

0100 677053

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RECORDATION NO. 17973 - A  
FILED 1425

JUL 3 - 1995 - 12 55 PM

INTERSTATE COMMERCE COMMISSION

June 29, 1995

RECEIVED  
OFFICE OF THE  
SECRETARY  
JUL 3 12 49 PM '95  
LICENSING BRANCH

Mr. Vernón 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 Amendment No. 1 to Lease Agreement dated as of May 1, 1995 ("Amendment"), a secondary document as defined in the Interstate Commerce Commission's Rules for the Recordation of Documents, 49 CFR §1177. The primary document to which the enclosed Amendment is connected is a Lease Agreement ("Lease Agreement") dated as of October 2, 1992. The Lease Agreement was recorded in the Interstate Commerce Commission's recordation files and records pursuant to 49 U.S.C §11303 under Recordation No. 17973 on October 9, 1992.

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

Lessor: Low End Rail Capital Holdings, Inc.  
6 West Hubbard Street  
Suite 500  
Chicago, Illinois 60610

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

Enclosed is a check payable to the order of the Interstate Commerce Commission for \$21.00 in payment of the recordation fee.

Please return the stamped copy of the enclosed document to Debora J. Choate, Esq., McLachlan, Rissman & Doll, 6 West Hubbard Street, Suite 500, Chicago, Illinois 60610.

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

Amendment No. 1 to Lease Agreement dated as of May 1, 1995, between Low End Rail Capital Holdings, Inc., lessor, and Wheeling & Lake Erie Railway Company, lessee, amending certain terms of the Lease Agreement.

**McLachlan, Rissman & Doll**

By: Debra F. Choate

cc: William A. Callison



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

7/3/95

Office Of The Secretary

Debora J. Choate  
McLachlan, Rissman & Doll  
6 W. Hubbard Street  
Ste. 500  
Chicago, Illinois 60610

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/3/95 at 12:55PM, and assigned recordation number(s). 17973-A.

Sincerely yours,

Vernon A. Williams  
Secretary

Enclosure(s)  
(0100677053)

\$ 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

Recorded with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code on \_\_\_\_\_, 1995, and assigned Recordation Number \_\_\_\_\_.

RECORDATION NO. 17973 - A  
FILED 1206

**AMENDMENT NO. 1 TO LEASE AGREEMENT**

MAY 3 - 1995 - 12 55 PM  
INTERSTATE COMMERCE COMMISSION

This Amendment No. 1 to Lease Agreement ("Amendment No. 1") is made as of the 1st day of May, 1995 between Low End Rail Capital Holdings, Inc., an Illinois corporation, with its principal office at 6 West Hubbard Street, Suite 500, Chicago, Illinois 60610 ("Lessor"), and Wheeling & Lake Erie Railway Company, a Delaware corporation, with its principal office at 100 East First Street, Brewster, Ohio 44613 ("Lessee"). Lessor and Lessee agree as follows:

**1. Agreement to Amend.**

Reference is made to that certain Lease Agreement dated as of October 2, 1992 by and between Lessor and Lessee pertaining to the lease of 199 gondola cars (the "Lease Agreement"). All capitalized terms used without definition in this Amendment No. 1 shall have the respective meanings ascribed to them in the Lease Agreement. Lessor and Lessee have determined that the Lease Agreement shall be amended to reflect, among other things, an extension of the term of the Lease Agreement and a change in the rental rates applicable to the Units, as set forth in this Amendment No. 1.

**2. Amendments.**

(a) **General.** All references to the "Agreement" set forth in the Lease Agreement shall mean the Lease Agreement, as amended from time to time.

(b) **Paragraph 2.** Paragraph 2 of the Lease Agreement is deleted in its entirety and the following is substituted in its place:

"The lease term with respect to each Unit shall be 96 months, commencing on October 2, 1992, and terminating on October 1, 2000, unless otherwise sooner terminated by any other provision of this Agreement."

(c) **Subparagraph 5(a).** Subparagraph 5(a) is deleted in its entirety and the following is substituted in its place:

"(a) **Rental Payments.** Lessee agrees to pay Lessor, for each Unit subject to this Agreement, monthly rental payments equal to (i) \$65.00 per Unit for the first 24 months of the lease term; (ii) \$45.00 per Unit for the period commencing 24 months and one day after the commencement of the lease term through (but not including) the Rental Increase Date (as defined below) with respect to a Unit; and (iii) \$88.17 per Unit for the period commencing on the Rental Increase Date with respect to a

Unit through the date of the expiration of the lease term (or any earlier termination with respect to a Unit in accordance with this Agreement). Rent shall be payable in advance on the first day of each month during the lease term. If the first day of a month falls on a Saturday, Sunday or legal holiday, the rent shall be due on the next succeeding business day."

**(d) Subparagraph 5(e).** A new Subparagraph 5(e) is added to the Lease Agreement, as follows:

**"(e) Rental Increase Date.** The Rental Increase Date shall occur with respect to a Unit on the date Lessor reimburses Lessee with respect to the replacement or rebuild of the draft gear device for the Unit. In order to facilitate the implementation of the rental increase triggered by the Rental Increase Date for each Unit, Lessor and Lessee agree that there shall be two Rental Increase Dates: one Rental Increase Date on or about July 14, 1995 with respect to approximately one half of the Units and one Rental Increase Date on or about September 29, 1995 with respect to the remainder of the Units."

**(e) Subparagraph 10(a).** Subparagraph 10(a) is amended to delete the following parenthetical, which is set forth in clause (iv) of the subparagraph: "(or any renewal term)".

**(f) Subparagraph 15(a).** Subparagraph 15(a) is amended to delete the following parenthetical, which is set forth in the third and fourth lines of the subparagraph: "(or any renewal term that shall have been entered into pursuant to this Agreement)".

**(g) Subparagraph 16(a).** Subparagraph 16(a) is amended to delete the phrase "or any renewal term" set forth in the second line of the subparagraph.

**(h) Paragraph 21.** Paragraph 21 is deleted in its entirety. Paragraph 21 shall be reserved so that the numbering of subsequent Paragraphs in the Lease Agreement will not be affected.

**(i) Subparagraph 22(a).** Subparagraph 22(a) is amended to delete the phrase "or of any renewal term" set forth in the fourth line of the subparagraph and to delete the language "or the renewal term, as the case may be" set forth in the eighth and ninth lines of the subparagraph.

**(j) Subparagraph 22(b).** Subparagraph 22(b) is amended to delete the language "or of the renewal term, as the case may be" set forth in the eighth line of the subparagraph.

**(k) Schedule II.** Schedule II is deleted in its entirety and a new Schedule II-May 1995, in the form attached to this Amendment No. 1, is substituted in its place.

**3. Insurance Coverage.**

If Lessor determines, in its reasonable discretion, that the insurance coverage currently maintained by Lessee with respect to physical loss or damage is not adequate to cover the increased value of the Units in light of the improvements to be made, Lessor may require Lessee to increase its insurance coverage (and such coverage shall be deemed to be required pursuant to Paragraph 13 of the Lease Agreement); provided, however, that such coverage shall be consistent with prudent industry standards. If Lessor exercises its right to require greater insurance coverage, Lessee shall furnish Lessor, prior to the Rent Increase Date with respect to a Unit, with a certificate of insurance showing such increased coverage with respect to the Unit, naming Lessor as loss payee and otherwise in compliance with Paragraph 13 of the Lease Agreement. Nothing in this Paragraph affects Lessor's right generally to require Lessee's compliance with Paragraph 13, including maintenance of insurance coverage as specified in Paragraph 13.

**4. Accession to Units.**

Lessee acknowledges and agrees that, in accordance with Paragraphs 7 and 8 of the Lease Agreement, the draft gear device to be installed on each Unit will constitute an accession to the Unit and that title to each such accession shall vest immediately in Lessor.

**5. Expenses.**

The allocation of expenses incurred by the respective parties in connection with this Amendment No. 1 shall be governed by that certain letter agreement dated May 1, 1995 by and between Lessor and Lessee.

**6. Effectiveness.**

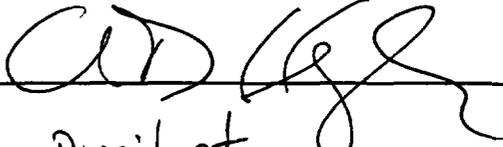
The effectiveness of the amendments to the Lease Agreement set forth in Paragraph 2 above is expressly conditioned on the occurrence of a Rental Increase Date. Notwithstanding the foregoing, Lessee's obligation to bear the expenses as set forth in Paragraph 5 above shall not be conditioned on the occurrence of a Rental Increase Date (it being the intention of the parties that Lessor shall bear no out-of-pocket expenses in connection with the improvements, raising the required capital or any related negotiation or documentation, irrespective of whether the improvements to the Units are actually made or the amendments to the Lease Agreement become effective).

**7. Miscellaneous.**

This Amendment No. 1 is made in accordance with and pursuant to Paragraph 25 of the Lease Agreement. This Amendment No. 1 may be executed in several counterparts, all of which when taken together shall constitute a single instrument. Except as specifically

set forth in this Amendment No. 1, the terms of the Lease Agreement remain unaffected and in full force and effect.

**LOW END RAIL CAPITAL HOLDINGS, INC.**

By:   
Its: President

**WHEELING & LAKE ERIE RAILWAY  
COMPANY**

*Cons  
WDE*

By:   
Its: President & Chief Operating Officer



**SCHEDULE II  
MAY 1995**

**Casualty Payments**

<u>MONTH</u>	<u>CASUALTY VALUE</u>
1	\$2,150
2	2,150
3	2,150
4	2,150
5	2,150
6	2,150
7	2,150
8	2,150
9	2,150
10	2,150
11	2,150
12	2,150
13	2,000
14	2,000
15	2,000
16	2,000
17	2,000
18	2,000
19	2,000
20	2,000
21	2,000
22	2,000
23	2,000
24	2,000
25	2,000
26	2,000
27	2,000
28	2,000
29	2,000
30	2,000
31	2,000
32	2,000
33	2,000
34	2,000*
35	2,000*
36	2,000*
37	3,700
38	3,700

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\* The Casualty Value for Units for which a Rental Increase Date has occurred will be \$3,700 rather than \$2,000.

39	3,700
40	3,645
41	3,645
42	3,645
43	3,588
44	3,588
45	3,588
46	3,528
47	3,528
48	3,528
49	3,466
50	3,466
51	3,466
52	3,401
53	3,401
54	3,401
55	3,333
56	3,333
57	3,333
58	3,262
59	3,262
60	3,262
61	3,188
62	3,188
63	3,188
64	3,111
65	3,111
66	3,111
67	3,030
68	3,030
69	3,030
70	2,946
71	2,946
72	2,946
73	2,858
74	2,858
75	2,858
76	2,766
77	2,766
78	2,766
79	2,670
80	2,670
81	2,670
82	2,570
83	2,570
84	2,570
85	2,466
86	2,466
87	2,466
88	2,357
89	2,357

90	
91	2,357
92	2,243
93	2,243
94	2,243
95	2,124
96	2,124