

OSTER
Researching Services

12897 Colonial Dr. • Mt. Airy, Md. 21771
Phone: 301-253-6040
Fax: 301-253-6040*

RECORDATION NO. 24976 FILED

May 27, 2004

MAY 27 '04 12-37 PM

SURFACE TRANSPORTATION BOARD

Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Sir:

Enclosed for recording with the Surface Transportation Board is a Master Equipment Lease Agreement dated 4/23/04 including the following parties and railroad equipment:

Lessor: Jules and Associates, Inc.
515 South Figueroa Street, Suite 1950
Los Angeles, CA 90071

Lessee: Wheeling & Lake Erie Railway Company
100 First Street SE
Brewster, OH 44613

Equipment: 50, Open-top Hoppers
WE 19480-19640, NI

Please record this agreement as a primary document. The filing fee of \$30 is enclosed.

Summary Master Equipment Lease Agreement dated 4/23/04 between Jules and Associates, Inc. as Lessor and Wheeling & Lake Erie Railway as Lessee including 50, Open-top Hoppers, WE 19480-19640, NI.

Sincerely,



Mary Ann Oster
Research Consultant

Enclosure

24976 12:37

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LESSOR:
JULES AND ASSOCIATES, INC.
515 SOUTH FIGUEROA STREET
SUITE 1950
LOS ANGELES, CA 90071

MAY 27 '04

12-37 PM

**MASTER EQUIPMENT
LEASE AGREEMENT**

SURFACE TRANSPORTATION BOARD

MASTER EQUIPMENT LEASE AGREEMENT NO. A02202004

Master Equipment Lease Agreement ("Lease") made this 23rd day of April, 2004 between JULES AND ASSOCIATES, INC. ("Lessor") with a place of business located at 515 South Figueroa Street, Suite 1950, Los Angeles, California 90071 and Wheeling & Lake Erie Railway Company, a Delaware corporation with charter identification number 2216764 ("Lessee") having its chief executive office or principal place of business located at 100 First Street SE, Brewster, Ohio 44613.

1. LEASE AGREEMENT. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the railroad rolling stock and other items of personal property ("Equipment") described in Equipment Lease Schedule(s), which are or may from time to time be executed by Lessor and Lessee and attached hereto or incorporated herein by reference ("Schedules"), upon the terms and conditions set forth in this Lease, as supplemented by the terms and conditions set forth in the appropriate Schedule(s) identifying such items of Equipment. All terms and conditions of this Lease shall govern the rights and obligations of Lessor and Lessee except as specifically modified in writing. Whenever reference is made herein to the "Lease", it shall be deemed to include each of the various Schedules identifying all items of Equipment described in such Schedule. Each Schedule shall incorporate all of the terms and conditions of this Lease and shall contain such additional terms and conditions as Lessor and Lessee shall agree (as set forth therein), and each Schedule shall constitute a separate lease obligation of the Lessee with respect to the Equipment described in such Schedule. In the event the Equipment includes software (including all documentation, later versions, updates, modifications) (herein "Software"), the following shall apply: (1) Lessee shall possess and use the Software in accordance with the terms and conditions of any license agreement entered into with the owner/vendor of such Software (at Lessor's request, Lessee shall provide a complete copy of the License to Lessor); (2) as due consideration for Lessor's payment of the Software price and for providing the Software to Lessee at a lease rate (as opposed to a debt rate), Lessee agrees that Lessor is leasing (and not financing) the Software to Lessee; (3) except as otherwise specifically provided herein, the Software shall be deemed Equipment for all purposes under the Lease. Lessee's liability for Lessee's obligations under this Lease will survive the expiration or earlier termination of this Lease.

2. SELECTION OF EQUIPMENT; ACCEPTANCE. Lessee will select the type, quantity and supplier of each item of Equipment designated in the appropriate Schedule, and in reliance thereon such Equipment will then be ordered by Lessor from such supplier or Lessor will accept an assignment of any existing purchase order therefore. Lessor will have no liability for any delivery or failure by the supplier to fill the purchase order or to meet the conditions thereof. Lessee acknowledges that Lessor has not participated and will not participate in any way in Lessee's selection of the Equipment or of the supplier. Lessee agrees to inspect the Equipment and to execute an Acknowledgment and Acceptance of Equipment by Lessee notice, as provided by Lessor, after the Equipment has been delivered and after Lessee is satisfied that the Equipment is satisfactory in every respect. Lessee hereby authorizes Lessor to insert in this Lease serial numbers or other identifying data with respect to the Equipment.

3. DISCLAIMER OF WARRANTIES AND CLAIMS; LIMITATION OF REMEDIES. LESSOR, NOT BEING THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS. LESSEE LEASES THE EQUIPMENT "AS IS" AND WITH ALL FAULTS. Lessee accordingly agrees not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages. Lessor shall have no obligation to install, erect, test, service, or maintain the Equipment. Lessee shall look to the manufacturer and/or seller for any claims related to the Equipment.

If the Equipment is not properly installed, does not operate as represented or warranted by the supplier or manufacturer, or is unsatisfactory for any reason, regardless of cause or consequence, Lessee's only remedy, if any, shall be against the supplier or manufacturer of the Equipment and not against Lessor.

Lessor hereby acknowledges that any manufacturer's and/or seller's warranties are for the benefit of both Lessor and Lessee. NOTWITHSTANDING THE FOREGOING, LESSEE'S OBLIGATIONS TO PAY THE RENTALS AND OTHER SUMS DUE UNDER THIS LEASE SHALL BE AND ARE ABSOLUTE AND UNCONDITIONAL, AND SHALL BE PAID WITHOUT SET-OFF, ABATEMENT OR COUNTER-CLAIM OF ANY NATURE. To the extent permitted by the manufacturer or seller, and provided Lessee is not in default under this Lease, Lessor shall make available to Lessee all manufacturer and/or seller warranties with respect to Equipment.



Lessee specifically acknowledges that the Equipment is leased to Lessee solely for commercial or business purposes and not for personal, family, household, or agricultural purposes.

The parties have specifically negotiated and agreed to the foregoing paragraph: Lessee Initials: ADU

4. **STATUTORY FINANCE LEASE.** Lessee agrees and acknowledges that it is the intent of both parties to this Lease that it qualify as a statutory finance lease under Division 10 of the California Uniform Commercial Code (or Article 2A of the Uniform Commercial Code as may be in effect in any jurisdiction the laws of which may be determined by a court of competent jurisdiction to apply to this Lease, any Schedule or the Equipment, notwithstanding the terms of Paragraph 28 of this Lease). Lessee acknowledges and agrees that Lessee has selected both: (1) the Equipment; and (2) the supplier from whom Lessor is to purchase the Equipment. Lessee acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or of the supplier, and Lessor has not selected, manufactured, or supplied the Equipment.

LESSEE IS ADVISED THAT IT MAY HAVE RIGHTS UNDER THE CONTRACT EVIDENCING THE LESSOR'S PURCHASE OF THE EQUIPMENT FROM THE SUPPLIER CHOSEN BY LESSEE AND THAT LESSEE SHOULD CONTACT THE SUPPLIER OF THE EQUIPMENT FOR A DESCRIPTION OF ANY SUCH RIGHTS. LESSEE HEREBY WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE UNDER DIVISION 10 OF THE CALIFORNIA COMMERCIAL CODE (AND ARTICLE 2A OF THE APPLICABLE UNIFORM COMMERCIAL CODE).

5. **ASSIGNMENT BY LESSEE PROHIBITED. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE SHALL NOT ASSIGN THIS LEASE OR SUBLEASE THE EQUIPMENT OR ANY INTEREST THEREIN, OR PLEDGE OR TRANSFER THIS LEASE, OR OTHERWISE DISPOSE OF THE EQUIPMENT COVERED HEREBY.**

6. **COMMENCEMENT; RENTAL PAYMENTS; INTERIM RENTALS.** This Lease shall commence upon the written acceptance hereof by Lessor and shall end upon full performance and observance by Lessee of each and every term, condition and covenant set forth in this Lease, any Schedules hereto and any extensions hereof. The monthly rental payments shall be in advance and shall be in the amounts and frequency as set forth on the face of this Lease or any Schedules hereto. The first such rental payment shall be made on the first day of the calendar quarter following the date on which the Equipment is accepted by the Lessee. In addition to regular rentals, Lessee shall pay to Lessor interim rent, which shall be a pro-rata portion of the monthly rental charges based on a daily rental charge of one-thirtieth (1/30th) of the monthly rental calculated from the date on which the Equipment is accepted by the Lessee to the end of the calendar quarter, and shall be due and payable upon Lessee's receipt of invoice from Lessor. The rental period under the Lease shall terminate following the last day of the terms stated on the face hereof or in any Schedule hereto unless such Lease or Schedule has been extended or otherwise modified. A calendar quarter means a three-month period commencing on January 1, April 1, July 1, or October 1 of any calendar year. Lessor shall have no obligation to Lessee under this Lease if the Equipment, for whatever reason, is not delivered to Lessee within ninety (90) days after Lessee signs this Lease. Lessor shall have no obligation to Lessee under this Lease if Lessee fails to examine and deliver to Lessor an Acknowledgment and Acceptance of Equipment by Lessee acknowledging its acceptance of the Equipment within thirty (30) days after it is delivered to Lessee, with respect to this Lease or any Schedule hereto.

7. **LIMITED PREARRANGED AMENDMENTS; AUTHORIZATION TO FILE FINANCING STATEMENTS; SPECIFIC POWER OF ATTORNEY.** In the event it is necessary to amend the terms of this Lease or the terms of any Schedule to reflect a change in one or more of the following conditions:

- (1) Lessor's actual cost of procuring the Equipment; or
- (2) Lessor's actual cost of providing Equipment to Lessee; or
- (3) A change in the Lease payments as a result of (1) and/or (2) above; or
- (4) Description of the leased Equipment.

Lessee agrees that any such amendment shall be described in a letter from Lessor to Lessee, and unless within 15 days after the date of such letter Lessee objects thereto in writing delivered to Lessor, this Lease and any affected Schedules shall be deemed amended and such amendments shall be incorporated herein/therein as if originally set forth herein/therein. Lessee hereby authorizes Lessor or its assignee to file such Uniform Commercial Code financing statements or financing statement amendments in any jurisdiction as Lessor shall deem necessary or desirable, at any time and from time to time, to carry out the terms of this Lease or any Schedule, or otherwise to protect Lessor's interests in the Equipment, in each case naming Lessee, as debtor or lessee, and Lessor, as secured party or lessor, and without Lessee's signature. Lessee hereby further grants to Lessor a specific power of attorney, coupled with an interest, for Lessor to use as follows: (1) Lessor may sign and file on Lessee's behalf any document Lessor deems necessary to perfect or protect Lessor's interest in the Equipment or pursuant to the Uniform Commercial Code; and (2) Lessor may sign, endorse or negotiate for Lessor's benefit any instrument representing proceeds from any policy of insurance covering the Equipment.

8. **LOCATION.** Lessee shall keep the Equipment only at the location specified in each Schedule or, if none is specified, at Lessee's address as set forth above, and Lessee shall not remove the Equipment therefrom without Lessor's prior written consent. Lessor shall have the right to inspect the Equipment and observe its use during normal business hours, and Lessee will ensure Lessor's ability to enter into and upon the premises where the Equipment may be located for such purpose.



Lessee specifically acknowledges that the Equipment is leased to Lessee solely for commercial or business purposes and not for personal, family, household, or agricultural purposes.

The parties have specifically negotiated and agreed to the foregoing paragraph: Lessee initials: _____

4. STATUTORY FINANCE LEASE. Lessee agrees and acknowledges that it is the intent of both parties to this Lease that it qualify as a statutory finance lease under Division 10 of the California Uniform Commercial Code (or Article 2A of the Uniform Commercial Code as may be in effect in any jurisdiction the laws of which may be determined by a court of competent jurisdiction to apply to this Lease, any Schedule or the Equipment, notwithstanding the terms of Paragraph 28 of this Lease). Lessee acknowledges and agrees that Lessee has selected both: (1) the Equipment; and (2) the supplier from whom Lessor is to purchase the Equipment. Lessee acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or of the supplier, and Lessor has not selected, manufactured, or supplied the Equipment.

LESSEE IS ADVISED THAT IT MAY HAVE RIGHTS UNDER THE CONTRACT EVIDENCING THE LESSOR'S PURCHASE OF THE EQUIPMENT FROM THE SUPPLIER CHOSEN BY LESSEE AND THAT LESSEE SHOULD CONTACT THE SUPPLIER OF THE EQUIPMENT FOR A DESCRIPTION OF ANY SUCH RIGHTS. LESSEE HEREBY WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE UNDER DIVISION 10 OF THE CALIFORNIA COMMERCIAL CODE (AND ARTICLE 2A OF THE APPLICABLE UNIFORM COMMERCIAL CODE).

5. ASSIGNMENT BY LESSEE PROHIBITED. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE SHALL NOT ASSIGN THIS LEASE OR SUBLEASE THE EQUIPMENT OR ANY INTEREST THEREIN, OR PLEDGE OR TRANSFER THIS LEASE, OR OTHERWISE DISPOSE OF THE EQUIPMENT COVERED HEREBY.

6. COMMENCEMENT; RENTAL PAYMENTS; INTERIM RENTALS. This Lease shall commence upon the written acceptance hereof by Lessor and shall end upon full performance and observance by Lessee of each and every term, condition and covenant set forth in this Lease, any Schedules hereto and any extensions hereof. The monthly rental payments shall be in advance and shall be in the amounts and frequency as set forth on the face of this Lease or any Schedules hereto. The first such rental payment shall be made on the first day of the calendar quarter following the date on which the Equipment is accepted by the Lessee. In addition to regular rentals, Lessee shall pay to Lessor interim rent, which shall be a pro-rata portion of the monthly rental charges based on a daily rental charge of one-thirtieth (1/30th) of the monthly rental calculated from the date on which the Equipment is accepted by the Lessee to the end of the calendar quarter, and shall be due and payable upon Lessee's receipt of invoice from Lessor. The rental period under the Lease shall terminate following the last day of the terms stated on the face hereof or in any Schedule hereto unless such Lease or Schedule has been extended or otherwise modified. A calendar quarter means a three-month period commencing on January 1, April 1, July 1, or October 1 of any calendar year. Lessor shall have no obligation to Lessee under this Lease if the Equipment, for whatever reason, is not delivered to Lessee within ninety (90) days after Lessee signs this Lease. Lessor shall have no obligation to Lessee under this Lease if Lessee fails to execute and deliver to Lessor an Acknowledgment and Acceptance of Equipment by Lessee acknowledging its acceptance of the Equipment within thirty (30) days after it is delivered to Lessee, with respect to this Lease or any Schedule hereto.

7. LIMITED PREARRANGED AMENDMENTS; AUTHORIZATION TO FILE FINANCING STATEMENTS; SPECIFIC POWER OF ATTORNEY. In the event it is necessary to amend the terms of this Lease or the terms of any Schedule to reflect a change in one or more of the following conditions:

- (1) Lessor's actual cost of procuring the Equipment; or
- (2) Lessor's actual cost of providing Equipment to Lessee; or
- (3) A change in the Lease payments as a result of (1) and/or (2) above; or
- (4) Description of the leased Equipment,

Lessee agrees that any such amendment shall be described in a letter from Lessor to Lessee, and unless within 15 days after the date of such letter Lessee objects thereto in writing delivered to Lessor, this Lease and any affected Schedules shall be deemed amended and such amendments shall be incorporated herein/therein as if originally set forth herein/therein. Lessee hereby authorizes Lessor or its assignee to file such Uniform Commercial Code financing statements or financing statement amendments in any jurisdiction as Lessor shall deem necessary or desirable, at any time and from time to time, to carry out the terms of this Lease or any Schedule, or otherwise to protect Lessor's interests in the Equipment, in each case naming Lessee, as debtor or lessee, and Lessor, as secured party or lessor, and without Lessee's signature. Lessee hereby further grants to Lessor a specific power of attorney, coupled with an interest, for Lessor to use as follows: (1) Lessor may sign and file on Lessee's behalf any document Lessor deems necessary to perfect or protect Lessor's interest in the Equipment or pursuant to the Uniform Commercial Code; and (2) Lessor may sign, endorse or negotiate for Lessor's benefit any instrument representing proceeds from any policy of insurance covering the Equipment.

8. LOCATION. Lessee shall keep the Equipment only at the location specified in each Schedule or, if none is specified, at Lessee's address as set forth above, and Lessee shall not remove the Equipment therefrom without Lessor's prior written consent. Lessor shall have the right to inspect the Equipment and observe its use during normal business hours, and Lessee will ensure Lessor's ability to enter into and upon the premises where the Equipment may be located for such purpose.



9. POSSESSION, USE AND MAINTENANCE. Lessee shall not use the Equipment, or permit it to be used, for the transportation or storage of any substance which is categorized as, or required to be labeled as, "poison" or "poisonous", "explosive", or "radioactive" (or any categories or labels substituted for such categories or labels as in effect on the day hereof) under 49 CFR 171 or other applicable Federal rules in effect from time to time regulating the transportation of hazardous materials. So long as no Event of Default shall have occurred and be continuing hereunder, Lessee shall be entitled to the possession and use of the Equipment upon the lines of a railroad owned or operated by it or upon lines over which Lessee has trackage or other operating rights or over which railroad Equipment of Lessee is regularly operated pursuant to contract and shall be entitled to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Equipment or sublease the Equipment, but only upon and subject to all the terms and conditions of this Lease; provided, that without Lessor's prior written consent (which shall not be unreasonably withheld or delayed), no such assignment or sublease shall be for a term in excess of the then remaining term of this Lease, and provided Lessee's obligations hereunder shall continue in full force and effect as the obligations of a principal and not of a surety; and provided, further, that Lessee shall not without Lessor's written consent assign or sublease the Equipment to, or permit the assignment or sublease of the Equipment to, any person who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangement or compositions or extensions of indebtedness. Lessee may receive and retain compensation for the use of any of the Equipment from railroads or other entities so using such Equipment. Each sublease or assignment permitted by this paragraph 9 shall (a) be expressly subject and subordinate to all of the provisions of this Lease, (b) expressly require the Equipment subject thereto to be returned as directed by Lessor upon notice to such assignee or sublessee that an Event of Default shall have occurred and be continuing and (c) expressly prohibit any further sublease or assignment of the Equipment. Lessee shall, within fifteen (15) days after the execution of any such sublease, deliver a conformed copy thereof to Lessor.

Lessee will use the Equipment with due care and for the purpose for which it is intended. Lessee agrees that, at its own cost and expense, it will maintain and service the Equipment (including any parts installed on or replacements made to the Equipment and considered an accession thereto) which is subject to this Lease consistent with Lessee's standards for similar owned or leased Equipment, so that the Equipment and each component thereof, will remain, at all times during the term of this Lease, (a) in the same operating order, repair and condition as when originally delivered to Lessee reasonable wear and tear excepted, (b) in compliance with any and all applicable laws, regulations, requirements and rules including, without limitation, those set forth in paragraph 8 hereof, and (c) in compliance with any manufacturer's recommendations, maintenance standards, service bulletins, manuals and preventive maintenance schedules relating to the Equipment, all as in effect from time to time during the term of this Lease. Lessee shall maintain all records, logs and other materials required by the Association of American Railroads or the Department of Transportation, or any other governmental authority having jurisdiction over the Equipment or Lessee. Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Equipment during the term of this Lease as are readily removable without causing material damage to the Equipment (and do not adversely and materially affect the value, utility and remaining useful life of the Equipment). The additions, modifications and improvements made by Lessee under the preceding sentence shall be owned by Lessee, except to the extent such additions, modifications or improvements are made to comply with the following sentence. Any and all parts installed on and additions and replacements made to the Equipment which are (x) not readily removable without causing material damage to the Equipment, (y) in the course of ordinary maintenance, or (z) required by the interchange rules of the Association of American Railroads or by the regulations of the Surface Transportation Board, the Department of Transportation or any other applicable regulatory body, for the operation or use of the Equipment in railroad interchange, shall constitute accessions to the Equipment and full ownership thereof free from any lien, charge, security interest, or encumbrance and shall immediately be vested in Lessor (unless otherwise agreed to by the parties) and Lessee shall comply with all provisions of the Lease applicable to such accessions.

10. TITLE, IDENTIFICATION, RECORDING. The Equipment is, and shall remain, the property of Lessor, and Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease. Should Lessee have an end of term purchase option and Lessee does not give proper notice as agreed upon by both parties, then, that purchase option shall be null and void and the terms and conditions as set forth in this Lease shall prevail after any extension period. The Equipment shall remain personal property even though installed in or attached to real property. Lessee has caused, or will cause, each unit of Equipment to be numbered with its reporting mark shown on the relevant Schedule and Lessee will not change the reporting mark of any unit of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Lessor an opinion of counsel in form and substance reasonably satisfactory to Lessor to the effect that such statement has been so filed, recorded and deposited, such filing recordation and deposit will protect Lessor's interests in such Equipment and no other filing, recording, deposit or giving of notice with or to any other Federal, State or local government or agency thereof is necessary to protect the interests of Lessor in such Equipment. The Equipment may be lettered with the names or initials or other insignia customarily used by Lessee or its permitted sublessees, but Lessee will not allow the name of any other person to be placed on the Equipment as a designation that might be interpreted as a claim of ownership, except Lessor. Lessor, at Lessee's expense, will cause this Lease and all Schedules to be filed with the Surface Transportation Board and will obtain an opinion of counsel, satisfactory to Lessor, that other than the Memorandum of Railcar Master Lease Agreement, there are no documents evidencing a lien or encumbrance on, or security interest in, the

Equipment appearing in the recordation files and records maintained by the Surface Transportation Board pursuant to 49 U.S.C. Section 11301(b) and the regulations thereunder.

11. NO CHANGES TO LESSEE. Lessee represents and warrants to Lessor that Lessee's exact legal name (as set forth in its articles of incorporation or other formation documents), state of organization, corporate or charter identification number, and location of its chief executive office are accurately set forth in the preamble paragraph of this Lease. Lessee shall not change its legal name, its state of organization or location of chief executive office unless Lessee shall have given Lessor 30 days prior written notice and have executed and delivered to Lessor such other agreements, instruments and documents as Lessor shall reasonably require in connection therewith to preserve Lessor's rights and remedies with respect to all items of Equipment covered by this Lease and/or any Schedule.

12. SURRENDER. By this Lease, Lessee acquires no ownership rights in the Equipment and has no option to purchase same. Upon the expiration or termination of any Schedule or this Lease, or in the event of a default pursuant to Paragraph 20 hereof, Lessee, at its expense, shall return the Equipment in the condition hereinafter provided by causing all such Equipment to be moved at Lessee's expense to a location within the continental United States as Lessor may direct. Each unit of Equipment returned to Lessor shall be (i) in good operating condition, order and repair, suitable for use in its intended service, with all components, systems and parts of a type, size, and quality standard as the original manufacturer's specifications, (ii) in interchange condition, in accordance with the standards set by the American Association of Railroads Interchange Rules and by any other applicable rules and regulations and any other governmental body having jurisdiction in the matter, (iii) free of any special advertising, lettering or other marking which indicate Lessee has an interest in the Equipment (except markings which are required by paragraph 10 hereof), (iv) cleaned (both interior and exterior) of any silt, sludge or other debris and otherwise in the condition required elsewhere in this Lease and commercially suitable to perform the service for which such Equipment is intended and to carry the commodities which are normal and customary for such type of Equipment; and (v) free of corrosion or any other commodity-related damage which cause the Equipment not to be capable of being used for its intended purpose (including accumulations or deposits of commodities, whether from commodities transported in or on the Equipment while in the service of Lessee or otherwise). Lessor or its representative shall inspect the Equipment to verify that each item has been returned in compliance with the terms and conditions of this Lease. In the event any item of Equipment does not conform to all of the foregoing requirements, Lessee, at its expense, shall be responsible to either promptly make such repairs as are required to permit each item of Equipment to conform to the foregoing requirements or to forward the Equipment to a repair facility (acceptable to Lessor) for such repairs and Lessee shall pay the costs of such repairs. Until such Equipment is returned to Lessor in the condition required by the terms of this Lease, Lessee shall continue to pay rent at the daily rent equivalent under this Lease until all such Equipment is in the condition required by the terms of this Lease.

13. RENEWAL. At the expiration of the term set forth in each Schedule, Lessee shall return the Equipment subject to said Schedule in accordance with Paragraph 12 hereof. At Lessor's option, this Lease, with respect to each Schedule, may be continued on a month-to-month basis until 30 days after Lessee returns the Equipment subject to the Schedule to Lessor. In the event that the Lease, with respect to a Schedule, is so continued, Lessee shall pay to Lessor rentals in the same periodic amounts as indicated under "Rental" on the Schedule.

14. LOSS AND DAMAGE. Lessee shall bear the entire risk of loss, theft, damage or destruction of the Equipment from any cause whatsoever, and no loss, theft, damage or destruction of the Equipment shall relieve Lessee of the obligation to pay rent or to comply with any other obligation under this Lease.

In the event of damage to any item of Equipment, Lessee shall immediately place the same in good repair at Lessee's expense. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall at Lessee's option do one of the following:

- (a) Replace the same with like Equipment in good repair, acceptable to Lessor; or
- (b) Pay Lessor in cash the following: (i) all amounts due by Lessee to Lessor with respect to all affected Schedules up to the date of the loss; (ii) the unpaid balance of the total rent for the remaining term of the affected Schedules attributable to said item, reduced to present value at a discount rate of 4% as of the date of the loss; and (iii) the Lessor's estimate as of the time this Lease was entered into of Lessor's residual interest in the Equipment, discounted to present value at a discount rate of 4% as of the date of the loss. Upon Lessor's receipt of payment as set forth above, Lessee shall be entitled to the Equipment, without any warranties. If insurance proceeds are used to fully comply with this subparagraph, the balance of any such proceeds shall go to Lessee to compensate for loss of use of the Equipment for the remaining term of the Lease.

15. INSURANCE; LIENS; TAXES. Lessee shall obtain and maintain on or with respect to the Equipment at its own expense liability insurance insuring against liability for bodily injury and property damage with a minimum limit of \$5,000,000 combined single limit (or such greater amount as may be required by the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation or any other governmental body or agency having jurisdiction over the Equipment). Lessee shall also provide and maintain comprehensive general all-risk liability insurance, including but not limited to product liability coverage, insuring Lessor and Lessee with a severability of interest endorsement or its equivalent, against any and all loss or liability for damages either to persons or property or otherwise, which might result from or happen in connection with the condition, use or operation of the Equipment, with such limits and with an insurer as are satisfactory to Lessor. Lessee shall comply with all restrictions (including any geographical limitations) contained in any insurance policies. Each policy shall expressly provide that said insurance as to Lessor and its assigns shall not be invalidated by any act, omission or neglect of Lessee and cannot be canceled without 30 days written notice to Lessor. As to each policy, Lessee shall furnish to Lessor a

Handwritten initials

certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Paragraph and shall designate Lessor as loss payee and/or additional insured. Lessor shall have no obligation to ascertain the existence or adequacy of insurance, or to provide any insurance coverage for the Equipment or for Lessee's benefit.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances. Lessee shall pay all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment excluding, however, all taxes on or measured by Lessor's net income.

If Lessee fails to procure or maintain said insurance or to pay said charges or taxes, Lessor shall have the right, but shall not be obligated, to effect such insurance, or pay such charges or taxes. In that event, Lessor shall notify Lessee of such payment and Lessee shall repay to Lessor the cost thereof within 15 days after such notice is mailed to Lessee.

Lessee agrees to comply with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the rules of the Association of American Railroads, the United States Department of Transportation, the Surface Transportation Board and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect title, operation, maintenance or the use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any Equipment, Lessee will conform therewith at its own expense.

16. INDEMNITY AND ENVIRONMENTAL COMPLIANCE. Lessee does hereby assume liability for and shall indemnify, defend, protect, save and keep harmless Lessor and its successors and assigns against any and all losses, penalties, claims, actions, suits costs, expenses, damages or liabilities, including all attorney fees and court costs of whatsoever kind and nature, in contract or tort, arising out of or connected with the Equipment or this Lease, without limitation, any claim alleging latent and other defects, whether or not discovered by Lessor or Lessee and any claim for patent, trademark or copyright infringement. Such indemnification shall survive the expiration, cancellation or termination of this Lease. Lessee waives any immunity Lessee may have under any industrial insurance act with regard to indemnification of Lessor. Lessee agrees to give Lessor notice of any claim or liability hereby indemnified against promptly following learning thereof.

Lessee has obtained all permits, licenses and other authorizations pertaining to the Equipment, if any, which are required under federal, state and local laws relating to pollution or protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, hazardous or toxic materials or wastes ("Environmental Laws"). With respect to the Equipment, Lessee is in compliance with all terms and conditions of such required permits, licenses and authorizations and also in full compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables contained in the Environmental Laws or contained in any plan, order, decree, judgment or notice. Lessee is further not aware of, nor has Lessee received, any notice of any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance or which may give rise to any liability under any Environmental Laws with respect to the Equipment

17. ASSIGNMENT BY LESSOR. Any assignee of Lessor shall have all of the rights but none of the obligations of Lessor under this Lease. Lessee shall recognize and hereby consents to any assignment of this Lease by Lessor, and Lessee shall not assert against the assignee any defense, counterclaim or set-off that Lessee may have against Lessor. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, devisees, personal representatives, survivors, successors in interest and assigns of the parties hereto.

18. SERVICE CHARGES; INTEREST. If Lessee shall fail to make any payment required by this Lease within 10 days of the due date thereof, Lessee shall pay to Lessor a service charge of 8% of the amount due, provided, however, that not more than one such service charge shall be made on any delinquent payment regardless of the length of the delinquency. In addition to the foregoing service charge, Lessee shall pay to Lessor a \$100 default fee with respect to any payment which becomes thirty (30) days past due. In addition, Lessee shall pay to Lessor any actual additional expenses incurred by Lessor in collection efforts, including but not limited to long-distance telephone charges and travel expenses. Further, Lessee shall pay to Lessor interest on any delinquent payment or amount due under this Lease from the due date thereof until paid, at 18% per annum; provided, however, in no event shall the interest and other charges hereunder exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that Lessor has received interest and other charges hereunder in excess of the highest rate applicable hereto, such excess shall be deemed received on account of, and shall automatically be applied to reduce, the amounts due hereunder, other than interest, in the inverse order of maturity, and the provisions hereof shall be deemed amended to provide for the highest permissible rate. If there are no amounts outstanding under this Lease, Lessor shall refund to Lessee such excess.

19. TIME OF ESSENCE. Time is of the essence of this Lease, and this provision shall not be impliedly waived by the acceptance on occasion of late or defective performance.

20. DEFAULT. Lessee shall be in default of this Lease if:

- (a) Lessee shall fail to make any payment due under the terms of this Lease for a period of 10 days from the due date thereof; or
- (b) Lessee shall fail to observe, keep or perform any other provision of this Lease, and such failure shall continue for a period of 10 days; or

(c) Lessee has made any misleading or false statement or representation hereunder or under any Schedule, or in connection with, the application for or performance of this Lease; or

(d) The Equipment or any part thereof shall be subject to any lien, levy, seizure, assignment, transfer, bulk transfer, encumbrance, application, attachment, execution, sublease, or sale without prior written consent of Lessor, or if Lessee shall abandon the Equipment or permit any other entity or person to use the Equipment without prior written consent of Lessor; or

(e) Lessee dies or ceases to exist or ceases business activities; or

(f) Lessee defaults on any other agreement it has with Lessor; or

(g) Lessee or any guarantor of this Lease defaults on any obligation to Lessor, or any of the above-listed events of default occur with respect to Lessee or any guarantor, or Lessee or any such guarantor files or has filed against it a petition under the bankruptcy laws; or

(h) Lessee undergoes a sale, buyout, change of control, or change in ownership of any type, form or manner which, as judged solely by Lessor, results in deterioration in Lessee's credit worthiness.

21. REMEDIES. If Lessee is in default, Lessor, with or without notice to Lessee, shall have the right to exercise any one or more of the following remedies, concurrently or separately and without any election of remedies being deemed to have been made:

(a) Lessor may enter upon Lessee's premises and without any court order or other process of law may repossess and remove the Equipment, or render the Equipment unusable without removal, either with or without notice to Lessee. Lessee hereby waives any trespass or right of action for damages by reason of such entry, removal or disabling. Any such repossession shall not constitute a termination of this Lease;

(b) Lessor may require Lessee, at its expense, to return the Equipment in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to such place or carrier as Lessor may specify;

(c) Lessor may cancel or terminate this Lease and may retain any and all prior payments paid by Lessee;

(d) Lessor may declare all sums due and to become due under this Lease immediately due and payable, including as to any or all items of Equipment, without notice or demand to Lessee;

(e) Lessor may re-lease the Equipment to any third party, without notice to Lessee, upon such terms and conditions as Lessor alone shall determine, or may sell the Equipment without warranties and without notice to Lessee, at private or public sale as Lessor shall determine, at which sale Lessor may be the purchaser. In the event that Lessor shall sell the Equipment pursuant to the foregoing, Lessor may specifically disclaim any warranties of title or the like;

(f) Lessor may sue for and recover from Lessee the sum of all unpaid rents and other payments due under this Lease then accrued, plus all accelerated future payments due under this Lease, reduced to their present value using a discount rate of 4%, as of the date of default, plus Lessor's estimate at the time this Lease was entered into of Lessor's residual interest in the Equipment, reduced to present value at a discount rate of 4%, as of the date of default, less the net proceeds of disposition, if any, of the Equipment;

(g) To pursue any other remedy available at law, by statute or in equity.

No right or remedy conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, or by law or by equity provided or permitted, but each shall be cumulative of every other right or remedy given herein or now or hereafter existing by law or equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time. No single or partial exercise by Lessor of any right or remedy hereunder shall preclude any other or further exercise of any other right or remedy.

22. MULTIPLE LESSEES. Lessee and each of them are jointly and severally responsible and liable to Lessor under this Lease. Lessor may, with the consent of any one of the Lessees hereunder, modify, extend or change any of the terms hereof without consent or knowledge of the others, without in any way releasing, waiving or impairing any right granted to Lessor against the others.

23. EXPENSE OF ENFORCEMENT. In the event of any legal action with respect to this Lease, the prevailing party in any such action shall be entitled to reasonable attorney fees, including attorney fees incurred at the trial level, including action in bankruptcy court, on appeal or review, or incurred without action, suits or proceedings, together with all costs and expenses incurred in pursuit thereof.

24. LESSEE'S WARRANTIES AND MISCELLANEOUS. Lessee certifies and warrants that the financial data and other information which Lessee submits to Lessor in connection with this lease is, or will be, as appropriate, a true and complete statement of the matters therein contained. Lessee further certifies and warrants that (a) this lease has been duly authorized, executed and delivered by Lessee and constitutes the legal, valid and binding obligation, contract and agreement of Lessee enforceable against Lessee in accordance with its respective terms except as enforcement may be affected by bankruptcy and similar laws affecting creditors' rights generally and (b) this lease and each and every showing provided by or on behalf of Lessee in connection herewith may be relied upon by Lessor in accordance with the terms thereof notwithstanding the failure of

STATUTORY CLAIMS. LESSEE AND LESSOR REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS LEASE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Lessee initials: MDM

LESSEE: Wheeling & Lake Erie Railway Company

LESSOR: JULES AND ASSOCIATES, INC.

By MDM Date: 4/23/04
Michael D. Mokodean, Vice President/CFO

By SCM Date: 5/25/04
Name: SCOTT C. MONROE
Title: VICE PRESIDENT

STATE OF OHIO)
) ss
County of Stark)

I, Michael D. Mokodean, being first duly sworn, depose and say:
That I am the Vice President / CFO of Wheeling & Lake Erie Railway Company
and hereby sign my name to the above. I Sheryl Durant hereby state that
Michael D. Mokodean signed the above.

Wheeling & Lake Erie Railway Company

Subscribed and sworn to before me on May 3, 2004.

Sheryl L. Durant
Notary Public for the State of Ohio
My commission expires August 30, 2004

I SCM certify this
to be a true and exact copy of the
original document.

Name: Scott C. Monroe

Title: Vice President

COPY

EXHIBIT "A"
JULES AND ASSOCIATES, INC.
LEASE NO: A02202004 SCHEDULE NO. 1

QUANTITY EQUIPMENT DESCRIPTION:

EQUIPMENT LOCATION: 100 FIRST STREET SE, BREWSTER, OH 44613

VENDOR: DONAHUE RAILROAD EQUIPMENT INC.

⁵² OPEN TOP HOPPER CARS (YEAR BUILT: 1977)
_{50 NDM}

WE	19480	WE	19517	WE	19586
WE	19483	WE	19519	WE	19590
WE	19489	WE	19520	WE	19597
WE	19492	WE	19528	WE	19599
WE	19495	WE	19536	WE	19601
WE	19502	WE	19538	WE	19604
WE	19504	WE	19539	WE	19608
WE	19505	WE	19541	WE	19609
WE	19506	WE	19546	WE	19614
WE	19508	WE	19547	WE	19617
WE	19510	WE	19550	WE	19618
WE	19515	WE	19551	WE	19619
WE	19516	WE	19561	WE	19622
		WE	19563	WE	19627
		WE	19572	WE	19630
		WE	19574	WE	19635
		WE	19575	WE	19636
		WE	19579	WE	19640
		WE	19584		

Along with all additions, substitutions, attachments, replacements, and accessions thereof, plus the proceeds of all the foregoing including amounts payable under any insurance policy.

This Exhibit "A" is attached to and a part of Jules and Associates, Inc. Lease No. A02202004, Schedule No. 1 and constitutes a true and accurate description of the equipment.

LESSEE: Wheeling & Lake Erie Railway Company

ACKNOWLEDGED & ACCEPTED BY:

BY: 
MICHAEL D. MOKODEAN

TITLE: VICE PRESIDENT/CFO

COPY