Lessee is not entitled to abate or reduce any rent or other amounts due under this Agreement, or to set-off any charges against those amounts for any reason. Lessee is not entitled to recoupments, crossclaims, counterclaims or any other defenses to the payment of rent or other amounts due under this Agreement. Lessee's obligation to pay all rent and other amounts due under this Agreement shall not terminate for any reason except the termination of this Agreement in accordance with its express terms.

3. TERM OF AGREEMENT.

Each Unit shall be subject to lease under the terms of this Agreement for the period commencing with the delivery date of the Unit in accordance with Section 1(c) above and shall continue for a period of five years from the delivery date.

4. ACKNOWLEDGEMENT OF SECURITY INTERESTS.

(a) Lessee acknowledges that the Units are subject to (i) a first priority security interest granted by Owner in favor of ABC Funding, Inc. an Illinois corporation ("ABC Funding"), pursuant to a Security Agreement dated July 20, 1994 (the "ABC Funding Security Agreement") and (ii) a second priority security interest of the Bank of America National Trust and Savings Association, as agent for the banks party to that certain First Amended And Restated Credit Agreement dated as of November 7, 1994, as amended, supplemented, restated or otherwise modified from time to time (the "Agent"), pursuant to a First Amended And Restated Security Agreement dated as of November 7, 1994 by Owner in favor of the Agent (the "Agent Security Agreement"). Lessee acknowledges that its rights in the Units under this Lease are subordinate to the rights of the Secured Parties. Lessee further acknowledges that this Agreement is subject to (1) a first priority pledge in favor of ABC Funding, together with an assignment of Owner's rights under this Agreement (including the right to receive payment of rent and other amounts that shall become due and payable under this Agreement), and (2) a second priority pledge in favor of the Agent, together with an assignment of Owner's rights under this Agreement (including the right to receive payment of rent and other amounts that shall become due and payable under

this Agreement). ABC Funding and Agent are referred to in this Agreement individually as a "Secured Party" or together as the "Secured Parties."

(b) In order to reflect the Secured Parties' respective security interests and other rights in and to the Units and this Lease, Lessee shall keep and maintain (at Lessee's expense), at all times, plainly and conspicuously marked on each Unit, in letters not less than one inch in height the following:

"OWNERSHIP SUBJECT TO SECURITY
AGREEMENTS FILED WITH THE INTERSTATE
COMMERCE COMMISSION"

or other words to that effect reasonably requested by either of the Secured Parties. Lessee shall promptly replace any stenciling required by this Section that may be defaced or removed.

(c) Upon written notice to Lessee of ABC Funding's enforcement of its rights under the ABC Funding Security Agreement to receive payments under this pledged Lease as a result of a default by Owner under the ABC Funding Security Agreement, Lessee shall pay all rent and other payments that shall become due and payable under this Agreement directly to ABC Funding at the bank account or accounts specified in writing by ABC Funding.

5. MARKING OF EQUIPMENT.

(a) The Lessee will cause each Unit to be kept numbered with the road numbers set forth in attached *Schedule I*. Lessee shall not during the term of this Agreement change the road number of any Unit unless and until it has taken the following actions: (i) Lessee shall furnish to Owner and each Secured Party, at least 45 days in advance of the change, a supplement to this Agreement (containing a statement of the new road numbers), in form and substance reasonably satisfactory to Owner and each Secured Party; (ii) Lessee shall furnish to Owner and each Secured Party, in advance of the change, evidence that such supplement has been filed, recorded or deposited in all public offices where this Agreement has been filed, recorded or deposited; and (iii) Lessee shall take such other action that may be reasonably requested by Owner or either of Secured Parties to protect their respective interests in the Units and this Lease.

(b) In addition to the markings required by Section 4 above, Lessee shall keep and maintain (at Lessee's expense) at all times during the term of this Lease, plainly and conspicuously marked on each Unit, in letters not less than one inch in height, the following:

"LEASED FROM A CORPORATION AS FILED WITH
THE INTERSTATE COMMERCE COMMISSION"

or other appropriate markings reasonably designated by Owner from time to time in order to protect Owner's title to the Units and its rights under this Lease. Lessee shall promptly replace any stenciling required by this Section that may be defaced or removed.

(c) During the term of this Agreement, Lessee will not permit a designation to be placed on a Unit which might be interpreted as indicating a claim of ownership adverse to that of the Owner (or any assignee of Owner); provided, however, that a Unit may be lettered with names, initials or other insignia customarily used by Lessee on equipment of the same or a similar type for convenience of identification of the rights to use and operate the Unit.

6. RISK OF LOSS; DISCLAIMER OF WARRANTY.

(a) During the term of this Agreement, Lessee shall bear the entire risk of loss, damage, theft or destruction to any of the Units (or any part of any Unit). In addition, during the term of this Agreement, Lessee shall bear the entire risk of the requisition by any governmental entity or the taking of any of the Units (or any part of any Unit) by eminent domain or otherwise (collectively, "Loss").

(b) OWNER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, AS TO THE UNITS, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO (I) THE DESIGN, QUALITY, OPERATION OR CONDITION OF ANY OF THE UNITS (OR ANY COMPONENT OF ANY UNIT), (II) THE MERCHANTABILITY OR FITNESS OF ANY OF THE UNITS FOR ANY PARTICULAR PURPOSE, (III) THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY OF THE UNITS (OR ANY COMPONENT OF ANY UNIT) OR CONFORMITY TO SPECIFICATIONS, (IV) THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, (V) OWNER'S TITLE TO THE UNITS, OR (VI) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN OWNER AND LESSEE, ARE TO BE BORNE BY LESSEE. ALL UNITS LEASED TO LESSEE UNDER THIS AGREEMENT ARE LEASED ON AN "AS IS" BASIS. Owner shall have no liability or responsibility in contract or in tort (including negligence), whether for personal injury, death, property damage or otherwise, under any theory of strict liability, or otherwise, for (i) any Loss caused or alleged to be caused directly or indirectly by any Unit or any inadequacy, deficiency or defect in any Unit or by any other circumstance in connection with the Units; (ii) the use, operation or performance of any Unit or any risks relating to the Units; (iii) the servicing, repair, replacement, improvement or modification of any Unit; (iv) any interruption of service, use, loss of business or anticipated profits or consequential damages; or (iv) any special, incidental, punitive or consequential damages of any nature arising at any time out of this Agreement. Lessee confirms that it has selected the Units on the basis of its own judgment, and expressly disclaims reliance upon any statements, representations, or warranties made by Owner, except as expressly stated

in this Agreement. Lessee acknowledges that Owner is not a manufacturer or vendor of the Units or any part of the Units.

7. USE, MAINTENANCE AND REPAIRS OF THE UNITS.

(a) Lessee shall use each of the Units only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. Lessee agrees that it will not discriminate against any Unit (as compared to other similar equipment owned or leased by Lessee) with respect to its use, operation or maintenance in contemplation of the expiration or termination of this Lease.

(b) During the term of this Agreement, Lessee shall, at its sole cost and expense, maintain each Unit (and the component parts of each Unit) in good repair and operating condition and in accordance with standards in effect from time to time established by the Association of American Railroads ("AAR"), the FRA, the ICC and each other governmental authority with jurisdiction over the condition of such Unit. Lessee shall perform all inspections of the Units and maintain all records, logs and other materials with respect to each of the Units as may be required to be maintained by the United States Department of Transportation or any other governmental authority having jurisdiction over the Units or the Lessee.

(c) Lessee agrees that, during the term of this Agreement, its use of the Units shall comply with all applicable state and federal laws, rules, and regulations and to the extent any of the Units are used in interchange, with the applicable Interchange Rules of the AAR. Lessee shall not be subject to compliance with respect to any applicable law, rule or regulation which it is contesting in good faith by appropriate proceedings so long as the failure of compliance, in the reasonable opinion of Owner, will not result in the sale or forfeiture of any Unit, adversely affect Owner's title in any Unit or interfere with the due payment by Lessee of rent and other amounts payable under this Agreement. Lessee agrees that none of the Units shall be removed from the United States and Canada. Lessee agrees to indemnify and save harmless any Indemnitee (as defined in Section 14 below) from and against any liability or expense, including attorneys' fees, arising out of its use of the Units in violation of any applicable law, rule, or regulation.

(d) If any modifications to a Unit are required to comply with applicable laws, rules or regulations, Lessee shall make those modifications unless the cost of the modifications shall exceed the Casualty Value of the Unit immediately prior to the time the modification is required. In that case, Lessee shall, at its option, either (i) make the modifications, or (ii) treat that Unit as a Casualty Unit under Section 12. Title to any such modifications shall vest immediately in Owner.

(e) Lessee, at its sole cost and expense, shall promptly replace any components or parts of a Unit that become worn-out, lost, destroyed, stolen or damaged beyond repair ("Replacement"). Lessee shall not modify a Unit or install equipment on a Unit (other than for purposes of Replacement) except (i) electronic

speed recorders, electronic event recorders and devices, end of train devices, cab heaters, ditch lights, radios, microphones, antennas and related equipment installed on Units that are locomotives (together, "Excepted Equipment") or (ii) with the prior written consent of Owner. Lessee is not authorized to permit any mechanics' liens or materialmen's liens to arise or exist on any of the Units.

(f) All replacement parts installed or attached to any of the Units and any additions made to the Units (other than Excepted Equipment installed by Lessee) shall be considered accessions to the Units and title to such replacement parts or additions shall vest in Owner, effective with respect to each Unit upon termination of the lease of such Unit under this Agreement or, if earlier, effective with respect to all Units upon the occurrence of any Event of Default under this Agreement.

8. ASSIGNMENT OF MANUFACTURER'S OR SUPPLIER'S WARRANTIES.

As of the date of delivery of each Unit, Owner assigns to Lessee, for the term of the lease of the Unit under this Agreement, any rights Owner has (to the extent Owner may validly assign those rights) under all manufacturers' and suppliers' warranties and servicing obligations with respect to the Unit and its components. Owner appoints Lessee its attorney-in-fact to assert during such term any claims which Owner from time to time may have against any seller or manufacturer of the Unit under the warranties or servicing obligations assigned to Lessee. Lessee agrees to settle all claims with respect to the Units directly with the manufacturers or suppliers, as the case may be, and to give Owner prompt notice of any settlement, including the details of the settlement. Owner shall cooperate in the enforcement by Lessee of any warranties or servicing obligations or the prosecution of any claim to the extent necessary or appropriate, at Lessee's request and expense.

9. TAXES.

Lessee agrees to pay, prior to the penalty date, all local, state, federal or foreign (including, without limitation, any Canadian or provincial) taxes (other than United States federal, state or local taxes imposed on Owner's income) and other fees or assessments that may be imposed upon or with respect to the ownership, delivery, possession, use, rental or return to Owner of the Units, together with any applicable penalties, fines or interest (collectively, "Taxes"). Lessee is liable for these Taxes whether they are imposed on an Indemnitee, Lessee, the Units, this Agreement or any applicable schedule. Taxes which are applicable or levied with respect to a period prior to delivery of a Unit to Lessee shall be prorated between the Owner and Lessee. If Lessee is required by law or administrative practice to make any report or return with respect to any Taxes, Lessee shall promptly advise Owner in writing and shall cooperate with Owner to ensure that the reports are properly filed and accurately reflect Owner's interest in the Unit. Although Owner has no obligation to contest any Taxes, Lessee may do so provided that: (a) Lessee does so in its own name and at its own expense unless it is necessary to join Owner in the contest or bring the contest in Owner's name; (b) the contest does not and will not result in any lien attaching to any

Unit or otherwise jeopardize Owner's rights to any Unit; and (c) Lessee indemnifies Owner (and any other Indemnitee) for all expenses (including legal fees and costs), liabilities and losses that Owner or such other Indemnitee incurs as a result of any contest.

10. RIGHT TO INSPECT.

During the term of this Agreement, the respective representatives of the Owner and each of the Secured Parties may on reasonable advance notice to Lessee, during regular business hours, and at the expense of Owner or the applicable Secured Party, as the case may be, inspect any of the Units or records maintained by Lessee relating to the Units for the purpose of determining the condition of and maintenance of the Units in accordance with the provisions of this Agreement.

11. INSURANCE.

(a) During the term of this Agreement, Lessee shall procure or maintain in effect comprehensive public liability insurance with respect to third-party personal or property damage and property insurance covering the operation and use of the Units, in such amounts, with such deductibles, covering such risks, in such form, with such insurance companies of recognized responsibility and subject to such self-insurance, in each case as is consistent with prudent industry practice and is commonly maintained by comparable railroad companies, and (in any event) is not less comprehensive in amounts and against risks customarily insured against by Lessee in respect of equipment owned or leased by it similar in nature to the Units.

(b) Such insurance policies shall (i) with respect to the comprehensive public liability coverage, name and insure the Owner and each of the Secured Parties as additional insureds, (ii) with respect to the property coverage, name the Owner and each of the Secured Parties as loss payees, as their respective interests appear, and (iii) provide that coverage shall not be reduced, materially changed or canceled without at least 30 days' prior written notice to Owner and each Secured Party.

(c) Evidence of the insurance coverage required by this Section shall be delivered to Owner and each of the Secured Parties prior to or on the lease commencement date. At the reasonable request of Owner or either of the Secured Parties, Lessee shall provide evidence of continued compliance with this Section during the term of this Agreement.

(d) Any proceeds of insurance covering loss or damage to the Units received by Owner or a Secured Party shall be paid to Lessee (i) on written application signed by Lessee for payment of or reimbursement for the costs of repair or replacement of a Unit that has been damaged or destroyed; provided that such application shall be accompanied by evidence satisfactory to Owner of the cost and completion of such repair or replacement, or (ii) if this Agreement is terminated with respect to a Casualty Unit (as defined in Section 12 below), on payment by Lessee of the Casualty Value of that Unit in accordance with Section 12. In all other instances, the proceeds of any insurance shall be paid to Owner or the Secured Parties, in accordance with their respective interests.

(e) If an Event of Default shall have occurred and be continuing under this Agreement, any proceeds otherwise payable to Lessee under Section 11(d) above may be applied by Owner toward payment of Lessee's obligations in default.

12. LOSS; CASUALTY VALUE.

(a) The lease under this Agreement shall terminate as to a Unit if Lessee makes a Termination Election pursuant to Section 12(b) or 12(c) below.

(b) If during the term of this Agreement, any material Loss (as defined in Section 6 above) occurs with respect to a Unit (an "Affected Unit"), Lessee shall advise Owner in writing within ten (10) days of the Loss. Lessee, at its option, may (i) place the Affected Unit in good condition and repair in a manner satisfactory to Owner if (in Lessee's reasonable judgment) repair of the Unit is practicable, or (ii) make an election (a "Termination Election") with respect to the Affected Unit, if (in Lessee's reasonable judgment) repair of the Unit is not practicable. If Lessee makes a Termination Election with respect to an Affected Unit (a "Casualty Unit"), Lessee shall pay Owner the casualty value for the Casualty Unit in accordance with Section 12(c) below; provided, however, that Owner may elect to supply Lessee a substitute Unit of the same model and in substantially the same condition (and with the same accessories) as the Casualty Unit within 45 days of the Termination Election.

(c) Lessee shall pay the casualty value as specified on *Schedule II* attached to this Agreement (less any insurance proceeds received and retained by Owner or the Secured Parties) at or prior to the end of the month in which the Termination Election is given, and the obligation to pay rent for that Unit shall terminate upon payment of the Casualty Value and payment of the rent with respect to the month in which the Termination Election is given. Upon payment of the casualty value and such rent, (i) Owner's title to and interest in the Casualty Unit shall vest in Lessee without any warranty, express or implied, from Owner, except that the Casualty Unit shall be free and clear of all liens by, through or under Owner; and (ii) all obligations of Owner and Lessee under this Agreement with respect to the Casualty Unit, other than obligations under Sections 7(c), 9 and 14, shall terminate.

13. RETURN OF UNITS.

(a) On termination of the lease of a Unit under this Agreement (other than a termination in accordance with Section 12 above), Lessee shall return the Unit at a point of interchange on Owner's lines and otherwise in accordance with this Section. Excepted Equipment furnished by Lessee may be removed by Lessee prior to return so long as removal will not damage such Unit. At the time of return, Owner and Lessee shall perform a joint inspection of such Unit. Except as determined by the inspection, the a Unit that is a locomotive shall be considered to be in good repair and operating condition if the following items are satisfied, normal wear and tear excepted:

- (i) Written evidence is provided to Owner from an authorized manufacturer's representative for the locomotives selected by Owner and approved by Lessee ("Manufacturer's Representative"), whose approval shall not be unreasonably withheld, (A) that he has inspected the Unit, (B) that in his opinion the Unit complies with the applicable standards established for locomotives by the AAR, FRA and each other governmental authority with jurisdiction over the condition of the Units and (C) that the Unit is in good repair and operating condition by industry standards and satisfies the conditions described below in clauses (ii) through (v) of this subsection.
- (ii) All variable displacement pumps, cylinders, power proportioning units, control valves, piping seals, and hose connections shall be fluid-tight and function in the same capacity and manner to meet the manufacturer's original specifications.
- (iii) All hydraulic fluids, filters, and support systems shall meet manufacturer's original specifications for fluid levels and change intervals.
- (iv) All diesel-engine systems will be in good repair and operating condition. The vital pressures and tolerances of the diesel-engine systems shall be within an approved range specified by the manufacturer, as demonstrated by approved testing procedures performed by the Manufacturer's Representative. Those components and functions that fail to meet this minimum specification shall be subject to repair or replacement by Lessee.
- (v) All electrical and electronic systems shall be fully operational and meet the manufacturer's original specifications.

(b) If, at the termination of the lease of a Unit under this Agreement, the Unit does not comply with the applicable conditions specified in subsection (a) above, Lessee shall either (i) correct the deficiencies at its expense within 30 days of the inspection (and, during such period, the Unit shall be considered to remain in Lessee's

possession, all risk of Loss with respect to the Unit shall continue to be borne by Lessee, and Lessee shall continue to insure the Unit in accordance with this Agreement), or (ii) notify Owner that it elects to have Owner correct the deficiencies at Lessee's expenses, in which case, Owner will assume responsibility for correcting the deficiencies and invoice the cost of correction to Lessee on completion.

(c) Lessee will permit Owner to store any of the Units on its tracks for a period of not longer than ninety (90) days following termination of this Agreement. Following storage, Lessee, at its expense, shall return each such Unit as directed by Owner either (i) to a point of interchange on Owner's tracks specified by Owner or (ii) to a connecting carrier for further shipment specified by Owner. During this 90-day storage period, Lessee at its expense shall maintain and insure such Units in accordance with this Agreement. The risk of loss and damage to Units during storage and shipment shall remain with Lessee in accordance with the provisions of this Agreement. While in storage Lessee shall permit representatives of Owner and each of the Secured Parties to inspect the Units.

14. INDEMNIFICATION.

Lessee agrees to indemnify and hold harmless, Owner and each of the Secured Parties, and their respective successors and assigns (each an "Indemnitee") and, if requested by an Indemnitee, defend that Indemnitee from and against Claims (as defined below in this Section) arising out of or connected with the Units, this Agreement or any Schedule or Exhibit to this Agreement. "Claims" refers to all damages, losses, liabilities, costs, expenses (including legal fees and costs), penalties, judgments, suits, actions or claims, whether in contract or in tort, whether caused by an Indemnitee's negligence or based on a theory of strict liability or otherwise, whether involving personal injury, death, property damage or otherwise, and shall include, but is not limited to, matters regarding (i) the manufacture, selection, purchase, acceptance, rejection, ownership, delivery, lease, possession, maintenance, use, condition, return or operation of any Units; (ii) latent defects or other defects in any Units, whether or not discoverable by Lessee or an Indemnitee; (iii) patent, trademark or copyright infringement; and (iv) the condition of any Units arising or existing during Lessee's use. "Claims" expressly excludes liabilities (A) arising from acts, events or conditions occurring or arising after the Units have been returned to Owner and (B) resulting solely from the willful misconduct or gross negligence of an Indemnitee.

15. PROHIBITION AGAINST LIENS.

Except as otherwise provided in this Agreement, the Units shall, for purposes of this Agreement, be considered to be in the sole possession, custody, and control of Lessee from the time of delivery to Lessee until returned to Owner; provided that Lessee shall not acquire any title or property interest or right to any Unit except as lessee under this Agreement. Lessee shall keep each of the Units (and all component parts of each of the Units) free and clear of all liens, encumbrances and charges except for the interests of Owner and the Secured Parties.

16. FILINGS.

Prior to delivery and acceptance of the Units under this Agreement, Lessee will cause this Lease to be duly recorded with the ICC in accordance with 49 U.S.C. §11303 and will furnish evidence of such filing to Owner and each of the Secured Parties. Prior to operating any of the Units in Canada, Lessee will comply with the filing and other requirements set forth in Section 17 below. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, record, deposit or register any and all amendments or supplements to this Agreement or other instruments or documents reasonably requested by Owner to protect Owner's title in and to the Units or to carry out the intention of this Agreement. Lessee will pay all costs and expenses incident to any such filing, recording, registering or depositing.

17. OPERATIONS IN CANADA.

Lessee shall be prohibited from operating any of the Units in Canada unless, prior to any such operation, (i) Lessee has provided Owner and each of the Secured Parties with prior written notice of its intention to operate in Canada, and (ii) Lessee has provided Owner and each of the Secured Parties with evidence that this Lease, the Oxford Security Agreement (a copy of which will be furnished to Lessee upon its notification of intent to operate in Canada), and the Agent Security Agreements (a copy of which will be furnished to Lessee upon its notification of intent to operate in Canada) has been deposited with the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada and notice of such deposit has been given in *The Canada Gazette* in accordance with Section 90 of the Railway Act of Canada. The cost of compliance with this Section (including the costs of any required deposit or publication) shall be borne solely by Lessee.

18. EVENTS OF DEFAULT.

An "Event of Default" means the occurrence of one or more of the following events:

- (a) a failure by Lessee to make any payment owing under this Agreement within 5 days after such payment is due and payable;
- (b) a default in the performance of any other material obligation of Lessee under this Agreement that continues for 10 days after written notice from Owner specifying the default and a demand for its remedy;
- (c) any representation or warranty made by Lessee in this Agreement which is untrue in any material respect when made, or any statement, report, schedule, notice, or other writing furnished by Lessee pursuant to this Agreement which is untrue in any material respect on the date as of which the facts are set forth or certified;

(d) Lessee becomes insolvent or fails generally to pay its debts as they become due, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a custodian, trustee, or receiver for Lessee for the major part of its property;

(e) a custodian, trustee, or receiver is appointed for Lessee or for the major part of its property and is not discharged within 60 days after the appointment;

(f) a proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency or receivership law is filed by or authorized by Lessee;

(g) a proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency or receivership law is filed against Lessee and is not dismissed or vacated within 60 days; or

(h) Lessee voluntarily or involuntarily dissolves or is dissolved.

19. REMEDIES.

(a) Upon the occurrence and during the continuation of an Event of Default, Owner may exercise one or more of the following remedies:

(i) terminate the lease of Units under this Agreement by written notice to Lessee, in which case Owner may enter the premises where the Units are located and take immediate possession of the Units or require Lessee at its expense to return possession of the Units to Owner pursuant to Section 13 above, and thereafter Owner may either:

(x) sell the Units in a public or private sale and recover from Lessee the amount by which the Casualty Value for the Units exceeds the net proceeds of sale; or

(y) lease the Units to a third party and recover from Lessee the amount by which Rent payable under this Agreement for the Units exceeds rent received under the third party lease;

(ii) declare all future payments of rent under this Agreement immediately due and payable, and upon payment of such amount and any amounts payable under clause (iv) below, the lease of Units under this Agreement shall continue in effect for the remainder of its term without payment of further rent;

(iii) proceed by appropriate court action to enforce performance by Lessee of its obligations under this Agreement and to collect damages suffered as a result of the Event of Default; and

- (iv) recover from Lessee all rent and other amounts accrued and unpaid under this Agreement and all of Owner's costs and expenses, including reasonable attorneys' fees, incurred in connection with enforcement of this Agreement after the occurrence and during the continuation of an Event of Default.

(b) The remedies stated above are cumulative and are in addition to any other right or remedy available under this Agreement or under applicable law. The failure of Owner to exercise the rights granted under this Agreement upon the occurrence of any Event of Default shall not constitute a waiver of any such rights upon the continuation or recurrence of any such Event of Default or any similar event.

20. SUBLEASE AND ASSIGNMENT.

Lessee shall not sublease the Units or assign its rights under this Lease without the prior written consent of Owner, which consent shall not be unreasonably withheld. Notwithstanding any sublease or assignment of this Agreement by Lessee, as between Owner and Lessee, Lessee will remain the primary obligor under this Agreement and shall not be relieved of any of its obligations under this Agreement.

21. REPORTS.

At the request of Owner during the term of this Agreement, Lessee shall promptly deliver to Owner any information regarding the Units reasonably requested by Owner.

22. REPRESENTATIONS.

- (a) Lessee represents and warrants to Owner as follows:
 - (i) Lessee is a validly organized and existing corporation, in good standing in its jurisdiction of incorporation.
 - (ii) All necessary corporate action of Lessee required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement has been authorized or obtained, and this Agreement constitutes the valid and binding obligation of Lessee, enforceable in accordance with its terms.
 - (iii) The lease of the Units contemplated by this Agreement will not result in any default under or breach of Lessee's charter documents or bylaws or any agreement to which Lessee is a party or to which it is bound.
 - (iv) There are no proceedings pending or threatened against Lessee that may materially and adversely affect Lessee's ability to enter into, or perform its obligations under, this Agreement.

- (v) Lessee has obtained all licenses, permits, approvals, authorizations or qualifications necessary for the conduct of its business and the execution, delivery and performance of this Agreement.
- (b) Owner represents and warrants to Lessee as follows:
 - (i) Owner is a validly organized and existing Delaware corporation, in good standing.
 - (ii) All necessary corporate action of Owner required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement has been authorized or obtained, and this Agreement constitutes the valid and binding obligation of Owner, enforceable in accordance with its terms.
 - (iii) The lease of the Units contemplated by this Agreement will not violate the provisions of, result in any default under or accelerate any obligation of Owner under any agreement, note, mortgage, lease or other instrument to which Owner is a party or by which Lessor is bound.
 - (iv) The execution, delivery and performance by Owner of its obligations under this Agreement requires no authorization or approval of, or exemption by, any governmental, public or self-regulatory body or authority.

23. SURVIVAL OF REPRESENTATIONS.

All representations, warranties and agreements made by the parties in this Agreement shall survive the execution, delivery and consummation of this Agreement and any investigation made at any time by or on behalf of either party. All representations and warranties made by Lessee under this Agreement shall survive the termination of this Agreement and shall remain in full force and effect. All of Owner's rights, privileges and indemnities, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the termination of this Agreement shall survive such termination and be enforceable by Owner and any successors and assigns.

24. QUIET ENJOYMENT.

So long as Lessee complies with the terms and provisions of this Agreement and no Event of Default has occurred and is continuing, Lessee shall be entitled to the use and possession of the Units according to the terms of this Agreement without interference by the Owner or any party claiming through the Owner except the Secured Parties, whose rights in the Units are prior and superior to the rights of the Lessee.

25. EXPENSES.

Except as otherwise expressly provided in this Agreement, each party shall pay its own expenses in connection with this Agreement.

26. FURTHER ASSURANCES.

Lessee shall promptly execute and deliver to Owner or either of the Secured Parties such documents or instruments and take such further actions as Owner or the Secured Party, as the case may be, may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to protect the rights and remedies of Owner and the Secured Parties, as the case may be, under this Agreement.

27. PURCHASE OPTION.

So long as no Default or Event of Default has occurred and is continuing, Lessee shall have the right, upon written notice delivered to Owner not less than sixty (60) days prior to the expiration of the term of this Agreement, to purchase all (but not fewer than all) of the Units then subject to this Agreement for a purchase price equal to the Casualty Value of the Units as of the expiration date. The purchase shall be effective as of the expiration of the term of this Agreement.

28. MISCELLANEOUS.

(a) This Agreement shall be construed under and in accordance with the laws of Illinois, including for the purpose of choice of law, as though all acts of performance or omission occurred in that state.

(b) The provisions of this Agreement shall, where possible, be interpreted in a manner necessary to sustain their legality and enforceability, and for that purpose the provisions of this Agreement shall be read as if they cover only the specific situation to which they are being applied. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in other situations or of other provisions of this Agreement.

(c) Any notice or other communication required or permitted by this Agreement shall be delivered personally or sent by United States registered or certified mail, postage prepaid, or by certified messenger service, or by facsimile (with telephonic confirmation) addressed as follows or to another address specified by a party on notice to the other:

To Lessee: Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613
Attn: President

To Owner: Akron Barberton Cluster
Railway Company
100 East First Street
P.O. Box 96
Brewster, Ohio 44613
Attn: President

To ABC Funding: ABC Funding, Inc.
6 West Hubbard Street
Suite 500
Chicago, Illinois 60610
Attn: President

To Agent: Bank of America Trust and Savings Association,
as Agent
1455 Market Street
12th Floor
San Francisco, California 94103
Attn: Agency Management Services Unit 5596

(d) The failure or delay of Owner to require Lessee's full compliance with the terms of this Agreement shall not be interpreted as a waiver of those terms or of Owner's right subsequently to insist on full compliance with those terms. If Lessee fails to perform any of its obligations under this Agreement, Owner may perform any act or make any payment which Owner considers reasonably necessary to the maintenance and preservation of the Units and Owner's or Secured Parties' interests in the Units; provided that the performance of any act or payment by Owner shall not be considered a waiver of, or release of Lessee from, the obligation at issue. Owner shall be reimbursed by Lessee for any such payments or demands.

(e) This Agreement shall be binding upon and inure to the benefit of Owner and Lessee and their respective successors and assigns.

(f) This Agreement (including the Schedules and Exhibits which are attached to and constitute a part of this Agreement), as supplemented and amended from time to time, sets forth the entire agreement and understanding of Owner and Lessee with respect to the Units and supersedes all other written or oral agreements relating to the subject matter of this Agreement. This Agreement may be amended, modified or

terminated only by a written instrument signed by Owner and Lessee and consented to in writing by each of the Secured Parties.

**AKRON BARBERTON CLUSTER
RAILWAY COMPANY**

By: Michael Amouf

Its: Secretary/Treasurer

**WHEELING & LAKE ERIE RAILWAY
COMPANY**

By: JRV

Its: President & CEO

State of Ohio)
) ss:
County of Stark)

On the 24 day of April, 1995, before me personally appeared Michelle C. Montford to me personally known, who, being by me duly sworn, says that he is the Secretary - Treasurer of Akron Barberton Cluster Railway Company ("ABCRC") and that the foregoing instrument was signed on behalf of ABCRC by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of ABCRC.

Paula Keller
Notary Public

Notary Seal:

My commission expires: Oct. 18, 1995

State of Ohio)
) ss:
County of Stark)

On the 24 day of April, 1995, before me personally appeared Larry P. Parsons, to me personally known, who, being sworn, says that he is the President + CEO of the Wheeling & Lake Erie Railway Company ("Wheeling") and that the foregoing instrument was signed on behalf of Wheeling by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of Wheeling.

Paula Keller
Notary Public

Notary Seal:

My commission expires: Oct. 18, 1995

SCHEDULE I

UNITS OF EQUIPMENT

<u>Type</u>	<u>Road Number/Serial Number</u>	<u>Monthly Rent</u>	<u>Cost</u>
GP35 Locomotives	WLE 2705	\$2,100	\$95,000
Model 6700 Pandrol Jackson	Serial No. 146419	\$2,900	\$130,000

SCHEDULE II

CASUALTY VALUES

<u>Casualty Date</u>	<u>Casualty Value</u>
First Year under Lease	100% of Cost
Second Year under Lease	95% of Cost
Third Year under Lease	90% of Cost
Fourth Year under Lease	85% of Cost
Fifth Year under Lease	80% of Cost

EXHIBIT A
FORM OF CERTIFICATE OF ACCEPTANCE

To: Akron Barberton Cluster Railway Company ("Owner")

I, a duly appointed and authorized representative of WHEELING & LAKE ERIE RAILWAY COMPANY (the "Lessee") under the Rail Equipment Lease Agreement dated as of April 14, 1995 between the Owner and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Units:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that each of the foregoing Units are in good order and condition, and conform to the specifications applicable to such Units, and that there are no defects in any of the foregoing Units with respect to design, manufacture, condition or in any other respect.

Dated: _____

Inspector and Authorized
Representative of Lessee