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LEASE OF RAILROAD EQUIPMENT
INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT OF LEASE, made as of June 1, 1960, from WHEELING CAR LEASING COMPANY, an Ohio corporation having an office at Terminal Tower, Cleveland 1, Ohio (hereinafter called the "Lessor"), to THE WHEELING AND LAKE ERIE RAILWAY COMPANY, an Ohio corporation having an office at Terminal Tower, Cleveland 1, Ohio (hereinafter called "Wheeling").

WITNESSETH:

WHEREAS, the Lessor is the conditional purchaser of the 2,000 70-ton hopper cars (hereinafter called the "Equipment") referred to in the Conditional Sale Agreement dated as of June 1, 1960, among G. H. Atkinson and E. F. Lorman (hereinafter called the "Sellers"), the Lessor and The New York, Chicago and St. Louis Railroad Company, a consolidated railroad corporation organized and existing under the laws of the several States of New York, Pennsylvania, Ohio, Indiana and Illinois (hereinafter called the "Railroad"), a copy of which Conditional Sale Agreement is made a part hereof by reference; and

WHEREAS, the Sellers have duly assigned certain of their rights under the Conditional Sale Agreement to The Central National Bank of Cleveland, as agent (hereinafter called the "Owner"), pursuant to the Assignment dated as of June 1, 1960, between the Sellers and the Owner, a copy of which Assignment is affixed to said Conditional Sale Agreement and is made a part hereof by reference; and

WHEREAS, as permitted by the Conditional Sale Agreement, the parties hereto desire that, upon acceptance from time to time by the Lessor's inspector under the Conditional Sale Agreement of units of the Equipment, such units shall thereupon be placed under this Lease; and

WHEREAS, Wheeling, as a lessor, and the Railroad, as a lessee, have heretofore entered into an Indenture of Lease, effective as of December 1, 1949 (hereinafter, together with any and all amendments thereof and supplements thereto, heretofore or hereafter entered into, called the "Nickel Plate Lease"), a copy of which is made a part hereof by reference; and

WHEREAS, the Railroad, pursuant to the Nickel Plate Lease, will acquire an interest in the Equipment and will enjoy and exercise certain rights of, and will perform certain obligations on behalf of, Wheeling in connection with the Equipment;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

(1) The Lessor hereby leases to Wheeling and Wheeling hereby hires from the Lessor, subject to all rights of the Owner under the Conditional Sale Agreement and Assignment, the Equipment for a term commencing from and after the respective dates of Acceptance of units of the Equipment by the Lessor's inspector under the Conditional Sale Agreement, to and including June 1, 1970, subject to the provisions of Section (5) hereof, at the rental, and upon the terms and conditions herein contained.



(2) The Lessor will deliver the Equipment to the Railroad, acting therein for Wheeling, on the tracks of the Railroad at Brewster, Ohio and/or Ironville, Ohio, as rapidly as practicable in accordance with the provisions of Section 2 of the Conditional Sale Agreement. Acceptance by the Lessor's inspector of units of the Equipment in the manner provided under Section 2 of the Conditional Sale Agreement and delivery by the Lessor to Wheeling or the Railroad of a copy of the Certificate of Acceptance covering such units, shall thereupon constitute acceptance by Wheeling of such units under this Lease.

(3) As rental for the use of the Equipment or any portion thereof Wheeling shall pay to or for and upon the instructions of the Lessor all payments which the Lessor shall be required to pay to or for the account of the Sellers pursuant to the Conditional Sale Agreement, except the payment under sub-paragraph (a) of Section 3 of said Conditional Sale Agreement.

(4) Wheeling shall also pay to the proper Governmental authority any and all taxes, assessments, or Governmental charges that may be imposed upon or in respect of the Equipment by reason of or in connection with the possession or use thereof under this Lease by Wheeling or the Railroad. It is understood, however, that Wheeling shall not be required to pay or discharge any such amount so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Owner of the Lessor in and to the Equipment.

(5) After all payments due or to become due hereunder from Wheeling to the Lessor and others, such payments shall be applied and treated as the full purchase price of the Equipment, title to which shall thereupon be duly conveyed by the Lessor to Wheeling. It is expressly agreed that until such termination of this Lease and such payment, neither Wheeling nor the Railroad, by virtue of this Lease or the Nickel Plate Lease or the possession and use of the Equipment hereunder, shall acquire any title to or ownership of the Equipment, but such title and ownership shall remain solely in the Owner.

(6) Wheeling will, during the term of this Lease, keep and maintain plainly and permanently on each side of each unit of Equipment, in letters not less than one-half inch in height, markings reading:

"The Central National Bank of Cleveland, Owner",

and will replace immediately any such markings that may become defaced or illegible, wholly or in part. Such markings will be applied initially by the Railroad prior to delivery of the Equipment to or for the account of Wheeling under this Lease. For convenience of identification of the leasehold interest hereunder of Wheeling and/or of the rights of the Railroad under the Nickel Plate Lease in the Equipment, the Equipment may be lettered "NYC & St L" or "W & LE" or in some other appropriate manner.

(7) During the term of this Lease, so long as Wheeling shall not be in default hereunder, Wheeling and/or the Railroad shall be entitled to possession of the Equipment and the use thereof on its or their own lines of railroad, upon the lines of railroad owned or operated by them or either of them or over which they or either of them have trackage rights, and upon the lines of other railroads in the usual interchange of traffic, and may receive compensation for any such use from railroads so using any of the Equipment.

(8) During the term of this Lease, Wheeling, or the Railroad on behalf of Wheeling, will at its own expense (a) comply with all valid laws and regulations of any State or Governmental authority respecting the manner of using or operating the Equipment, (b) maintain and keep the Equipment in good order and repair at all times, and (c) keep the Equipment free from any liens or encumbrances that might affect the Owner's title. Any and all replacements of any parts of any units of the Equipment and all additions and betterments thereto shall constitute accessions to the Equipment and shall be and remain the property of the Owner, and be subject to all the terms and conditions of this Lease.

(9) During the term of this Lease the possession, use, operation, and maintenance of the Equipment shall be at the sole risk and expense of Wheeling and Wheeling shall assume and be solely responsible for, and shall indemnify and save harmless the Owner and the Lessor from and against (a) any and all loss or damage, usual wear and tear excepted, of or to the Equipment, and (b) any and all claims, demands, suits, judgments, or causes of action for or on account of injury to or death of persons, or loss of or damage to property, which may result from or grow in any manner out of the presence, use, or operation of the Equipment while in the possession of Wheeling or the Railroad or others. In the event that any unit of Equipment shall be worn out, lost, destroyed, or irreparably damaged from any cause whatsoever prior to termination of this Lease thereon, Wheeling shall promptly and fully inform the Owner and the Lessor in regard thereto.

(10) Wheeling shall not assign or transfer this Lease, or any of its rights or obligations hereunder, or transfer or sublet any of the Equipment, without the written consent of the Owner and the Lessor first had and obtained, provided, however, that nothing herein contained shall be deemed to prevent Wheeling from assigning, transferring and conveying its rights in this Lease and the Equipment to the Trustee under its General and Refunding Mortgage dated as of September 1, 1945, as supplemented, or from complying with its obligations under the Nickel Plate Lease to the extent that such obligations are not inconsistent with the Conditional Sale Agreement and the Assignment.

(11) Wheeling covenants that in case at any time during the term of this Lease it shall fail or refuse to comply with any of its covenants or agreements herein contained, and shall continue in such failure or refusal for a period of thirty (30) days after written notice, specifying such failure, shall be given to it by the Owner or the Lessor, then the Owner, or the Lessor with the consent of the Owner, shall have the right, at its election, by notice in writing given to Wheeling to terminate this Lease, and all of the rights of Wheeling in respect of the Equipment shall forthwith cease; and the Owner, or the Lessor with the consent of the Owner, shall be entitled without further demand or formality forthwith to take possession of the Equipment without prejudice to any rights or remedies the Owner or the Lessor may have for recovery of rental or breach of covenant or otherwise; or the Owner, or the Lessor with the consent of the Owner, may lease the Equipment to others on such terms and conditions and for such amount as shall seem best to it for the remainder of the term or any part thereof for the account of Wheeling, which shall make good any deficiency. Any waiver by the Owner or the Lessor of one or more defaults on the part of Wheeling shall not in any way impair the right of either the Owner or the Lessor to take advantage of any other default or defaults of Wheeling.

(12) Wheeling shall, at its expense, upon execution and delivery of this Lease, cause this Lease to be duly filed and recorded with the Interstate

Commerce Commission and in such other public offices, if any, as the Owner or the Lessor may reasonably request, for the full protection of the Owner's title to the Equipment and/or the rights of the Lessor. Wheeling will promptly deliver to the Owner and to the Lessor an opinion of Wheeling's counsel to the effect that (a) this Lease has been duly filed and recorded in compliance with the provisions of this Section and (b) this Lease has been duly and validly authorized and executed by Wheeling and is a valid and binding agreement of Wheeling in accordance with its terms.

(13) Wheeling covenants that it will from time to time upon the request of the Owner or the Lessor execute and deliver such instruments, make such reports, give such information and do or cause to be done, any and all such further acts and things as may be necessary or proper to carry out and make effective the purposes of this Lease.

(14) This Lease may be simultaneously executed in several counterparts, each of which, so executed, shall be deemed to be an original, and such counterparts together will constitute but one and the same Lease, which will be sufficiently evidenced by any such original counterpart.

(15) This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the date first above written, at Cleveland, Ohio.

(Corporate Seal)

WHEELING CAR LEASING COMPANY

By

M. Dillen
President

Attest:

E. W. Teeters
Secretary

(Corporate Seal)

THE WHEELING AND LAKE ERIE
RAILWAY COMPANY

By

George S. ...
President

Attest:

M. ...
ASSISTANT Secretary

STATE OF OHIO)
COUNTY OF CUYAHOGA) ss.:

On this 25th day of May, 1960, before me personally appeared J. N. Dillen, to me personally known, who being by me duly sworn, says that he is ~~*~~ President of WHEELING CAR LEASING COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

W. J. Bettcher
W. J. Bettcher, Notary Public

My Commission expires Feb. 22, 1961

STATE OF OHIO)
COUNTY OF CUYAHOGA) ss.:

On this 18th day of May, 1960, before me personally appeared George Durham, to me personally known, who being by me duly sworn, says that he is President of THE WHEELING AND LAKE ERIE RAILWAY COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

W. J. Bettcher
W. J. Bettcher, Notary Public

My Commission expires Feb. 22, 1961