

LAW OFFICES

No. 8-299A100 CONNER, MOORE & CORBER

Date OCT 26 1979

Fee \$ 60.00

1747 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006

10954
RECORDATION NO. Filed 1425

OCT 26 1979 - 3 00 PM

ICC Washington, D. C.

October 26, 1979

INTERSTATE COMMERCE COMMISSION
(202) 833-3500

ROBERT J. CORBER

CABLE ADDRESS: ATOMLAW

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Office of the Secretary - Room 2209
Washington, D. C. 20423

10954 A
RECORDATION NO. Filed 1425

OCT 26 1979 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to former section 20c of the Interstate Commerce Act, 49 USC §11303, are two documents relating to the railroad equipment described and marked in accordance with the attached Schedule A.

1. Lease Agreement dated as of October 15, 1979 between the Connecticut Bank and Trust Company and First Security State Bank.
2. Sublease Assignment and Agreement dated as of October 15, 1979 between First Security State Bank and Connecticut Bank and Trust Company.

The names and addresses of parties to the transactions evidenced by the foregoing documents are as follows:

1. Lease Agreement:

- a. Lessor: Connecticut Bank and Trust Company
One Constitution Plaza
Hartford, Connecticut 06115
- b. Lessee: First Security State Bank
c/o Brae Railcar Management, Inc.
Three Embarcadero Center
San Francisco, CA 94111

2. Sublease Assignment and Agreement

- a. Trustee: First Security State Bank
c/o Brae Railcar Management, Inc.
Three Embarcadero Center
San Francisco, California 94111
- b. Assignee: Brae Corporation
Three Embarcadero Center
San Francisco, California 94111

Constitution Bank - Donald / Barkeley /
First Security State Bank - [Signature]

October 26, 1979

c. Lessee: Mississippi and Skuna Valley Rail-
Road Company
Bruce, Mississippi 38915

It is requested that these documents be assigned the same recordation number with a letter designation combined with the recordation number for the Sublease Assignment and Agreement. It is further requested that the documents be indexed in accordance with the names of the parties to the transactions stated above. Enclosed is a check payable to the ICC in the amount of \$60, the prescribed fee for filing and recordation of the documents. Please return to the person presenting this letter your letter confirming such filing and recordation, the fee receipt thereof and all copies of the document not required for filing.

Yours very truly,



Robert J. Corber

mbm

Enclosures

SCHEDULE A

Equipment Description

<u>Lessee/User</u>	<u>Car Number and Description</u>	<u>Quantity</u>
Mississippi and Skuna Valley Railroad	7000 cubic foot chip cars MSV1440-66	27

Interstate Commerce Commission
Washington, D.C. 20423

10/26/79

OFFICE OF THE SECRETARY

**Robert J. Corber, Atty.
Conner, Moore & Corber
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006**

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 10/26/79 at 3:00pm, and assigned re-
recording number(s). 10954 & 10954-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

LEASE AGREEMENT

OCT 26 1979 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT, dated as of October 15, 1979 (the "Agreement") between THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Owner-Trustee under the Series ^{page} 21 Trust established pursuant to the Master Trust Agreement dated as of February 2, 1976, as supplemented, with NB 5 Leasing Company, as Trustor, as Lessor ("Lessor") and FIRST SECURITY STATE BANK, not in its individual capacity but solely as Lease-Trustee under a Trust Agreement dated as of October 15, 1979 with RAIL FINANCE CORPORATION and CFS RAILCAR, INC., as Lessee ("Lessee").

1. Lease of Railcars

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, railroad equipment of the types and description set forth in the equipment schedule ("Schedule") executed by Lessor and Lessee concurrently herewith and attached hereto as Exhibit "A". Upon execution, the Schedule shall be incorporated herein and made a part of this Agreement. The items of equipment listed on any Schedule are hereinafter referred to as "Cars".

2. Term

The term of lease with respect to each Car shall commence upon the Acceptance Date (as defined in Section 3B) with respect to such Car and continue (1) for a period of fifteen (15) years from January 15, 1980, or (2) until the parties execute a subsequent lease under the terms of which the Cars will be included, or (3) until the Lessee exercises its purchase option and pays the purchase price therefor pursuant to Section 16 hereof.

Upon expiration or termination of this Lease, except for termination pursuant to Section 16 hereof, the Lessee, at its own expense, will return the Cars to the Lessor at the location designated by Lessor upon the railroad lines of the Lessee or such sublessee as shall be using the Cars at such time.

3. Delivery and Acceptance

A. Prior to the delivery and acceptance of the first Car listed on any Schedule, Lessee shall confirm in writing to Lessor that a sample Car made available for Lessee's inspection conforms to specifications acceptable to Lessee.

B. Lessee, as agent for Lessor, shall inspect each Car delivered to Lessee by the manufacturer and if such Car is new and unused and is in satisfactory physical condition and conforms to the above-mentioned specifications, Lessee shall accept such Cars on behalf of the Lessor; the date of such

acceptance shall be the Acceptance Date for such Car(s). Upon acceptance of any Cars hereunder, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in the form attached hereto as Exhibit "B". Upon acceptance hereunder, each Car shall become subject to the terms and conditions of this Agreement.

4. Markings

Lessee shall cause each Car to be marked clearly and conspicuously to show the interests of Lessor, any secured party or any assignee of either thereof in such Car. Any such secured party or assignee may from time to time, at its cost, require new or changed markings to be placed on the Cars disclosing its interest in the Cars.

5. Rent

Lessee agrees to pay rent for the Cars as follows:

(a) The interim rent for each Car shall be an amount equal to .0292% per day of the invoice purchase price of such Car. Interim monthly rent shall commence with respect to each Car from the date on which payment for the Cars is made to the Manufacturer thereof, and shall continue to be paid to and including January 15, 1980. Interim rent shall be paid on January 15, 1980.

(b) As of January 15, 1980, the monthly rental for the Cars shall be an amount equal to 2.18204% of the total invoice purchase price of Cars; such increased rental shall become the fixed rent and shall be paid monthly in advance commencing January 15, 1980 and continuing until the expiration date or other termination of this Agreement pursuant to the terms hereof.

(c) Lessor and Lessee acknowledge and agree that this Lease constitutes a net Lease and that Lessee's obligation to pay all rent and any and all amounts payable by Lessee hereunder shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever, and that such payments shall be and continue to be payable in all events. Lessee agrees to pay, to the extent permitted by applicable law, interest at the rate of 14% per annum on any payment not paid when due hereunder for any period for which the same shall be overdue.

6. Maintenance

A. Lessee will preserve the Cars in good condition and will not alter the physical structure of any Car without the prior written consent of Lessor; provided however, that nothing set

forth herein shall prohibit Lessee from complying with rules of the American Association of Railroads. Any such addition or alteration shall become the property of the Lessor.

B. Lessee agrees at its expense to maintain the Cars in good condition and repair in accordance with the Code of Rules and the rules and regulations of the Federal Railway Administration. All manufacturer's warranties with respect to the Cars shall inure to the benefit of Lessor.

C. In the case of damage caused to the Cars which is the responsibility of a railroad under the Code of Rules, Lessee shall perform the necessary repairs and shall prepare and submit such documents and take such other actions as are necessary to recover the cost of such repairs in accordance with the Code of Rules. Lessee shall be entitled to any costs so recovered.

7. Destruction of Cars

Until the Cars are returned to Lessor as provided herein, Lessee relieves Lessor of responsibility for all risks of physical damage to or loss or destruction of the Cars, howsoever caused.

If any Car is rendered unusable as a result of any physical damage to, or destruction of, such Car, Lessee shall give to Lessor immediate notice thereof and this Lease shall continue in full force and effect without any abatement of rental. Lessee shall determine, within fifteen (15) days after the date of occurrence of such damage or destruction, whether such Car can be repaired. In the event Lessee determines that such Car can be repaired, Lessee, at its expense, shall cause such Car to be promptly repaired. In the event Lessee determines that the Car is lost or cannot be repaired, Lessee shall promptly notify the Lessor and such Car shall be deemed to have suffered a "Loss" for purposes of this paragraph. Within 10 days the Lessor shall notify the Lessee of the amount of the Casualty Value payable to the Lessor on the next monthly rent date. Any installment of monthly rent with respect to such Car due on such monthly rent payment date shall remain due and payable. After the payment of such Casualty Value and all monthly rent due and owing with respect to such Car, the Lessee's obligation to pay further monthly rent for such Car shall cease. As used herein, "Casualty Value" with respect to a Car which has suffered a Loss shall mean, on the date that the Casualty Value is payable pursuant to this paragraph, an amount equal to the outstanding balance of the Initial Casualty Value (indicated below) on such date resulting from the Initial Casualty Value being periodically, on each monthly rent payment date, (a) increased by interest accruals (commencing with January 15, 1980) at the Interest Rate indicated below and (b) then reduced by the receipt of the monthly rent with respect to such Car. Lessor agrees to provide to Lessee a schedule, at Lessee's request, of such Casualty Values.

Initial Casualty Value: 105% of invoice purchase price of Car Suffering a Loss.

Interest Rate: 12% per Annum.

8. Indemnities

The Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Lessor (in both its individual and fiduciary capacities) from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (Claims) which may be imposed on, incurred or asserted against the Lessor, whether or not the Lessor shall also be indemnified as to any such Claim by any other person, in any way relating to or arising out of this Lease or any document contemplated hereby, or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or disposition of any Car or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); provided however, that the Lessee shall not be required to indemnify the Lessor for (1) any Claim in respect of any Car arising from acts or events which occur after possession of such Car has been delivered to the Lessor, or (2) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of the Lessor. The Lessee agrees that the Lessor shall not be liable to the Lessee for any Claim caused directly or indirectly by the inadequacy of any Item of Equipment for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business, all of which shall be the risk and responsibility of the Lessee.

9. Insurance

A. Lessee shall maintain (or cause to be maintained) during the term of this Agreement policies of property damage and public liability insurance (or programs of self insurance) on the Cars in such form and amount and covering such risks and with such carriers as are standard in the industry.

B. Lessee covenants that it will not take or fail to take any act or voluntarily permit any act to be taken or fail to be taken whereby any insurance on the Cars shall or may be suspended, impaired or defeated.

10. Disclaimer of Warranties by Lessor

LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CARS. LESSOR SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS ARISING IN STRICT LIABILITY.

11. Taxes

A. Lessee shall be responsible for and shall pay all sales, ad valorem and property taxes levied upon the Cars and file any required tax reports relating thereto.

B. Lessor shall not be responsible for the payment of any tax, tariff, duty, customs, switching, demurrage or other charge made by any governmental agency, railroad or other person in respect of any Car, or upon the sale, purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition of the Cars or upon the earnings therefrom excluding taxes based on net income of the Lessor. Lessee agrees to pay or reimburse Lessor promptly for any such tax, tariff, demurrage or other charges.

12. Assignment; Subordination; Title

A. Upon receipt of Lessee's written consent which consent shall not be unreasonably withheld, Lessor's rights hereunder may be assigned, mortgaged or otherwise transferred, either in whole or in part, and Lessor may assign, mortgage or otherwise transfer title to any Car.

B. In the event of any such assignment, mortgage or transfer, Lessee agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's interest in and to the Cars and this Agreement.

C. Lessee acknowledges and agrees that by execution of this Agreement it does not obtain, and by payment and performance hereunder it will not obtain, title to any Car or any interest therein, except solely as lessee hereunder. Lessee shall keep the Cars free from all encumbrances, liens and security interests of all kinds (other than those granted by Lessor), which could adversely affect Lessor's title thereto.

13. Sublease

Lessee shall be entitled to sublease the Cars to the Weyerhaeuser Company or any subsidiaries thereof. Lessee shall be entitled to retain all amounts received from such sublessee(s) or other railroads for the use of the Cars. Lessee agrees that any subleases shall be subordinate to this Agreement and that no sublease shall relieve Lessee from its obligations hereunder.

14. Compliance with Regulations

Lessee shall, at its own expense, comply with or cause any sublessee(s) to comply with all governmental laws, regulations and requirements, with the Code of Rules and with the rules and regulations of the Federal Railway Administration with respect to the use, maintenance, and operation of the Cars. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for use of the Cars and shall bear all risk of failure to obtain such permission, approval and consent, or of cancellation thereof. Lessor, at Lessee's expense, shall take all actions reasonably requested by Lessee in order to assist Lessee in obtaining such permissions, approvals or consents.

15. Events of Default

A. The occurrence of any of the following shall constitute an Event of Default:

(i) the failure by Lessee to make any payment of fixed or additional rent or other amount required to be paid by Lessee under this Agreement within ten days after the date such payment is due;

(ii) any breach by Lessee of any agreement or covenant contained in this Agreement, which is not cured within 30 days after notice thereof from Lessor to Lessee;

(iii) any act of insolvency or bankruptcy by the Lessee or the filing by the Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, relating to, debtors;

(iv) the filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against the Lessee that is not dismissed within 45 days thereafter, or the appointment or any receiver or trustee to take possession of the properties of the Lessee unless such petition or appointment is set aside or withdrawn or ceases to be in effect within 45 days from the date of such filing or appointment.

B. Upon the occurrence of any Event of Default, Lessor may, at its option:

(i) proceed by appropriate court action or actions either at law or in equity to enforce specific performance by Lessee of this Agreement and/or to recover damages for breach hereof; or

(ii) terminate this Agreement whereupon all rights of Lessee to the use of the Cars shall absolutely cease and terminate as though this Agreement had never been made, and all fixed rent not therefore due and payable with respect to the Cars shall forthwith become due and payable.

Lessee shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Car.

16. Purchase Option

At any time after December 31, 1979, upon delivery of 8 days written notice to Lessor and if this Agreement is still in force and effect, Lessee shall have the option to purchase all but not less than all of the Cars from Lessor. The purchase price to be paid Lessor for the Cars shall be 100% of the total invoice purchase price of the Cars or the fair market value thereof, whichever amount is greater. Upon the exercise of such option and the payment of the purchase price hereunder, this Agreement shall automatically terminate.

Upon receipt of the purchase price of the Cars, Lessor shall execute and deliver to Lessee a bill of sale conveying title to Lessee free and clear of any liens or encumbrances which may have been created or granted by the Lessor and agreeing to defend such title, if necessary. Otherwise, such sale shall be on an as-is, where-is basis without warranty of merchantability or fitness for any specific purpose.

17. Investment Tax Credit and Accelerated Depreciation

Lessor agrees to execute such documents or instruments as are necessary to allow the Lessee to utilize the investment tax credit afforded with respect to the Cars pursuant to Sections 38 and 46 through 50 of the Internal Revenue Code of 1954, as amended (the "Code"). Lessor agrees that it will not take any action or fail to take any action which would cause or result in the loss by the Lessee of the benefits of all or any portion of such tax credit.

Lessee acknowledges that this Lease with respect to the Cars has been entered into on the basis that Lessor shall be entitled to such deductions and other benefits as are provided to an owner of new and unused property under the Code. Except as contemplated by the terms hereof, if, as a result of an act, omission, or misrepresentation of Lessee, Lessor shall lose, shall not have the right to claim, or shall have disallowed or recaptured with respect to Lessor, all or any portion of such benefits, Lessee will indemnify Lessor so as to compensate Lessor in Lessor's reasonable judgment, for such loss.

18. Miscellaneous

A. Each party agrees to execute the documents contemplated by this Agreement and such other documents as may reasonably be required in furtherance of this Agreement.

B. This Agreement shall be governed by and construed according to the laws of the State of New York.

C. All notices hereunder shall be in writing and shall be deemed given when delivered personally or 72 hours after it has been deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the following address: if to Lessee: FIRST SECURITY STATE BANK, c/o Brae Railcar Management, Inc., Three Embarcadero Center, San Francisco, California 94111 Attention: Director of Full Service Leasing; or if to Lessor: The Connecticut Bank and Trust Company, One Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department.

D. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

E. First Security State Bank and The Connecticut Bank and Trust Company are each entering into this Agreement solely as trustees, respectively, under the trust agreements set forth in the first paragraph hereof and not in their individual capacities and in no case whatsoever shall First Security State Bank or The Connecticut Bank and Trust Company be personally liable for, or for any loss in respect of, any of the statements, warranties, representations, agreements or obligations of the Lessee or Lessor, respectively, hereunder except for losses resulting from its own respective wilful misconduct or gross negligence.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:

LESSEE:

pk
THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Owner-Trustee under the Series 11 Trust established pursuant to the Master Trust Agreement dated as of February 2, 1976, as supplemented, with NB5 Leasing Company, as Trustor.

FIRST SECURITY STATE BANK, not in its individual capacity but solely as Lease-Trustee under a Trust Agreement dated as of October 15, 1979 with RAIL FINANCE CORPORATION and CFS RAILCAR, INC., as Lessee.

By [Signature]
Title ASSISTANT VICE PRESIDENT
Date October 25, 1979

By [Signature]
Title ROBERT S. CLARK Trust Officer
Date 23 Oct 79

(SEAL)
ATTEST: [Signature]
Authorized Officer

(SEAL)
ATTEST: [Signature]
Authorized Officer

STATE OF UTAH
COUNTY OF SALT LAKE

)
) :ss:
)

On this 23 day of October, 1979, before me personally appeared Barrett A. Clark, to me personally known, who being by me duly sworn, says that he is a Trust Officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the seal of said Bank and that said instrument was signed and sealed on behalf of said Bank 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 Bank.

Arthur D. Eubank
NOTARY PUBLIC

(NOTARIAL SEAL)

My Commission Expires: November 21, 1979

STATE OF CONNECTICUT
COUNTY OF Hartford

)
) :ss: Hartford October 25, 1979
)

On this 25th day of October, 1979, before me personally appeared DONALD E. SMITH, ASSISTANT VICE PRESIDENT, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said Bank and that said instrument was signed and sealed on behalf of said Bank 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 Bank.

Kathleen O'Sullivan
NOTARY PUBLIC

(NOTARIAL SEAL)

My Commission Expires: March 31, 1983

EXHIBIT "A"

EQUIPMENT SCHEDULE No.

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Owner-Trustee ("Lessor") hereby leases the following Cars to FIRST SECURITY STATE BANK, not in its individual capacity, but solely as Lease-Trustee ("Lessee") on the terms and conditions contained in the Lease Agreement to which this Schedule is attached.

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
	7,000 cubic foot Chip Cars	MSV 1440-66					27

FIRST SECURITY STATE BANK, not in its individual capacity, but solely as Lease-Trustee.

BY: [Signature]

TITLE: Trust Officer ROBERT S. CLARK

DATE: 23 Oct 79

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity, but solely as Owner-Trustee.

BY: [Signature]

TITLE: ASST

DATE: 10/25/79

EXHIBIT "B"

CERTIFICATE OF ACCEPTANCE

Pursuant to the Lease Agreement dated as of October 15, 1979 (the "Lease"), between THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity, but solely as Owner-Trustee (the "Lessor") and the undersigned ("Lessee"), Lessee hereby certifies that the Cars described below have been delivered to the Lessee, have been inspected by authorized representatives of Lessee, have been fully and finally accepted by Lessee under the Lease and have been found to be in good working order.

<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>CAR NUMBERS</u>	<u>AAR MECH. DESIGN</u>
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LESSEE:

FIRST SECURITY STATE BANK,
not in its individual capacity,
but solely as Lease-Trustee.

By _____

Title _____

Date _____