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CC Washington, D

Brae Corporation  
Three Embarcadero Center  
San Francisco, California

RECORDATION NO. 9844 Filed 1425

NOV 20 1978 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9844 Filed 1425

November 16, 1978

NOV 20 1978 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

H. G. Homme, Jr.  
Acting Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECORDATION NO. 9844 - A Filed 1425

NOV 20 1978 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Homme:

Enclosed for filing and recordation pursuant to Section 20c of the Interstate Commerce Act are the following documents relating to the railroad equipment described and marked in accordance with Schedule I attached hereto:

- (1) Loan and Security Agreement dated as of September 12, 1978 among Brae Corporation ("Debtor"), Union Mutual Life Insurance Company and Union-mutual Stock Life Insurance Co. of America ("Lenders"), and Union Mutual Life Insurance Company, as security agent ("Security Agent"); Supplement No. 1 thereto dated as of November 15, 1978.
- (2) Lease Agreement dated as of March 27, 1978 between BRAE Corporation ("Lessor") and Columbia & Cowlitz Railway Company ("Lessee"), including Equipment Schedule No. 1.

The Loan and Security Agreement acts as an assignment of the Lessor's interest in the Lease Agreement to the Security Agent on behalf of and for the benefit of the Lenders. It constitutes such an assignment, however, only to the extent that the Lease Agreement relates to the railroad equipment described in Schedule I hereto. The Lease Agreement also relates to additional railroad equipment not described in Schedule I hereto, and the Lessor's interest in such additional railroad equipment has not been assigned to the Security Agent.

The names and addresses of the parties to the above transactions are as follows:

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I.C.C.  
FEE OPERATION BR.

*Handwritten signature/initials on the left margin.*

(1) Loan and Security Agreement

(a) Security Agent:

Union Mutual Life Insurance  
Company  
2211 Congress Street  
Portland, Maine 04112

(b) Lenders:

Union Mutual Life Insurance  
Company  
2211 Congress Street  
Portland, Maine 04112

Unionmutual Stock Life Insur-  
ance Co. of America  
2211 Congress Street  
Portland, Maine 04112

(c) Debtor:

Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111

(2) Lease Agreement

(a) Lessor:

Brae Corporation  
Three Embarcadero Center  
San Francisco, California 94111

(b) Lessee:

Columbia & Cowlitz Railway Company  
P.O. Box 188  
Longview, Washington 98632

(c) Assignee:

Union Mutual Life Insurance  
Company, as Security Agent  
2211 Congress Street  
Portland, Maine 04112

BRAE Corporation, a California corporation, the corporation which originally executed the Lease Agreement, was on September 27, 1978 merged into its wholly-owned subsidiary, Brae Corporation, a Delaware corporation, formerly known as BraeLease Corporation. Pursuant to such merger, Brae Corporation assumed all of the rights and obligations of BRAE Corporation. Accordingly, Brae Corporation, as the successor to BRAE Corporation, is now party to the Lease Agreement.

9844

RECORDS NO. FILE 1423

NOV 20 1978 11 35 AM

FEDERAL RESERVE COMMISSION

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LOAN AND SECURITY AGREEMENT

among

BRAB CORPORATION

and

UNION MUTUAL LIFE INSURANCE COMPANY

UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA,

as Lenders

and

UNION MUTUAL LIFE INSURANCE COMPANY,

as Security Agent

Dated as of September 12, 1978

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LOAN AND SECURITY AGREEMENT

among

BRAE CORPORATION

and

UNION MUTUAL LIFE INSURANCE COMPANY

UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA,

as Lenders

and

UNION MUTUAL LIFE INSURANCE COMPANY,

as Security Agent

Dated as of September 12, 1978

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DELAWARE

LOAN AND SECURITY AGREEMENT, dated as of September 12, 1978, among BRAE CORPORATION, a ~~California~~ corporation (the "Company"), UNION MUTUAL LIFE INSURANCE COMPANY and UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA, each a Maine corporation (individually a "Lender" and, collectively, the "Lenders"), and UNION MUTUAL LIFE INSURANCE COMPANY, as security agent hereunder (in such capacity, the "Security Agent").

W I T N E S S E T H :

WHEREAS, the Company is in the business of purchasing and leasing railroad box-cars to various railroads; and

WHEREAS, the Company desires to obtain loans from the Lenders in order to finance 75% of the purchase price of 100 box-cars on order from Paccar Inc.; and

WHEREAS, the Company proposes to lease such box-cars to the short-line railroad identified in Schedule I hereto; and

WHEREAS, the Company will evidence its borrowings hereunder by the issuance of promissory notes which, together with the Company's obligations and liabilities under this Agreement, will be secured by a lien on and security interest in such box-cars and the rights of the Company under the lease of such box-cars; and

WHEREAS, each Lender is agreeable to making the loans to be made by it on the terms and conditions of this Agreement;

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

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement the following terms shall have the following meanings:

"Agreement" shall mean this Loan and Security Agreement, including all Schedules and Exhibits and all Supplements hereto, as the same may from time to time be amended, supplemented or otherwise modified.

"Box-cars" shall mean at any time the 100-ton XM box-cars and any other box-cars which are described in the Supplements at such time, together with (i) any and all parts, mechanisms, devices and replacements referred to in Subsection 6.19 hereof from time to time incorporated in or installed on or attached to any of such box-cars, (ii) any and all additions and improvements from time to time incorporated in or installed on or attached to any of such box-cars pursuant to requirement of law or governmental regulation and (iii) any and all Non-Removable Improvements.

"Box-car Cost" shall mean, for each Unit (other than a Replacement Unit), the actual cost thereof to the Company including all delivery charges and inspection fees and all applicable local or state sales taxes, if any, as set forth in the manufacturer's invoice with respect to such Unit; provided, however, that if at any time the aggregate delivery charges and inspection fees with respect to all Units theretofore financed hereunder equals \$60,000, there shall be excluded from the Box-car Cost of each Unit thereafter financed hereunder the delivery charges and inspection fees with respect to such Unit. The "Box-car Cost" of a Replacement Unit shall be the Box-car Cost of the Unit which it replaced.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday under the laws of Maine or California.

"Capitalized Lease" shall mean any lease of real or personal property under which the Company or any Restricted Subsidiary is the lessee which has a term (including renewals at the option of the lessor) of more than three years (excluding leases between the Company and any Restricted Subsidiary or between Restricted Subsidiaries, and leases of office space, automobiles or office equipment).

"Capitalized Lease Obligations" shall mean the aggregate amount of fixed rentals payable or to become payable by the Company and its Restricted Subsidiaries with respect to all Capitalized Leases, discounted to present value on

the basis of an interest factor equal to the weighted average lease cost of all such Capitalized Leases. The "lease cost" of a Capitalized Lease shall mean (i) with respect to a lease of new personal property, that interest factor which, when applied to the aggregate amount of all fixed rentals payable during the original term of such lease, will result in a present value equal to the original invoiced cost of such property to the lessor, including any sales taxes, delivery costs and inspection fees; (ii) with respect to a lease of used personal property, that interest factor which, when applied as in the foregoing clause (i), will result in a present value equal to the fair market value of such property at the time it is leased under such lease; and (iii) with respect to a lease of real property, the effective interest rate at which obligations of the United States Government of equal or near equal maturity to that of such lease are trading at the time such property is leased under such lease.

"Casualty Occurrence" shall mean any of the following events or conditions with respect to any Unit:

(i) such Unit shall become lost for a period of at least 60 consecutive days, or shall become worn out, stolen, destroyed or irreparably damaged from any cause whatsoever; or

(ii) the confiscation, condemnation, seizure or forfeiture of, or other requisition of title to, or use of, such Unit by any governmental authority or any Person acting under color of governmental authority, provided that a requisition of use of such Unit by a governmental authority shall not be deemed a Casualty Occurrence so long as such governmental authority pays to the Company during each quarterly payment period under the Consolidated Notes, for the use of such Unit, an amount at least equal to the

installment of principal and interest payable on such Notes at the end of such quarterly payment period multiplied by a fraction, the numerator of which is the Box-car Cost of such Unit and the denominator of which is the aggregate Box-car Costs of all Box-cars which are then subject to the lien and security interest of this Agreement; or

(iii) such Unit shall become an Unprotected Unit, and the Box-car Cost thereof together with the Box-car Costs of all other Unprotected Units shall exceed an amount equal to 9% of the aggregate Box-car Costs of all Units then subject to the lien and security interest of this Agreement.

"Casualty Value" with respect to any Unit shall mean the amount obtained by multiplying the aggregate unpaid principal amount of the Notes at the time Casualty Value is being determined by a fraction, the numerator of which is the Box-car Cost of such Unit and the denominator of which is the aggregate Box-car Costs of all Box-cars which are then subject to the lien and security interest of this Agreement.

"Casualty Value Determination Date" shall have the meaning set forth in Subsection 6.18 (a) hereof.

"Collateral" shall mean the Box-cars, the Lease, the Deposited Funds and all other property, interests and rights described or referred to in Subsection 5.1 hereof or in any Supplement, or otherwise subjected to the lien and security interest created by this Agreement or intended so to be.

"Consolidated Funded Debt" shall mean the aggregate amount of all Funded Debt of the Company and its Restricted Subsidiaries, after eliminating intercompany items, consolidated in accordance with generally accepted accounting principles.

"Consolidated Net Income" for any period shall mean the algebraic sum of the net income of the Company and its Restricted Subsidiaries for such period, after eliminating all off-setting debits and credits between the Company and its Restricted Subsidiaries, all computed in accordance with generally accepted accounting principles; provided, however, that there shall not be included in Consolidated Net Income (i) the net income of any Person (other than a Restricted Subsidiary) in which the Company or one or more of its Restricted Subsidiaries has an ownership interest except to the extent that such net income has actually been received by the Company or such Restricted Subsidiary in the form of cash dividends or similar cash distributions, and (ii) except to the extent permitted by the foregoing clause (i), the net income of any Person accrued prior to the date on which it is designated as a Restricted Subsidiary or is acquired by, merged into or consolidated with the Company or a Restricted Subsidiary.

"Consolidated Net Tangible Assets" shall mean at any date the aggregate of all assets of the Company and its Restricted Subsidiaries which in accordance with generally accepted accounting principles are classified as assets and would appear on the asset side of a consolidated balance sheet of the Company and its Restricted Subsidiaries as at the date of determination (and including, in any event, any leasehold interests pertaining to Capitalized Leases), after deducting therefrom (without duplication of deductions): (i) all liabilities of the Company and its Restricted Subsidiaries (other than reserves) which in accordance with generally accepted accounting principles are classified as liabilities and would appear on the liability side of such consolidated balance sheet, excluding for this purpose, however, any such liabilities which constitute Funded Debt, capital stock or surplus; (ii) all reserves (other than reserves for deferred income taxes, Maintenance Reserves and contingency reserves not allocated for any particular purpose), including reserves for liabilities (fixed or contingent), bad debts, deferred income and other non-current items, depreciation, amortization, depletion, obsolescence,

insurance and inventory valuation; (iii) minority interests, if any, in any Person; (iv) good will, organizational expenses, trademarks, trade names, copyrights, patents, patent rights, franchises, licenses, permits and other similar intangible assets; (v) the aggregate amount of all Restricted assets; (v) the aggregate amount of all Restricted Investments of the Company and its Restricted Subsidiaries; and (vi) treasury shares, if any, carried as an asset on such consolidated balance sheet.

"Consolidated Notes" shall mean the promissory notes of the Company described in Subsection 2.4 hereof.

"Consolidated Senior Funded Debt" shall mean the aggregate amount of all Senior Funded Debt of the Company and all Funded Debt of its Restricted Subsidiaries, after eliminating inter-company items, consolidated in accordance with generally accepted accounting principles.

"Consolidation Date" shall mean the earlier of (i) December 31, 1978, and (ii) the date on which the Company shall have borrowed the maximum amount which each Lender has committed to loan to it pursuant to Subsection 2.1 hereof.

"Damaged Unit" shall mean any Unit which has suffered a Casualty Occurrence.

"Default" shall mean any of the events specified in Section 8 hereof, whether or not there has been satisfied any requirement in connection with such event for the giving of notice or the lapse of time, or both.

"Deposited Funds" shall have the meaning set forth in Subsection 6.18(c) hereof.

"Event of Default" shall mean any of the events specified in Section 8 hereof, provided that there has been satisfied any requirement in connection with such event for the giving of notice, or the lapse of time, or both.

"Funded Debt" of any corporation shall mean all indebtedness for borrowed money or for the

deferred purchase price of property and all Capitalized Lease Obligations of such corporation which by its terms matures more than one year from the date as of which any calculation of Funded Debt is made (excluding, however, all fixed prepayments, fixed sinking fund payments and other payments required to be made with respect thereto within one year from such date), and any such indebtedness maturing within one year from such date which is renewable or extendible at the option of the obligor to a date beyond one year from such date, including any indebtedness renewable or extendible (whether or not theretofore renewed or extended) under, or payable from the proceeds of the other indebtedness which may be incurred pursuant to the provisions of, any revolving credit agreement or other similar agreement.

"Interim Notes" shall mean the promissory notes of the Company described in Subsection 2.3 hereof.

"Lease" shall mean the lease of Box-cars identified in Schedule I hereto, and each additional lease or substituted lease entered into by the Company pursuant to Subsection 6.24 hereof.

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, security interest, lien or encumbrance, priority or other security agreement or arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any lease having substantially the same economic effect as a conditional sale or other title retention agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"Loan" shall mean each loan made by each Lender under this Agreement.

"Maintenance Reserves" shall mean, at any time, the reserves for the maintenance of railroad rolling stock set aside on the books of the Company and its Restricted Subsidiaries, but

only to the extent that the amount of such reserves does not exceed (i) the product of \$500 times the number of units of railroad rolling stock then owned by the Company and its Restricted Subsidiaries times the aggregate number of years that such units have been so owned, less (ii) the aggregate amount of expenses theretofore incurred by the Company and its Restricted Subsidiaries for the maintenance of such units.

"Minimum Short-Term Debt Period" shall mean whichever period of 30 consecutive days during each 12-month period referred to in Subsection 6.3 hereof had the lowest average amount of outstanding Short-Term Debt of the Company and its Restricted Subsidiaries.

"Non-Removable Improvement" shall mean any addition or improvement incorporated in or installed on or attached to any Box-car which is not readily removable without causing material damage to such Box-car or without diminishing or impairing the utility or condition which such Box-car would have had at the time of removal had such addition or improvement not been made.

"Notes" shall mean, collectively, the Interim Notes and the Consolidated Notes.

"Obligations" shall have the meaning set forth in Section 5 hereof.

"Permitted Liens" shall mean, with respect to any Unit, (i) the rights of the lessee under the Lease of such Unit, (ii) Liens for taxes which are not yet due or the payment of which is not at the time required to be made in accordance with the provisions of Subsection 6.11(a) hereof, and (iii) materialmen's, mechanics', repairmen's and other like Liens arising in the ordinary course of business securing obligations which are not more than 30 days overdue or the payment of which is not at the time required to be made in accordance with the provisions of Subsection 6.11(a) hereof.

"Person" shall mean an individual, partnership, corporation, joint venture, trust, unincorporated organization, or government or any agency or political subdivision thereof.

"Proceeds" shall have the meaning assigned to it under the Uniform Commercial Code of the State of Maine and, in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to the Company from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to the Company from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any of the Collateral by any governmental authority (or any Person acting under color of governmental authority), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Pro Forma Earnings Available for Fixed Charges" shall mean at any date the projected Consolidated Net Income of the Company and its Restricted Subsidiaries during the 12 consecutive calendar months next succeeding the date of determination (based on existing operations plus the reasonably projected net income to be derived from railroad rolling stock being purchased by the Company or a Restricted Subsidiary with the proceeds of Funded Debt issued on such determination date), plus the Pro Forma Fixed Charges and provisions for Federal, state and local income taxes which were deducted in determining such projected Consolidated Net Income. Such projected Consolidated Net Income with respect to railroad rolling stock shall be calculated by using (i) the average car-hire utilization rate of all railroad rolling stock owned by the Company and its Restricted Subsidiaries and the average mileage rate of such railroad rolling stock for which a mileage charge is available under the rules and regulations of the Interstate Commerce Commission, during the period commencing January 1, 1979 to the determination date or during the four fiscal quarters of the Company immediately preceding the determination date, whichever

period is shorter, and (ii) the applicable car-hire charges in effect under the Interstate Commerce Commission's rules and regulations on the determination date.

"Pro Forma Fixed Charges" shall mean at any date the sum of (i) an amount equal to the aggregate fixed rentals payable or to become payable by the Company and its Restricted Subsidiaries with respect to each lease of real or personal property in existence on the date of determination (other than Capitalized Leases and leases between the Company and any Restricted Subsidiary or between Restricted Subsidiaries), divided by the number of years (calculated to the nearest one-twelfth), commencing on the date of determination, then remaining under the original lease term of each such lease, and (ii) the aggregate amount of interest charges which will accrue during the 12 consecutive calendar months next succeeding the date of determination on all Funded Debt of the Company and its Restricted Subsidiaries outstanding on such determination date (including such interest charges attributable to Funded Debt proposed to be issued on such determination date but excluding such interest charges attributable to Funded Debt being concurrently retired, if any). For the purpose of all computations of Pro Forma Fixed Charges, the interest charges on Funded Debt represented by Capitalized Lease Obligations shall be determined by using the interest factor referred to in the definition of Capitalized Lease Obligations.

"Replacement Unit" shall have the meaning set forth in Subsection 6.18(c) hereof.

"Restricted Investments" shall mean all investments, whether made in cash or by delivery of property, by the Company or any of its Restricted Subsidiaries (a) in any Person, whether by acquisition of stock, indebtedness or other obligation or security, or by loan, advance or capital contribution, or otherwise, or (b) in any property not used in the business of the Company or any Restricted Subsidiary, except the following:

- (i) investments in Restricted Subsidiaries;

(ii) investments in direct obligations of the United States of America or in obligations fully guaranteed by the United States of America, provided that such obligations mature within twelve months from the date of acquisition thereof;

(iii) investments in open market commercial paper rated at least "Prime-1" by Moody's Investors Services, Inc. or "A-1" by Standard & Poor's Corporation Inc. having a maturity of not more than 270 days, and in open market commercial paper rated "Prime-2" or "A-2" having a maturity of not more than 90 days;

(iv) investments in time deposits and certificates of deposit of commercial banks in the United States of America which are members of the Federal Reserve System and which have capital and surplus of at least \$50,000,000; and

(v) purchases from any commercial bank referred to in clause (iv) above of direct obligations of the United States of America or obligations fully guaranteed by the United States of America of any maturity, pursuant to repurchase agreements obligating such bank to repurchase such obligations not later than 90 days after their purchase by the Company or any of its Restricted Subsidiaries.

"Restricted Subsidiary" shall mean any Subsidiary of the Company (i) which is incorporated and doing business primarily in the United States of America or Canada, (ii) the assets of which are located primarily in the United States of America or Canada, (iii) all of the issued and outstanding shares of capital stock of which (except for directors' qualifying shares, if required by law) are owned by the Company or another Restricted Subsidiary, and (iv) which the Company has designated as a Restricted Subsidiary by written notice to the holders of the Notes; provided, however, that a Subsidiary may not be designated as a Restricted Subsidiary (a) if such Subsidiary would have outstanding immediately after its designation as a Restricted Subsidiary any Funded

Debt which it would not then be permitted to incur in compliance with the provisions of Subsection 6.4 hereof or any guarantee or other contingent obligation which it would not then be permitted to incur under the provisions of Subsection 6.7 hereof, or (b) if, immediately after such Subsidiary's designation as a Restricted Subsidiary, the Company would be in default in the performance or observance of any covenant, agreement or condition contained in this Agreement. The Company may at any time, by written notice to the holders of the Notes, withdraw the designation of a Subsidiary as a Restricted Subsidiary if (x) at the time of such withdrawal and immediately after giving effect thereto, no Default or Event of Default shall be in existence and (y) immediately after giving effect to such withdrawal, the Company shall be able to incur at least \$1 of additional Funded Debt in compliance with the provisions of Subsection 6.4 hereof. Upon such withdrawal such Subsidiary shall cease to be a Restricted Subsidiary and it may not at any time within 36 months after such withdrawal, directly or indirectly, be redesignated as a Restricted Subsidiary.

"Security Agent" shall mean Union Mutual Life Insurance Company in its capacity as Security Agent hereunder, and any other financial institution or holder of any of the Notes which is appointed as successor Security Agent by the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the time outstanding.

"Senior Funded Debt" shall mean all Funded Debt of the Company other than Subordinated Funded Debt.

"Short-Term Debt" shall mean unsecured indebtedness for money borrowed in the ordinary course of business maturing on demand or within one year after the date of creation thereof (excluding any such indebtedness renewable or extendible, or in effect renewable or extendible through the operation of a revolving credit agreement or other similar agreement, at the option of the debtor for a period or periods ending more than one year after the date of creation thereof).

"Subordinated Funded Debt" shall mean Funded Debt of the Company which by its terms is expressly junior or subordinate in right of payment to any other indebtedness of the Company.

"Subsidiary" shall mean any corporation more than 50% of the issued and outstanding shares of Voting Stock of which at the time is owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries.

"Supplement" shall mean any supplement substantially in the form of Exhibit J hereto which is executed and delivered by the Company to the Lenders and the Security Agent pursuant to this Agreement.

"Unit" shall mean one of the Box-cars.

"Unprotected Unit" shall mean, at any time, any Box-car which is then located in a jurisdiction (other than the United States of America) in which the lien on and security interest in such Box-car created by this Agreement has not been duly perfected of record against all third parties so as to be prior to all other Liens except Permitted Liens.

"Voting Stock" of a corporation shall mean stock having ordinary voting power for the election of a majority of the board of directors, managers or trustees of such corporation, other than stock having such power only by reason of the happening of a contingency.

1.2 Use of Defined Terms. All terms defined in this Agreement shall have their defined meanings when used in any Notes, certificates, reports or other documents made or delivered pursuant hereto. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

1.3 Other Definitional Provisions. (a) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural and vice versa.

## SECTION 2. AMOUNT AND TERMS OF LOANS

2.1 Commitment. Subject to the terms and conditions of this Agreement, each Lender severally agrees to make loans to the Company from the date hereof to and including December 31, 1978, to finance a portion of the aggregate purchase price of up to 100 100-ton XM box-cars to be purchased by the Company and leased under the Lease identified in Schedule I hereto, provided that (i) there shall be no more than two closings hereunder, and (ii) the sum of the aggregate principal amount of the loans made by each Lender hereunder shall not exceed the amount set forth opposite such Lender's name below:

<u>Name of Lender</u>	<u>Aggregate Principal Amount of Loans</u>
UNION MUTUAL LIFE INSURANCE COMPANY	\$ 2,834,000
UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA	<u>\$ 566,000</u>
	\$ 3,400,000

Each borrowing from the Lenders pursuant to this Agreement shall be made pro rata according to the respective principal amounts set forth above, and on the same date. Each borrowing pursuant hereto shall not exceed 75% of the aggregate Box-car Costs of the Units being purchased by the Company with the proceeds of such borrowing. The Company shall give the Lenders at least four Business Days' prior written notice (effective upon receipt) of each borrowing hereunder.

2.2 Use of Proceeds. The Company will use the proceeds of each Loan solely to pay, or to reimburse the Company for payments made by it with respect to, 75% of the aggregate Box-car Costs of the Units described in the Supplement executed and delivered by the Company in connection with such Loan.

2.3 The Interim Notes. Each Loan initially shall be evidenced by a separate secured promissory note of the Company in the principal amount of such Loan, substantially

in the form of Exhibit A hereto (an "Interim Note" and, collectively, the "Interim Notes"). Each Interim Note shall (a) be registered in the name of the Lender which made the Loan evidenced thereby, (b) be dated the date of issue, (c) be stated to mature on December 31, 1978, and (d) bear interest at the rate of 10% per annum, payable at maturity (and after maturity on demand), on the unpaid principal amount thereof from the date thereof until such principal amount shall be paid in full.

2.4 The Consolidated Notes. On the Consolidation Date the Company shall execute and deliver to each Lender, in exchange and substitution for (but not in payment of) the Interim Notes then outstanding which are held by such Lender, and, upon satisfaction of the terms and conditions of Subsection 4.3 hereof, such Lender shall accept, a secured promissory note of the Company substantially in the form of Exhibit B hereto (the "Consolidated Note" and, collectively the "Consolidated Notes"), registered in the name of such Lender and in a principal amount equal to the then aggregate unpaid principal amount of all outstanding Interim Notes held by such Lender. Upon receipt of its Consolidated Note, each Lender shall cancel and surrender to the Company all outstanding Interim Notes held by it.

Each Consolidated Note shall be dated the Consolidation Date, and shall bear interest on the unpaid principal amount thereof from the date thereof until such principal amount shall be paid in full at the rate of 10% per annum. The principal of and interest on each Consolidated Note shall be payable in 60 consecutive quarterly installments, commencing on the day of the third calendar month after the date of such Note corresponding with the Consolidation Date and on the same day of each third calendar month thereafter (or if any such month does not have a corresponding day, then on the last day of such month), each of such installments being in an amount equal to 3.23533% of the original principal amount of such Note, provided that, in any event, the 60th quarterly installment shall be in an amount sufficient to pay in full all accrued interest on, and the entire unpaid principal amount of, such Consolidated Note, and provided, further, that in the event any partial prepayment of such Consolidated Note is made pursuant to Subsection 2.5, 2.6 or 2.7 hereof, each installment due and payable under such Note after such partial prepayment shall be reduced in the same proportion as the then outstanding principal amount of such Note shall have been reduced by such partial prepayment. Interest on any overdue principal of and premium, if any, on each Consolidated

Note shall be payable from the due date thereof at the rate of 10% per annum for the period during which such principal or premium shall be overdue.

2.5 Voluntary Prepayment With Premium. Commencing with the tenth anniversary date of the Consolidation Date, the Company may, at its option, upon notice as provided in Subsection 2.8 hereof, prepay the Consolidated Notes as a whole at any time or in part from time to time, at the applicable percentage set out below of the principal amount then being prepaid, together with accrued interest on the principal amount so prepaid to the date fixed for such prepayment:

<u>If Prepayment is Made during the 12-month Period Commencing on the Following Anni- versary Date of the Consolidation Date</u>	<u>Percentage of Principal Amount</u>
Tenth	103.330%
Eleventh	102.660%
Twelfth	101.660%
Thirteenth	100.833%
Fourteenth	100.000%.

2.6 Voluntary Prepayment Without Premium. In the event that the Interstate Commerce Commission shall at any time (a) issue an order, applicable to any of the Box-cars, which reduces incentive per diem charges for car-hire under its rules and regulations on an annual basis to three months or less without a corresponding increase in straight car-hire charges or other charges available to the Company as rent charges under the Lease, or (b) determine that the lessee under the Lease may not apply its incentive car-hire charge receipts in payment of rent charges under such Lease, or (c) require that the lessee under the Lease spend moneys not earned by the Box-cars leased thereunder in order for such lessee to continue to meet its obligations under the Lease, then the Company may, at its option, upon notice as provided in Subsection 2.8 hereof, prepay the Consolidated Notes without premium in a principal amount not exceeding the amount determined by multiplying the then aggregate unpaid principal amount of the

Consolidated Notes by a fraction, the numerator of which is the aggregate Box-car Costs of all Units which are affected by the foregoing events and the denominator of which is the aggregate Box-car Costs of all Box-cars which are then subject to the lien and security interest of this Agreement, together with accrued interest on the principal amount so prepaid to the date fixed for such prepayment.

2.7 Casualty Occurrence Prepayment. In the event that any Unit shall suffer a Casualty Occurrence and the Company shall not replace such Unit pursuant to Subsection 6.18 hereof, the Company will prepay the Notes without premium in accordance with the provisions of said Subsection 6.18.

2.8 Notice of Prepayment. The Company shall give written notice to the holders of the Notes of any prepayment of the Notes not less than 30 days nor more than 60 days before the date fixed for such prepayment, specifying (a) the date fixed for such prepayment, (b) the Subsection hereof under which such prepayment is to be made, (c) the aggregate principal amount of the Notes, and the pro rata principal amount of each Note, to be prepaid, (d) the premium, if any, and accrued interest applicable to such prepayment, and (e) if the prepayment occurs after the Consolidation Date, the revised amount of each installment of principal and interest payable on each Consolidated Note after such prepayment. Such notice of prepayment shall also certify all facts which are conditions precedent to such prepayment, including, if such prepayment is to be made pursuant to Subsection 2.6 or 2.7 hereof, the calculations used in determining the unpaid principal amount of the Notes to be prepaid. Upon the giving of such notice, the unpaid principal amount of the Notes to be prepaid, together with the premium, if any, and accrued interest thereon, shall become due and payable on the date fixed for such prepayment.

2.9 Partial Prepayment Pro Rata. In the case of any prepayment of less than the entire unpaid principal amount of all outstanding Notes, the amount to be prepaid shall be applied pro rata (as nearly as may be in whole dollars) to all outstanding Notes according to the respective unpaid principal amounts thereof.

2.10 Computation of Interest; Method of Payment of Principal, Interest and Premium. Interest on the Notes shall be calculated on the basis of a 365 or 366-day year, as applicable.

Notwithstanding anything to the contrary in this Agreement or the Notes, in the case of Notes held by a Lender the Company will make all payments of principal thereof and of premium (if any) and interest thereon in the manner and at the address provided in Annex I hereto (or in such other manner or at such other address as such Lender may from time to time designate to the Company in writing), without any presentment or surrender of such Notes and without any notation of such payment being made thereon. Each Lender agrees that in the event it shall sell or transfer any Note held by it, it will notify the Company of that fact and will prior to the delivery of such Note make, or cause to be made, a notation thereon of all principal, if any, theretofore paid on such Note and of the date to which interest has been paid on such Note.

If any payment with respect to a Note becomes due and payable on a day that is not a Business Day, the maturity thereof shall be extended to the next succeeding Business Day.

2.11 Release of Collateral. Upon any prepayment of the Notes pursuant to Subsection 2.5 or 2.6 hereof, the Security Agent will execute and deliver to the Company such instruments as shall be necessary to release from the lien and security interest of this Agreement, without recourse to, or representation or warranty by, the Security Agent, that number of Units (together with the Proceeds thereof and the Lease to the extent that it relates to such Units) which is equal to the number (disregarding any fraction) obtained by multiplying the total number of Box-cars which are then subject to the lien and security interest of this Agreement by a fraction, the numerator of which is the aggregate principal amount of the Notes so prepaid and the denominator of which is the aggregate unpaid principal amount of the Notes immediately prior to such prepayment. In the case of a prepayment pursuant to Subsection 2.5 hereof, the Units shall be released in consecutive order of the identification numbers required to be placed on the Box-cars pursuant to Subsection 6.25 hereof, commencing with an identification number chosen by the Security Agent which number shall be chosen in such a manner to insure that the Units to be released are leased under the same Lease. In the case of a prepayment pursuant to Subsection 2.6 hereof, the Units to be released shall be those affected by the event permitting such prepayment and, to the extent possible, such Units shall be chosen in the manner described in the preceding sentence.

### 2.12 Registration, Transfer and Exchange of Notes.

The Company shall keep at its office maintained as provided in Subsection 6.11(e) hereof a register in which the Company shall provide for the registration of Notes and for the registration of transfer and exchange of Notes. The holder of any Note intending to transfer such Note to a new holder, or to exchange such Note for new Notes, shall surrender such Note for registration of transfer or exchange at the office of the Company maintained pursuant to Subsection 6.11(e) hereof, together with a written request from such holder for the issuance of a new Note or Notes, specifying the denomination or denominations thereof (which shall be \$1,000 or any multiple thereof) and the name and address of the prospective holder or holders thereof. Every Note so surrendered shall be duly endorsed, or be accompanied by a written instrument of transfer duly executed, by the holder of such Note or its duly authorized attorney. Promptly upon receipt of such documents the Company will issue (without expense to such holder) a new Note or Notes of the same type, in the same aggregate original principal amount and dated the same date or dates as the Note or Notes surrendered, and in such authorized denomination or denominations and registered in the name of such holder or holders as shall be specified in the written request from the holder of the Note or Notes surrendered.

The Company may deem and treat the Person in whose name any Note is registered as the absolute owner and holder of such Note for the purpose of receiving payment of principal of and premium, if any, and interest on such Note and for all other purposes whatsoever, and the Company shall not be affected by any notice to the contrary.

### 2.13 Mutilated, Destroyed, Lost or Stolen Notes.

If any Note shall become mutilated, destroyed, lost or stolen, the Company shall, upon the written request of the holder of such Note, execute and deliver in replacement thereof a new Note payable in the same original principal amount and dated the same date as the Note so mutilated, destroyed, lost or stolen. If the Note being replaced has become mutilated, such Note shall be surrendered to the Company. If the Note being replaced has been destroyed, lost or stolen, the holder of such Note shall furnish to the Company such indemnity as shall be reasonably satisfactory to the Company; provided, however, that if the holder of such Note is a Lender or a nominee for a Lender, an indemnity agreement signed by such Lender shall be deemed to constitute indemnity satisfactory to the Company.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

In order to induce each Lender to enter into this Agreement and to make Loans hereunder, the Company represents and warrants to each Lender that:

3.1 Corporate Existence. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and the Company is duly qualified as a foreign corporation and in good standing in each other jurisdiction where the conduct of its business or the ownership or lease of its properties requires such qualification and the failure to be so qualified could have a material adverse effect on the business, operations, properties or assets or on the condition, financial or other, of the Company. As of the date hereof, such jurisdictions consist of those listed in Schedule II hereto. The Company has four Subsidiaries in the process of being organized, one under the laws of the State of Delaware, one under the laws of the State of New York and two under the laws of the State of California.

3.2 Power and Authorization. The Company has full corporate power, authority and legal right to own its properties and to conduct its business as now conducted and presently proposed to be conducted by it and to execute, deliver and perform this Agreement, the Supplements and the Notes, and the Company has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement, the Supplements and the Notes on the terms hereof and thereof. This Agreement has been duly executed and delivered by the Company and constitutes, and each Supplement and each Note when executed and delivered by the Company will constitute, a valid and binding obligation of the Company enforceable in accordance with its terms. No consent of any other party (including stockholders of the Company) and no consent, license, approval or authorization of, exemption by, or registration or declaration with, any governmental authority is required in connection with the execution, delivery and performance by the Company of this Agreement, any Supplement or any Note except for the filing of this Agreement and each Supplement with the Interstate Commerce Commission and the filing of a financing statement with respect hereto with the California Secretary of State.

3.3 No Legal Bar. The execution, delivery and performance by the Company of this Agreement, the Supplements, the Notes and the Lease will not violate any provision of any existing law or regulation to which the Company

is subject or of any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company or of the Articles of Incorporation, By-Laws or any preferred stock provision of the Company or of any mortgage, indenture, contract or other agreement to which the Company is a party or which is binding upon the Company or any of its properties or assets, and will not constitute a default thereunder, and (except as contemplated by this Agreement) will not result in the creation or imposition of any Lien on any of the properties or assets of the Company. The Company is not in default in the performance or observance of any of the obligations, covenants or conditions contained in any bond, debenture or note, or in any mortgage, deed of trust, indenture or loan agreement, of the Company.

3.4 No Material Litigation. Except as set forth in a letter dated the date of this Agreement from the Company to the Lenders, there are no actions, suits or proceedings (whether or not purportedly on behalf of the Company) pending or, to the knowledge of the Company, threatened against the Company or any of its properties or assets in any court or before any arbitrator of any kind or before or by any governmental body, which (i) relate to any of the Collateral or to any of the transactions contemplated by this Agreement, or (ii) would, if adversely determined, materially impair the right or ability of the Company to carry on its business substantially as now conducted and presently proposed to be conducted by it, or (iii) would, if adversely determined, have a material adverse effect on the operating results or on the condition, financial or other, of the Company. The Company is not in default with respect to any material order, judgment, award, decree, rule or regulation of any court, arbitrator or governmental body.

3.5 No Default. No Default or Event of Default has occurred and is continuing under this Agreement.

3.6 Financial Condition. The balance sheet of the Company as at October 18, 1977, reported on by Arthur Andersen & Co., and the balance sheet of the Company as at July 31, 1978, certified by the principal accounting officer of the Company, copies of which have heretofore been delivered to the Lenders, present fairly the financial position of the Company as at October 18, 1977 and as at July 31, 1978, respectively, and have been prepared in accordance with generally accepted accounting principles. There has been no material adverse change in the condition, financial or other, of the Company since July 31, 1978, provided that a decrease in the Company's net worth will not be deemed

to be a material adverse change so long as the net worth of the Company is at least \$8,500,000.

3.7 Payment of Taxes. The Company has filed all federal, state and local tax returns and declarations of estimated tax which are required to be filed (except for certain state and local tax returns with respect to which the Company has no material liability and which will be filed by the Company as soon as is practicable) and has paid all taxes which have become due pursuant to such returns and declarations or pursuant to any assessment received by it, and the Company has no knowledge of any deficiency or additional assessment in connection therewith not adequately provided for on the books of the Company. In the opinion of the Company, all tax liabilities of the Company were adequately provided for as of July 31, 1978, and are now so provided for, on the books of the Company.

3.8 Force Majeure. Since July 31, 1978, the business, operations, properties and assets of the Company have not been materially and adversely affected in any way as the result of any fire, explosion, earthquake, disaster, accident, labor disturbance, requisition or taking of property by governmental authority, flood, drought, embargo, riot, civil disturbance, uprising, activity of armed forces, or act of God or the public enemy.

3.9 Burdensome Provisions. Except as set forth in a letter dated the date of this Agreement from the Company to the Lenders, the Company is not a party to any agreement or instrument, or subject to any charter or other corporate restriction or to any judgment, order, writ, injunction, decree, award, rule or regulation, which materially and adversely affects the business, operations, properties or assets or the condition, financial or other, of the Company.

3.10 Lease. (a) The Lease has been duly authorized, executed and delivered by the Company and the lessee thereunder and constitutes a valid and binding obligation of the Company and such lessee, enforceable in accordance with its terms. All consents, licenses, approvals or authorizations of, exemptions by, and registrations or declarations with, any governmental authority required to be obtained, effected or given in connection with the execution, delivery and performance of the Lease by each party thereto have been duly obtained, effected or given and are in full force and effect, other than the filing of the Lease with the Interstate Commerce Commission

which will have been duly effected on or before date of the initial Loan hereunder and will be in full force and effect at all times thereafter.

(b) Neither the Company nor (to the best of the Company's knowledge) the lessee under the Lease is in default in the performance or observance of any covenant, term or condition contained in the Lease, and no event has occurred and no condition exists which constitutes, or which with the lapse of time or the giving of notice or both would constitute, an event of default under the Lease. The Company has fully performed all its obligations under the Lease, and the right, title and interest of the Company in, to and under the Lease is not subject to any defense, offset, counterclaim or claim, nor have any of the foregoing been asserted or alleged against the Company as to the Lease.

3.11 Title to Box-cars. Whenever the Company executes and delivers a Supplement to the Lenders and the Security Agent, the Company will have good and valid title to, and will be the lawful owner of, each Unit described in such Supplement, free and clear of all Liens whatsoever except (i) the lien and security interest created by this Agreement and (ii) Permitted Liens.

3.12 First Lien. Upon the filing of this Agreement, the Lease and any Supplement in the manner prescribed in Section 20c of the Interstate Commerce Act, as amended, and in the regulations of the Interstate Commerce Commission promulgated thereunder, and the filing of a financing statement covering the Collateral in the office of the Secretary of State of California, this Agreement will constitute a legal, valid and perfected first lien on and first priority security interest in each of the Units described in such Supplement (and any Proceeds thereof) and the Lease (and the Proceeds thereof) to the extent the Lease relates to such Units, as security for the Obligations, free and clear of all other Liens whatsoever except Permitted Liens. No security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral, which has been signed by the Company or which the Company has authorized any other Person to sign or file or record, is on file or of record with the Interstate Commerce Commission or with any other public office, except such as may have been filed by or on behalf of the Company in favor of the Security Agent pursuant to this Agreement.

3.13 Offering of Notes. The Company has not, either directly or through any agent, offered any of the Notes or any related securities to, or solicited any offers to acquire any of the Notes or any related securities from, or otherwise negotiated in respect of any of the Notes or any related securities with, any Person other than the Lenders, Manufacturers Hanover Leasing Corporation and not more than 25 other institutional investors; and the Company agrees that the Company will not, directly or indirectly, offer any of the Notes to, or solicit offers to acquire any of the Notes from, or otherwise approach, negotiate or communicate in respect of any of the Notes with, any Person or Persons so as thereby to bring the issue or disposition of the Notes within the provisions of Section 5 of the Securities Act of 1933, as amended.

#### SECTION 4. CONDITIONS OF BORROWING

4.1 Conditions of Initial Loan. Each Lender shall not be required to make its initial Loan hereunder unless each Lender and the Security Agent shall receive, in addition to the documents described in Subsection 4.2 hereof, the following documents, each in form and substance satisfactory to such Lender:

(a) a copy, certified by the Secretary of the Company on the date of such Loan, of the resolutions of the Board of Directors of the Company approving the transactions contemplated by this Agreement and authorizing the execution, delivery and performance by the Company of this Agreement, the Notes, the Supplements, the Lease and all other documents and instruments required hereby;

(b) a certificate of the Secretary of the Company, dated the date of such Loan, as to the incumbency and signatures of each of the officers of the Company executing this Agreement or any documents relating hereto on behalf of the Company;

(c) an opinion of Messrs. Heller, Ehrman, White & McAuliffe, counsel for the Company, substantially in the form of Exhibit C hereto, an opinion of Messrs. Conner, Moore & Corber, special counsel for the Company, substantially in the form of Exhibit D hereto, and an opinion of Messrs. Simpson Thacher & Bartlett, special counsel for

the Lenders, substantially in the form of Exhibit E hereto;

(d) evidence that this Agreement has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and that a financing statement with respect hereto has been duly filed with the California Secretary of State;

(e) a copy of the Lease, duly executed by the parties thereto, together with evidence that the Lease has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended;

(f) a duly executed but undated directive of the Company to the lessee under the Lease, substantially in the form of Exhibit F hereto; and

(g) a duly executed assignment by the Company to the Security Agent of each maintenance contract entered into by the Company pursuant to Subsection 6.19 hereof.

4.2 Conditions of Each Loan. Each Lender shall not be required to make any Loan hereunder unless:

(a) the representations and warranties contained in Section 3 hereof shall be true and correct on and as of the date of the making of such Loan with the same effect as if made on and as of such date (except that, if the Company shall have merged with its Delaware Subsidiary in compliance with Subsection 6.8 hereof, the Company shall be duly organized, validly existing and in good standing under the laws of the State of Delaware), and no Default or Event of Default shall be in existence on the date of the making of such Loan or would occur as a result of such Loan; and

(b) each Lender and the Security Agent shall receive the following documents (except that the Security Agent shall not receive an Interim Note), each in form and substance satisfactory to such Lender:

(i) an Interim Note in the principal amount of such Loan, duly executed by the Company;

(ii) a copy of the warranty bill of sale from the manufacturer of the Box-cars being financed by such Loan, substantially in the form of Exhibit K hereto, transferring to the Company good title to such Box-cars free and clear of all Liens;

(iii) a copy of the invoice from the manufacturer of the Box-cars being financed by such Loan, identifying such Box-cars and specifying the Box-car Costs thereof, and accompanied by or having endorsed thereon a certification by an authorized officer of the Company as to the correctness of the information set forth in such invoice;

(iv) a completed Supplement duly executed by the Company, identifying the Box-cars being financed by such Loan and subjecting such Box-cars to the lien and security interest created by this Agreement, together with evidence that such Supplement has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended;

(v) one or more completed and executed lease schedules substantially in the form of Exhibit G hereto, subjecting the Box-cars being financed by such Loan to the Lease, together with evidence that each such lease schedule has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended;

(vi) evidence of insurance on the Box-cars being financed by such Loan which indicates compliance with the provisions of Subsection 6.17 hereof;

(vii) evidence that the Box-cars being financed by such Loan have been duly placed under one of the maintenance contracts referred to in Subsection 6.19 hereof;

(viii) a certificate, dated the date of such Loan and signed by the President or any Vice President of the Company, to the same effect as paragraph (a) of this subsection 4.2 and to the further effect that (A) the Box-cars being financed by such Loan have been delivered to and accepted by the Company; (B) the Company has valid and legal title to, and is the lawful owner of, such Box-cars, free and clear of all Liens except the lien and security interest created by this Agreement and Permitted Liens; and (C) such Box-cars have been duly leased to the lessee under the Lease;

(ix) an opinion of Messrs. Conner, Moore & Corber, special counsel for the Company, dated the date of such Loan, to the effect that (A) the Company has valid and legal title to, and is the lawful owner of, the Box-cars being financed by such Loan, free and clear of all Liens except the lien and security interest created by this Agreement and Permitted Liens; (B) the Supplement describing such Box-cars, and each lease schedule subjecting such Box-cars to the Lease, have been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended; (C) this Agreement, as supplemented by such Supplement, constitutes a legal, valid and perfected first lien on and first priority security interest in each of such Box-cars (and any Proceeds thereof) and the Lease (and the Proceeds thereof) to the extent the Lease relates to such Box-cars; and (D) no further action, including any filing or recording of any document, is necessary or advisable in order to create and maintain in favor of the Security Agent for the benefit of the holders of the Notes the lien and security interest referred to in the foregoing clause (C) (or, if any action is necessary or advisable, specifying the same);

(x) an opinion of counsel for Paccar, Inc. ("Paccar"), dated the date of such Loan and addressed to each Lender, the Security Agent and the Company, in form and substance satisfactory to counsel for the Lenders, to the effect that (A) Paccar is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and

has all requisite corporate power and authority to own its property and to conduct its business as presently conducted; (B) the purchase order with respect to the Box-cars being financed by such Loan has been duly authorized, executed and delivered by Paccar and, assuming due authorization, execution and delivery thereof by the Company, is a legal and valid agreement, binding upon Paccar, enforceable against Paccar in accordance with its terms, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights generally; and (C) Paccar's bill of sale relating to the Box-cars being financed by such Loan has been duly authorized, executed and delivered by Paccar and is effective to transfer to the Company good and marketable title to the Box-cars, free and clear of all claims, charges, liens, security interests and other encumbrances, except the rights of the Lenders under this Agreement; and

(xi) any other documents, affidavits or certificates that the Lenders may reasonably request.

4.3 Conditions of Acceptance of Consolidated Notes. Each Lender shall not be required to accept a Consolidated Note in exchange for the Interim Notes held by such Lender unless on the Consolidation Date:

(a) the Company shall deliver to each Lender a Consolidated Note, duly executed by the Company and in a principal amount equal to the aggregate unpaid principal amount of all outstanding Interim Notes held by such Lender;

(b) the Company shall pay to each Lender all interest accrued on the Interim Notes held by such Lender to and including the Consolidation Date;

(c) no Default or Event of Default shall be in existence on the Consolidation Date, and each Lender and the Security Agent shall receive a certificate, dated the Consolidation Date and signed by the President or a Vice President of the Company, to such effect; and

(d) each Lender and the Security Agent shall receive an opinion of counsel for the Company, dated the Consolidation Date and substantially in the form of Exhibit H hereto, and an opinion of Messrs. Simpson Thacher & Bartlett, special counsel for the Lenders, dated the Consolidation Date and substantially in the form of Exhibit I hereto.

## SECTION 5. GRANT OF LIEN AND SECURITY INTEREST

5.1 The Collateral. As collateral security for (a) the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration or otherwise) of the unpaid principal of, premium, if any, and interest on the Notes, (b) the due and punctual payment and performance by the Company of all of its obligations and liabilities under or arising out of or in connection with this Agreement, and (c) unless and until Weyerhaeuser Company assumes the obligations of the Company under the Notes and complies with the provisions of the proviso to Section 8 hereof, the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration or otherwise) of all other indebtedness, obligations and liabilities of the Company to the Lenders, whether now existing or hereafter incurred (all of the foregoing being hereinafter called the "Obligations"), and in order to induce each Lender to make the Loans hereunder:

(a) Box-cars. The Company does hereby assign, convey, mortgage, pledge and transfer to the Security Agent on behalf of and for the benefit of the holders of the Notes, and does hereby grant to the Security Agent on behalf of and for the benefit of the holders of the Notes a continuing security interest in, all Box-cars now owned or at any time hereafter acquired by the Company and any and all Proceeds thereof, provided that neither the Security Agent nor the holders of the Notes hereby consent to the sale or other disposal thereof.

(b) Lease. The Company does hereby assign, convey, mortgage, pledge and transfer to the Security Agent on behalf of and for the benefit of the holders of the Notes, and does hereby grant to the Security Agent on behalf of and for the benefit of the holders of the Notes a continuing security interest in, all of the right, title and interest of the Company in, to and under the Lease, including, without limitation, all right, title and interest of the Company in and to all rents, issues, profits, revenues and other income arising under the Lease and other moneys due and to become

due to the Company under the Lease, all proceeds of and all claims for damages arising out of the breach of the Lease, the right of the Company to terminate the Lease and to compel performance of the terms and provisions thereof, and all chattel paper, contracts, instruments and other documents evidencing the Lease or any moneys due or to become due thereunder or related thereto, but only to the extent that all the foregoing relate to, derive from or arise out of the Box-cars. Each and every copy of the Lease which the Company directly or indirectly has in its control or possession shall have attached thereto a notice indicating the Security Agent's interest therein.

If an Event of Default has occurred and is continuing, upon the demand of the Security Agent the Company will specifically authorize and direct the lessee under the Lease to which any Box-cars financed hereunder are subject to make payment of all moneys due and to become due under or arising out of such Lease on account of such Box-cars directly to the Security Agent and upon such demand the Company irrevocably authorizes and empowers the Security Agent to ask, demand, receive, receipt and give acquittance for any and all such amounts which may be or become due or payable or remain unpaid to the Company by such lessee at any time or times under or arising out of its respective Lease; to endorse any checks, drafts or other orders for the payment of money payable to the Company in payment therefor; and in the Security Agent's discretion to file any claims or take any action or proceedings either in its own name or in the name of the Company or otherwise which the Security Agent may deem to be necessary or advisable in the premises. The Company hereby irrevocably authorizes the Security Agent after any such demand has been made, in its own name or in the name and on behalf of the Company, to give notification to the lessee under the Lease that payment thereunder is to be made directly to the Security Agent.

It is expressly agreed by the Company that, anything herein to the contrary notwithstanding, the Company shall remain liable under the Lease to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof. The Security Agent and the holders of the Notes shall not have any obligation or liability under the Lease by reason of or arising out of this Agreement or the assignment of the Lease to the Security Agent or the receipt by the Security Agent or any holder of the Notes of any payment relating to the Lease pursuant hereto, nor shall the Security Agent or any

of the holders of the Notes be required or obligated in any manner to perform or fulfill any of the obligations of the Company under or pursuant to the Lease, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any performance by any party under the Lease, or to present or file any claim, or to take any action to enforce the observance of any obligations of any party to the Lease.

(c) Deposited Funds. The Company does hereby assign, convey, mortgage, pledge and transfer to the Security Agent on behalf of and for the benefit of the holders of the Notes, and does hereby grant to the Security Agent on behalf of and for the benefit of the holders of the Notes a continuing security interest in, all moneys at any time held by the Security Agent as Deposited Funds.

5.2 The Security Agent. Each of the Lenders and each subsequent holder of any Note, by its acceptance thereof, hereby (i) appoints the Security Agent as its agent hereunder for the purpose of holding the Collateral for the benefit of the holders of the Notes and of enforcing the remedies with respect to the Collateral as provided in this Agreement, and (ii) appoints and authorizes the Security Agent to take such action as agent on its behalf and to exercise such powers hereunder as are delegated to the Security Agent by the terms hereof, together with such action and powers as are reasonably incidental thereto. Neither the Security Agent nor any of its directors, officers or employees shall be liable for any action taken or omitted (a) at the request or with the approval of the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the time outstanding or (b) in the absence of gross negligence or willful misconduct. The Company shall certify to the Security Agent the names and signatures of its respective officers authorized to sign this Agreement, the Supplements, the Notes, the Lease, financing statements and related documents hereunder and otherwise act in respect thereof, and the Security Agent may conclusively rely thereon until receipt by it of notice to the contrary. The Security Agent may treat the payee of any Note as the registered holder thereof until written notice of transfer shall have been filed with it.

The Security Agent shall take such action with respect to a Default or an Event of Default as it shall be directed in writing by the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the

time outstanding, provided that, unless and until the Security Agent shall have received such directions, the Security Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to a Default or Event of Default, not inconsistent with the provisions of this Agreement, as it shall deem advisable in the best interests of the holders of the Notes.

With respect to its loans under this Agreement and the Notes held by it, Union Mutual Life Insurance Company shall have the same rights and powers hereunder as a Lender and a holder of the Notes, and may exercise the same as though it were not the Security Agent.

## SECTION 6. COVENANTS

The Company hereby covenants and agrees that from the date of this Agreement and so long as any of the Notes remain outstanding and unpaid:

6.1 Financial Statements and Reports. The Company will furnish to the Lenders and to each other holder of the Notes (a) as soon as available but in any event not later than 120 days after the close of each fiscal year of the Company, a balance sheet of the Company as at the end of such fiscal year and the related statements of income and of changes in financial position of the Company for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout such fiscal year and accompanied by a report or opinion of Arthur Andersen & Co. or other independent public accountants of nationally recognized standing selected by the Company and satisfactory to the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the time outstanding; (b) within 60 days after the close of each quarter, other than the last, of each fiscal year of the Company, an unaudited balance sheet of the Company as at the end of such quarter and the related unaudited statements of income and of changes in financial position of the Company for the period from the beginning of such fiscal year to the end of such quarter, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the principal financial or accounting officer of the Company (subject to normal year-end audit adjustments); (c) concurrently with the delivery of the financial statements referred to in clauses (a) and (b) above, a certificate of the

principal financial or accounting officer of the Company (1) stating that, to the best of his knowledge after due inquiry, the Company has observed and performed each and every covenant and agreement of the Company contained in this Agreement and the Notes and that no Default or Event of Default has occurred during the period covered by such financial statements or is then in existence, except as specifically indicated, and (2) setting forth in reasonable detail all computations required to determine if the Company was in compliance during the period covered by such financial statements with the provisions of Subsections 6.3, 6.4, 6.5 and 6.10 hereof; (d) concurrently with the delivery of the financial statements referred to in clause (a) above, a certificate of the independent public accountants which certified such statements to the effect that, in making the examination necessary for the audit of such financial statements, they obtained no knowledge of any default by the Company in the observance or performance of any of its covenants or agreements contained in this Agreement or the Notes, except as specifically indicated; (e) during any period when the Company shall have one or more Restricted Subsidiaries, within the periods prescribed in clauses (a) and (b) above, financial statements of the character and for the period or periods and as of the date or dates specified in said clauses (a) and (b) and certified or accompanied by a report or opinion of independent public accountants as therein provided, covering the financial condition, income and changes in financial position of the Company and each Restricted Subsidiary on a consolidated basis and, if requested by any Lender, covering the financial condition, income and changes in financial position of the Company and each material Restricted Subsidiary on a consolidating basis; (f) promptly upon their becoming available, copies of all regular and periodic reports, if any, which the Company or any of its Restricted Subsidiaries shall file with the Securities and Exchange Commission or any similar or corresponding governmental department, commission, board, bureau or agency substituted therefor, or with any national securities exchange; and (g) promptly, such additional financial and other information as any Lender from time to time reasonably request.

6.2 Utilization Reports. The Company will furnish to each holder of the Notes as soon as available but in any event not later than 30 days after the close of each fiscal quarter of each fiscal year of the Company, information setting forth the average utilization during such fiscal quarter of all railroad rolling stock (including the Box-cars) owned by the Company and its Restricted Subsidiaries, whether or not leased, all in reasonable detail and

certified by the principal financial or accounting officer of the Company. For the purpose of this Subsection 6.2, the "average utilization" of an item of railroad rolling stock owned by the Company or a Restricted Subsidiary during a fiscal quarter shall be determined by dividing the aggregate number of days in such fiscal quarter that car-hire charges are earned by such rolling stock by the aggregate number of days in such fiscal quarter that such rolling stock was owned by the Company or a Restricted Subsidiary.

6.3 Limitation on Short-Term Debt. For a period of at least 30 consecutive days in each period of 12 consecutive calendar months (commencing with the 12-month period ending August 31, 1979 and including the successive 12-month periods ending on the last day of each month thereafter) neither the Company nor any Restricted Subsidiary will have any outstanding Short-Term Debt (other than Short-Term Debt owing to the Company or a Restricted Subsidiary), unless the highest amount of such Short-Term Debt outstanding on any day during the Minimum Short-Term Debt Period could have been incurred by the Company on such day as Senior Funded Debt without violating the provisions of Subsection 6.4 hereof.

6.4 Limitation on Funded Debt. The Company will not, and will not permit any Restricted Subsidiary to, create, incur or assume any Funded Debt (other than the Notes) unless, immediately thereafter and after giving effect to the existence of such Funded Debt, to the receipt of the net proceeds thereof and to the retirement of any indebtedness which is concurrently being retired out of the proceeds of such Funded Debt:

(a) Consolidated Net Tangible Assets would be at least 120% of Consolidated Senior Funded Debt and at least 115% of Consolidated Funded Debt; and

(b) Pro Forma Earnings Available For Fixed Charges would not be less than 1.25 times Pro Forma Fixed Charges;

provided, however, that this covenant shall not apply to Funded Debt created, incurred or assumed solely for the purpose of extending, renewing or refunding any Senior Funded Debt of the Company or any Funded Debt of any Restricted Subsidiary so long as the principal amount of such Funded Debt is not thereby increased; and provided, further, that the provisions of paragraph (b) above shall not apply to Funded Debt created or incurred by the Company prior to March 31, 1979.

6.5 Limitation on Subordinated Funded Debt. The Company will not create, incur or assume any Subordinated Funded Debt unless, immediately thereafter and after giving effect to the existence of such Subordinated Funded Debt, to the receipt of the net proceeds thereof and to the retirement of any indebtedness which is concurrently being retired out of the proceeds of such Subordinated Funded Debt:

(a) Consolidated Net Tangible Assets would be at least 115% of Consolidated Funded Debt; and

(b) Pro Forma Earnings Available For Fixed Charges would not be less than 1.25 times Pro Forma Fixed Charges.

6.6 Accounts Receivable. The Company will not, and will not permit any Restricted Subsidiary to, (a) sell, assign, discount or otherwise dispose of any notes or accounts receivable owned by the Company or any Restricted Subsidiary, except for sales without recourse for a cash consideration at least equal to the face value thereof, or (b) create or suffer to exist any Lien on any notes or accounts receivable owned by the Company or any Restricted Subsidiary; provided, however, that the foregoing provisions of this Subsection 6.6 shall not prevent (i) the assignment of rental payments under leases of railroad rolling stock as collateral security for loans made to finance the purchase or reconstruction by the Company or any Restricted Subsidiary of such rolling stock, or (ii) if the Company or any Restricted Subsidiary is the lessee under a lease of railroad rolling stock, the assignment of rental payments under a sublease of such rolling stock as collateral security for the Company's or such Subsidiary's obligations to the lessor under such lease.

6.7 Guarantees and other Contingent Liabilities. The Company will not, and will not permit any Restricted Subsidiary to, become or remain liable, directly or indirectly, in connection with the indebtedness, dividends or other obligation of any Person (other than a Restricted Subsidiary or the Company), whether by guarantee or indorsement or by any agreement, contingent or otherwise, (i) to purchase or otherwise acquire such obligation or any security therefor, (ii) to purchase, sell, transport or lease (as lessee or lessor) property or to purchase or sell services at prices or in amounts designed to enable the debtor to make payment of such obligation or to assure the owner of such obligation against loss, or (iii) to supply or advance funds to or in any other manner invest in the debtor; provided, however, that the Company and any

Restricted Subsidiary may (1) indorse negotiable instruments for collection in the ordinary course of business, (2) indemnify lessees under leases from it to such lessees of railroad rolling stock pursuant to indemnification provisions substantially in the form of Section 10 of the Lease identified in Schedule I hereto, (3) indemnify lessors under leases to it from such lessors of railroad rolling stock pursuant to indemnification provisions of the type customarily used in similar kinds of leases, and (4) indemnify lenders under loan agreements to which it is a party pursuant to indemnification provisions substantially in the form of Subsection 6.12 hereof.

6.8 Sale, Lease, Merger or Consolidation by Company. The Company will not sell, lease, transfer or otherwise dispose of all or substantially all of its properties and assets as an entirety, or consolidate with or merge into any Person, or permit any Person to merge into it, unless:

(a) the successor formed by or resulting from such consolidation or merger or the transferee or lessee to which such sale, lease, transfer or other disposition shall be made shall be a corporation duly organized and existing under the laws of the United States of America or any State thereof;

(b) the obligations, covenants and agreements of the Company under this Agreement and the Notes shall be expressly assumed by such successor (if such successor shall not be the Company), transferee or lessee, by a written instrument furnished to the Security Agent and the holders of the Notes and in form and substance satisfactory to the holders of not less than  $66 \frac{2}{3}\%$  in aggregate unpaid principal amount of the Notes at the time outstanding; and

(c) immediately after giving effect to such transaction and to the assumption of the obligations, covenants and agreements of the Company under this Agreement and the Notes, the Company or such successor (if such successor shall not be the Company) or such transferee or lessee (i) shall not be in default in the performance or observance of any covenant, agreement or condition contained in this Agreement, and (ii) shall be able to incur at least \$1 of additional Funded Debt in compliance with the provisions of Subsection 6.4 hereof.

6.9 Issuance and Disposition of Stock and Funded Debt of Restricted Subsidiaries. Except to the extent, if any, required to qualify directors under any applicable law:

(a) the Company will not cause, suffer or permit any Restricted Subsidiary to issue or dispose of any shares of stock of such Restricted Subsidiary to any Person other than the Company or another Restricted Subsidiary; and

(b) the Company will not, and will not permit any Restricted Subsidiary to, sell, assign, transfer, dispose of or in any way part with control of any Funded Debt of any Restricted Subsidiary owned by the Company or such Restricted Subsidiary or any shares of stock of any Restricted Subsidiary owned by the Company or such Restricted Subsidiary, except to the Company or a Restricted Subsidiary, unless:

(i) there shall simultaneously be sold or otherwise disposed of as an entirety all of the Funded Debt and all of the shares of stock of such Restricted Subsidiary at the time owned by the Company or any other Restricted Subsidiary;

(ii) the Restricted Subsidiary whose Funded Debt and shares of stock are so sold or otherwise disposed of shall not own (1) any Funded Debt or capital stock of the Company, or (2) any Funded Debt or shares of stock of any other Restricted Subsidiary not being simultaneously disposed of as permitted by this Subsection 6.9(b); and

(iii) such Funded Debt and shares of stock shall be sold or otherwise disposed of for a consideration equal to the fair value thereof, as determined by the Board of Directors of the Company.

6.10 Limitation on Dividends, Stock Retirements and Restricted Investments. The Company will not declare or pay any dividends (other than dividends payable solely in capital stock of the Company) on any shares of any class of its capital stock, or apply any of its property or assets to the purchase, redemption or other retirement of any

shares of its capital stock (except shares acquired upon the conversion thereof into other shares of capital stock of the Company), or make any other distribution, by reduction of capital or otherwise, in respect of any shares of its capital stock, or permit any Subsidiary to purchase any shares of capital stock of the Company, or make, or permit any Restricted Subsidiary to make, any Restricted Investment, unless, immediately after giving effect to such action, the aggregate amount expended for all such purposes subsequent to July 1, 1978 shall not exceed the sum of (a) the aggregate amount received by the Company after July 1, 1978 (other than from Restricted Subsidiaries) as the net cash proceeds, or the net proceeds by conversion of indebtedness of the Company issued for cash after July 1, 1978, of the issue or sale of capital stock of the Company, plus (b) 75% of the Consolidated Net Income of the Company and its Restricted Subsidiaries (or, in the case of a deficit, minus 100% of such deficit) accrued after December 31, 1978.

For the purposes of this Section 6.10, the "net proceeds" of the issue or sale of capital stock of the Company by conversion of indebtedness of the Company shall be the unpaid principal amount of such indebtedness (or, if less, the net proceeds received upon the issuance of such unpaid indebtedness), less all expenses, including underwriters' commission, of such issue or sale.

As used in this Subsection 6.10, the term "capital stock" of the Company shall mean (i) shares of capital stock of any class of the Company, whether now or hereafter authorized, regardless of whether such capital stock shall be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Company, and (ii) warrants and rights to purchase any such shares of capital stock.

Nothing contained in this Subsection 6.10 shall prevent or restrict the acquisition of shares of capital stock of the Company solely in exchange for other shares of capital stock of the Company.

6.11 Payment of Taxes; Corporate Existence; Maintenance of Properties; Principal Office. (a) The Company will promptly pay and discharge or cause to be paid and discharged, before the same shall become in default, all lawful taxes, assessments and governmental charges or

levies imposed upon the Company or any Restricted Subsidiary, or upon any property, real, personal or mixed, belonging to the Company or any Restricted Subsidiary, or upon any part thereof, as well as all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any such property or any part thereof; provided, however, that the Company shall not be required to pay and discharge or to cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as (i) the validity thereof shall be contested in good faith by appropriate proceedings, (ii) such proceedings do not involve any danger of the sale, forfeiture or loss of the Collateral or any part thereof, and (iii) the Company or such Restricted Subsidiary, as the case may be, shall have set aside on its books adequate reserves with respect thereto.

(b) The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises and the corporate existence, rights and franchises of each of its Restricted Subsidiaries, and will comply with and cause each Restricted Subsidiary to comply with all valid and applicable statutes and governmental regulations except any such statute or regulation the validity or applicability of which is being contested in good faith; provided, however, that nothing in this Subsection 6.11(b) shall prevent a consolidation or merger of, or a sale, lease, transfer or other disposition of all or substantially all of the property and assets of, the Company not prohibited by the provisions of Subsection 6.8 hereof; and provided, further, that nothing in this Subsection 6.11(b) shall prevent (i) the sale or other disposition of the Funded Debt and capital stock of any Restricted Subsidiary pursuant to the provisions of Subsection 6.9 hereof, (ii) the consolidation or merger of any Restricted Subsidiary with or into the Company not prohibited by the provisions of Subsection 6.8 hereof, (iii) the consolidation or merger of any Restricted Subsidiary with or into any other Restricted Subsidiary, or (iv) the abandonment or termination of the corporate existence, rights and franchises of any Restricted Subsidiary if such abandonment or termination is in the opinion of the Board of Directors of the Company in the interest of the Company and not disadvantageous to the holders of the Notes.

(c) The Company will at all times maintain and keep, or cause to be maintained and kept, in good repair, working order and condition all property of the Company and its Restricted Subsidiaries used or useful in the conduct

of their respective businesses, and will from time to time make or cause to be made all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

(d) The Company represents that its principal place of business, chief executive office and the place at which its books and records are kept is 3 Embarcadero Center, San Francisco, California 94111. The Company will not change the location of its principal place of business, chief executive office or the place at which its books and records are kept unless it shall have given the holders of the Notes at least 30 days prior written notice of such change, and the Company will at all times maintain its principal place of business, chief executive office and the place at which its books and records are kept within the United States of America.

(e) The Company will at all times maintain an office at 3 Embarcadero Center, San Francisco, California 94111 (or such other place in the United States of America as the Company shall designate in writing to the holders of the Notes), where notices, presentations and demands to or upon the Company in respect of the Notes may be given or made.

6.12 Indemnities, etc. (a) In any suit, proceedings or action brought by the Security Agent under the Lease or to enforce any provisions thereof, the Company will save, indemnify and keep the Security Agent and the holders of the Notes harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the lessee thereunder, arising out of a breach by the Company of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such lessee or its successors from the Company, and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Security Agent or the holders of the Notes.

(b) The Company agrees to indemnify and hold the Security Agent and the holders of the Notes harmless against any and all liabilities, obligations, losses, damages, claims, suits, costs, expenses and disbursements (including legal fees and expenses) incurred by or asserted against the Security Agent or the holders of the Notes with respect to

claims for personal injury or property damage arising from their participation in the transactions contemplated by this Agreement, the Lease or the Notes.

6.13 Performance of Lease. The Company will perform and comply in all material respects with all its obligations under the Lease and all other agreements to which it is a party or by which it is bound relating to the Collateral, and the Company will use its best efforts to cause each other party to any thereof to so perform and comply.

6.14 Preservation of Collateral. (a) The Company will not create, permit or suffer to exist, and will defend the Collateral against and take such other action as is necessary to remove, any Lien, claim or right in or to the Collateral (other than the lien and security interest created by this Agreement and Permitted Liens), and will defend the right, title and interest of the Security Agent in and to the Company's rights under the Lease and rights in the Box-cars and in and to the Proceeds thereof against the claims and demands of all other Persons whomsoever.

(b) The Company will not, without the prior written consent of the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the time outstanding, sell, transfer or otherwise dispose of any of the Collateral or attempt or offer to do so, provided that in the event Weyerhaeuser Company assumes the obligations of the Company under the Notes and complies with the provisions of the proviso to Section 8 hereof, the Company may without such consent sell the Box-cars to Weyerhaeuser Company, subject to the lien and security interest of this Agreement, pursuant to an Agreement dated March 27, 1978 between Weyerhaeuser Company and the Company and the proceeds of such sale will not be deemed to be Proceeds hereunder.

(c) The Company will not, without the prior written consent of the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the time outstanding, agree to or permit any amendment or other modification of the Lease which (i) shortens the initial lease term of such Lease, (ii) reduces the amount of rental or any other amount payable to the Company thereunder, or changes the time of any such payment, or changes the method of determining such rental or other amount in a manner which is likely to reduce the amount thereof payable to the Company, (iii) changes the utilization rate for which the Company has

the right to terminate such Lease, (iv) changes any of the provisions relating to the assignment by the Company of such Lease or the rights of the holder of a lien on the Box-cars leased thereunder with respect to the lessee, (v) changes any of the provisions regarding the relationship between the Box-cars and the other box-cars leased under such Lease as to loading or other use thereof, (vi) adds, deletes or modifies any of the events of default thereunder, or (vii) otherwise adds to the obligations of the Company thereunder or releases the lessee from any of its obligations thereunder unless such change is made in accordance with commercially reasonable standards. The Company will not terminate the Lease in whole or in part except in accordance with the provisions of Subsection 6.24 hereof.

(d) The Company will advise the Security Agent and the holders of the Notes promptly, in reasonable detail, of any Lien or claim made or asserted against any of the Collateral and of any event affecting the Security Agent's lien on and security interest in the Collateral.

6.15 Further Assurances; Recordation and Filing. The Company will, at its sole cost and expense, do, execute, acknowledge and deliver all further acts, supplements, mortgages, security agreements, conveyances, transfers and assurances necessary or advisable for the perfection and preservation of the lien and security interest created by this Agreement in the Collateral, whether now owned or hereafter acquired. The Company will cause this Agreement and all Supplements hereto, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at no expense to the Security Agent in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Security Agent and the holders of the Notes hereunder.

6.16 ICC Jurisdiction. The Company will not take or permit to be taken any action within its control which would subject it or any Subsidiary or its or their operations to the jurisdiction of the Interstate Commerce Commission, if such jurisdiction will adversely affect the ability of the Company to perform its obligations under this Agreement, any Note or the Lease or adversely affect the validity or enforceability of this Agreement, any Note or the Lease.

6.17 Maintenance of Insurance. Upon the delivery of any Box-cars the Company will promptly effect and maintain or cause to be effected and maintained with

financially sound and reputable companies, insurance policies (i) insuring each such Box-car against loss by fire, explosion, theft and such other casualties as are usually insured against by companies engaged in the same or a similar business and with coverage in an amount at least equal to the Casualty Value of such Box-car (but such coverage for all freight cars owned or leased by the Company may be limited to \$5,000,000 for each occurrence), (ii) insuring the Company, the Security Agent and the holders of the Notes against liability for personal injury and property damage caused by or relating to such Box-cars or their use with coverage in the amount of at least \$1,000,000, and (iii) insuring the Company for the loss of revenues from any Unit which becomes inoperable due to damage, for an 80-day period commencing 10 days after the date of such damage, all such insurance policies to be in such form and to have such coverage as shall be satisfactory to the the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the time outstanding, with losses payable to the Company and the Security Agent and the holders of the Notes as their respective interests may appear. The Company shall, if so requested by the Security Agent or a Lender, deliver to the Security Agent or such Lender within a reasonable time and as often as it may reasonably request a report of a reputable insurance broker with respect to the insurance on the Box-cars.

6.18 Casualty Occurrence. (a) In the event of a Casualty Occurrence with respect to any Unit, the Company shall promptly give the Security Agent and the holders of the Notes written notice of such Casualty Occurrence, which notice shall (i) identify the Unit which has suffered the Casualty Occurrence, (ii) set forth the Casualty Value of such Damaged Unit (and the calculations used in the determination thereof) as of the date which is 30 days after the date of such notice (the "Casualty Value Determination Date"), and (iii) specify whether the Company will, on the Casualty Value Determination Date, prepay the Notes pursuant to paragraph (b) of this Subsection 6.18 or make a deposit with the Security Agent pursuant to paragraph (c) of this Subsection 6.18.

(b) If the notice given pursuant to paragraph (a) of this Subsection 6.18 specifies that the Company will prepay the Notes on the Casualty Value Determination Date, the Company will, on such date, (i) prepay the Notes in an aggregate principal amount equal to the Casualty Value of the Damaged Unit as of such date and (ii) pay the accrued interest on the principal amount so prepaid to the date of prepayment.

(c) If the notice given pursuant to paragraph (a) of this Subsection 6.18 specifies that the Company will make a deposit with the Security Agent, the Company will, on the Casualty Value Determination Date, pay over to the Security Agent an amount (the "Deposited Funds") equal to the Casualty Value of the Damaged Unit as of the Casualty Value Determination Date. If within 180 days after the notice referred to in paragraph (a) of this Subsection 6.18 the Company

(i) replaces the Damaged Unit with a box-car of the same type which has a value and utility at least equal to, and which is in as good condition as, the Damaged Unit immediately prior to the Casualty Occurrence (assuming that such Damaged Unit was then in the condition required to be maintained by Subsection 6.19 hereof) and which is free and clear of all Liens other than Permitted Liens,

(ii) takes all steps necessary to subject such replacement box-car (the "Replacement Unit") to the lien and security interest of this Agreement and to lease such Replacement Unit under the Lease, and

(iii) delivers to the Security Agent and the holders of the Notes such documents evidencing the foregoing as the Security Agent may reasonably request, including (without limitation) a duly executed Supplement describing the Replacement Unit and documents and opinions of counsel with respect thereto corresponding to those described in subparagraphs (ii) through (ix) of Subsection 4.2(b) hereof;

the Security Agent will, if no Default or Event of Default has occurred and is continuing, (x) release to the Company the Deposited Funds with respect to the Damaged Unit and (y) execute and deliver to the Company such instruments as shall be necessary to release from the lien and security interest of this Agreement (without recourse to, or representation or warranty by, the Security Agent) such Damaged Unit, the Proceeds thereof and the Lease to the extent that it relates to such Unit. If the Company does not replace the Damaged Unit within the aforesaid 180-day period in compliance with the preceding provisions of this paragraph (c), or if at any time within such period the Company gives at least 30 days' prior written notice to the Security Agent and the holders of the Notes of its election to prepay the Notes, the Security Agent will, on the last day

of such 180-day period or on a date specified in such notice, as the case may be, apply the Deposited Funds with respect to such Damaged Unit to the prepayment of the principal amount of the Notes, and the Company will concurrently therewith pay to the holders of the Notes the accrued interest on the principal amount so prepaid to the date of prepayment.

(d) All moneys received by the Security Agent as Deposited Funds shall, until used or applied as herein provided, be held in trust for the purpose provided for in this Subsection 6.18, but need not be segregated from other funds of the Security Agent. All Deposited Funds shall constitute additional collateral security for the Obligations. So long as no Event of Default shall have occurred and be continuing, the Security Agent will accrue interest on the Deposited Funds at a rate equal to the monthly average rate of interest on 90-day United States Treasury bills (as specified by Maine National Bank) and will pay such interest to the Company upon release to the Company of such Deposited Funds or prepayment of the Notes pursuant to paragraph (c) of this Subsection 6.18.

6.19 Maintenance; Maintenance Contracts. The Company will, at its expense, keep and maintain the Box-cars in good repair, condition and working order and will cause to be furnished all parts, mechanisms, devices and servicing required therefor so that the value, condition and operating efficiency thereof will at all times be maintained and preserved, ordinary wear and tear excepted. In order to comply with the foregoing, the Company, upon the delivery of any Box-cars, shall have entered into one or more maintenance contracts, substantially in the form of Exhibit L hereto, with reputable rail service maintenance companies to provide for the maintenance and repair of such Box-cars. Upon the execution and delivery thereof the Company shall assign to the Security Agent on behalf of and for the benefit of the holders of the Notes, by an instrument in form and substance satisfactory to the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the time outstanding, all right, title and interest of the Company in, to and under such maintenance contracts, including (without limitation) all rights, privileges and remedies of the Company thereunder, but only to the extent that the foregoing relate to, derive from or arise out of the Box-cars; provided, however, that the Company shall remain liable under such maintenance contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with and pursuant to the terms and provisions

thereof. The Company will not agree to or permit any amendment or other modification of any such maintenance contract except for amendments and other modifications made in accordance with reasonable commercial standards which do not adversely affect the Security Agent's rights thereunder or the ability of either of the parties thereto to perform such contract.

6.20 Notice of Default; etc. The Company will promptly give written notice to the Security Agent and the holders of the Notes of (a) the occurrence of any Default or Event of Default; (b) any litigation or proceedings affecting the Company or any of its Restricted Subsidiaries or any of the properties or assets of the Company or any of its Restricted Subsidiaries which, if adversely determined, might have a material adverse effect upon the financial condition, business or operations of the Company or of the Company and its Restricted Subsidiaries taken as a whole; and (c) any dispute between the Company or any of its Restricted Subsidiaries and any governmental regulatory body that might materially interfere with the normal business operations of the Company or any of its Restricted Subsidiaries.

6.21 Books and Records. The Company will, and will cause each Restricted Subsidiary to, keep proper books of record and account in which full, true and correct entries in accordance with generally accepted accounting principles will be made of all dealings or transactions in relation to its business and activities.

6.22 Inspection. The Company will permit any person designated by a Lender or by any other holder of the Notes to visit and inspect any of the Collateral (subject to the rights of the lessee under the Lease) and any of the corporate books and financial records of the Company and its Restricted Subsidiaries and to discuss the affairs, finances and accounts of the Company and its Restricted Subsidiaries with their respective officers, all at such reasonable times and as often as may be reasonably requested.

6.23 Protection of Lien in Canada. The Company will, within 30 days after any Box-car becomes subject to the lien and security interest of this Agreement, at its sole cost and expense, (i) record, register or file this Agreement (or any financing statement or similar notice) in each Province of Canada (other than Prince Edward Island) in which the Company is permitted under applicable law to make such recording, registration or filing in order to perfect and protect the lien and security interest of

this Agreement on such Box-car, and (ii) deliver to the Security Agent and the holders of the Notes an opinion of Canadian counsel to the Company to the effect that all such recordings, registrations and filings have been duly made and no other recording, registration or filing is necessary in order to protect in such Province the rights of the Security Agent under this Agreement against any and all subsequent purchasers or mortgagees from or under the Company or from creditors of the Company.

6.24 Addition or Substitution of Leases. (a) If pursuant to the provisions of any Lease the Company has the right to terminate such Lease with respect to all or a portion of the box-cars leased thereunder upon a reduction in the utilization rate of the box-cars leased thereunder below a specified rate, upon any such reduction the Company may terminate such Lease with respect to any of the Box-cars leased thereunder, provided that (i) the total number of box-cars withdrawn from such Lease shall not exceed the sum of (x) the minimum number necessary in order that the box-cars remaining under such Lease shall meet the utilization rate specified therein plus (y) such additional number as shall be required to make the total number of box-cars withdrawn a multiple of 25; (ii) the number of Box-cars withdrawn from such Lease as a ratio of the total number of box-cars withdrawn therefrom shall not exceed the ratio that the number of Box-cars leased under such Lease bears to the total number of box-cars leased thereunder; and (iii) within 180 days after such termination (1) the Box-cars withdrawn from such Lease shall be duly leased to another lessee under a lease (an "additional lease") meeting the requirements of paragraph (c) of this Subsection 6.24, (2) such additional lease (insofar as it pertains to the Box-cars) shall have been duly assigned to the Security Agent on behalf of and for the benefit of the holders of the Notes and subjected to the lien and security interest of this Agreement, all recordations, filings and other action necessary to establish, perfect, protect and preserve the rights of the Company and the Security Agent in and to such additional lease and the lien and security interest of this Agreement on such additional lease shall have been duly made or taken, and the Security Agent and the holders of the Notes shall have received such instruments and documents as they may reasonably request in order to evidence the foregoing, and (3) the Security Agent and the holders of the Notes shall have received an opinion of counsel for the Company to the effect that this Agreement constitutes a legal, valid and perfected first lien on and first priority

security interest in such additional lease (and the Proceeds thereof) to the extent that such additional lease relates to the Box-cars leased thereunder, and all recordations, filings and other action necessary to establish, perfect, protect and preserve, as security for the Obligations, such lien and security interest have been duly made or taken (specifying the same).

(b) If pursuant to the provisions of any Lease the Company has the right to terminate such Lease upon the occurrence of an event of default by the lessee thereunder, upon the occurrence and continuance of any such event of default the Company may terminate such Lease with respect to all of the Box-cars leased thereunder. If the Company so terminates the Lease, within 180 days after such termination (i) all of the Box-cars previously leased under such Lease shall be duly leased by the Company to another lessee under a lease (a "substituted lease") meeting the requirements of paragraph (c) of this Subsection 6.24, (ii) such substituted lease (insofar as it pertains to the Box-cars) shall be duly assigned by the Company to the Security Agent on behalf of and for the benefit of the holders of the Notes and subjected to the lien and security interest of this Agreement, all recordations, filings and other action necessary to establish, perfect, protect and preserve the rights of the Company and the Security Agent in and to such substituted lease and the lien and security interest of this Agreement on such substituted lease shall be duly made or taken, and the Company shall deliver to the Security Agent and the holders of the Notes such instruments and documents as the Security Agent and the holders of the Notes may reasonably request in order to evidence the foregoing, and (3) the Company shall deliver to the Security Agent and the holders of the Notes an opinion of counsel for the Company to the effect that this Agreement constitutes a legal, valid and perfected first lien on and first priority security interest in such substituted lease (and the Proceeds thereof) to the extent that such substituted lease relates to the Box-cars leased thereunder, and all recordations, filings and other action necessary to establish, perfect, protect and preserve, as security for the Obligations, such lien and security interest have been duly made or taken (specifying the same).

(c) Each additional lease of Box-cars referred to in paragraph (a) of this Subsection 6.24, and each substituted lease of Box-cars referred to in paragraph (b) of this Subsection 6.24, (i) shall have a non-cancellable lease term which expires not earlier than the lease term of the Lease identified in Schedule I hereto, and (ii) shall have

substantially the same other terms and be in substantially the same form as the Lease identified in Schedule I hereto, or, if the Company is in good faith unable to enter into a lease having such other terms and in such form, shall have such other commercially reasonable terms and be in such form as shall be agreeable to the Company provided that the rent payable thereunder with respect to the Box-cars leased thereunder during each quarterly payment period under the Consolidated Notes shall be in an amount at least equal to the installment of principal and interest payable on such Notes at the end of such quarterly payment period multiplied by a fraction, the numerator of which is the aggregate Box-car Costs of the Box-cars leased thereunder and the denominator of which is the aggregate Box-car Costs of all Box-cars which are then subject to the lien and security interest of this Agreement.

6.25 Marking of Box-cars. The Company will cause each Unit to be kept numbered with such identifying number as shall be set forth in the Supplement pertaining to such Unit and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following: "MORTGAGED TO AN INSTITUTIONAL INVESTOR UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c" or other appropriate words designated by the Security Agent, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Security Agent's interest in the Box-cars and its rights under this Agreement. The Company will not permit any such Unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any Unit to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been delivered to the Security Agent and filed, recorded and deposited by the Company in all public offices where this Agreement shall have been filed, recorded or deposited.

6.26 Assignment of Moneys Payable under Requisition for Use. If at any time a governmental authority requisitions the use of any Unit and such requisition is not

deemed to be a Casualty Occurrence under the provisions of the proviso to clause (ii) of the definition of Casualty Occurrence in Subsection 1.1 hereof, the Company will use its best efforts to validly and effectively assign to the Security Agent on behalf of and for the benefit of the holders of the Notes as security for the Obligations, by an instrument in form and substance satisfactory to the holders of not less than 66 2/3% in aggregate unpaid principal amount of the Notes at the time outstanding, all payments made and to be made by such governmental authority for the use of such Unit.

## SECTION 7. POWER OF ATTORNEY

7.1 Appointment. The Company hereby irrevocably constitutes and appoints the Security Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Company and in the name of the Company or in its own name, from time to time in the Security Agent's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, the Company hereby gives the Security Agent the power and right, on behalf of the Company, without notice to or assent by the Company, to do the following:

(a) upon default by the Company in the performance of subsection 6.11(a) or 6.17, the Security Agent may, but shall not be obligated to, (i) effect any insurance called for by the terms of Subsection 6.17 and pay all or any part of the premiums therefor and the costs thereof and (ii) pay and discharge any taxes, liens and encumbrances on the Collateral; and

(b) upon the occurrence and continuance of any Event of Default or of any Default specified in paragraph (h) of Section 8 hereof, (i) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (ii) to sign and indorse any invoices, freight or

express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts and other documents relating to the Collateral; (iii) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any thereof and to enforce any other right in respect of any of the Collateral; (iv) to defend any suit, action or proceeding brought against the Company with respect to any of the Collateral; (v) to settle, compromise or adjust any suit, action or proceeding described in clause (iv) above and, in connection therewith, to give such discharges or releases as the Security Agent may deem appropriate; and (vi) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Security Agent were the absolute owner thereof for all purposes, and to do, at the Security Agent's option and the Company's expense, at any time or from time to time, all acts and things which the Security Agent deems necessary to protect, preserve or realize upon the Collateral and the Security Agent's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Company might do.

The Company hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

7.2 No Duty. The powers conferred on the Security Agent hereunder are solely to protect the interests of the holders of the Notes in the Collateral and shall not impose any duty upon it to exercise any such powers. The Security Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Company or to the holders of the Notes for any act or failure to act, except for its or their own gross negligence or willful misconduct.

7.3 Additional Rights. (a) The Company authorizes the Security Agent, at any time and from time to time, to execute, in connection with the sale provided for in Section 9(b) of this Agreement, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(b) If the Company fails to perform or comply with any of its agreements contained herein, the Security Agent may itself perform or comply, or otherwise cause performance or compliance, with such agreement, and the expenses of the Security Agent incurred in connection with such performance or compliance, together with interest thereon at the rate of 10% per annum, shall be payable by the Company to the Security Agent on demand and shall constitute part of the Obligations secured hereby.

#### SECTION 8. EVENTS OF DEFAULT

If any of the following Events of Default shall occur and be continuing:

(a) Failure to pay any principal of, premium, if any, or interest on any of the Notes when due and such failure shall continue for a period of five days;

(b) Any representation or warranty made by the Company in this Agreement, or made by the Company or any officer thereof in any document, certificate or financial or other statement furnished at any time under or in connection with this Agreement, shall prove to have been untrue when made in any material respect;

(c) Default by the Company in the observance or performance of (i) any covenant contained in Subsection 6.8, 6.17 or 6.24 hereof, or (ii) any covenant contained in Subsection 6.3, 6.4, 6.5, 6.6, 6.7, 6.9, 6.10, 6.14 or 6.25 hereof and such default shall continue for 30 days;

(d) Default by the Company in the observance or performance of any other covenant or agreement contained in this Agreement and not referred to in paragraph (c) of this Section 8, and such default shall continue for 30 days after written notice thereof, specifying such default and requesting that the same be remedied, shall have been given to the Company by the holder of any of the Notes;

(e) The occurrence of any event or condition which constitutes an event of default by the Company under the Lease;

(f) The Company or any Restricted Subsidiary shall default (and such default shall not have been cured or waived) in any payment of principal of, or

interest on, any obligation for borrowed money (other than the Notes) or for the deferred purchase price of any property or asset (unless the aggregate amount of all such defaulted obligations for deferred purchase price does not exceed \$100,000 and the Company or the appropriate Restricted Subsidiary is disputing such obligations in good faith and by appropriate proceedings), or any obligation guaranteed by it or in respect of which it is liable, for a period equal to the period of grace, if any, applicable to such default; or the Company or any Restricted Subsidiary shall default in the performance or observance of any other term, condition or covenant contained in any obligation referred to above or in any agreement or instrument relating thereto if as a result of such default such obligation has become, or has been declared to be, due and payable prior to its stated maturity;

(g) Filing by the Company or any Restricted Subsidiary of a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing, or any action by the Company or any Restricted Subsidiary indicating its consent to, approval of, or acquiescence in, any such petition or proceeding; the application by the Company or any Restricted Subsidiary for, or the appointment by consent or acquiescence of, a receiver or trustee for the Company or any Restricted Subsidiary or for all or a substantial part of its property; the making by the Company or any Restricted Subsidiary of an assignment for the benefit of creditors; the inability of the Company or any Restricted Subsidiary, or the admission by the Company or any Restricted Subsidiary in writing of its inability, to pay its debts as they mature;

(h) Filing of an involuntary petition against the Company or any Restricted Subsidiary in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition,

readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing; or the involuntary appointment of a receiver or trustee of the Company or any Restricted Subsidiary or for all or a substantial part of its property; or the service on the Company or any Restricted Subsidiary of a warrant of attachment, execution or similar process against any substantial part of the property of the Company or such Restricted Subsidiary; and the continuance of any of such events for 60 days undismitted, unbonded or undischarged;

(i) Final judgment for the payment of money in excess of \$100,000 shall be rendered against the Company or a Restricted Subsidiary and the same shall remain undischarged for a period of 60 days during which execution shall not be effectively stayed;

then, and in any such event, each Lender may terminate forthwith its commitment to make any further loans hereunder, each holder of a Note may exercise any all remedies granted to it under this Agreement and under applicable law, and the holders not less than 34% in aggregate unpaid principal amount of the Notes at the time outstanding may, by notice of default given to the Company, declare the Notes to be forthwith due and payable, whereupon the principal amount of all of the Notes, together with accrued interest thereon, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding; provided, however, that if, within 30 days after written notice of an Event of Default is given to Weyerhaeuser Company, a Washington corporation, Weyerhaeuser Company (A) expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on the Notes and the due and punctual performance and observance of all the obligations, liabilities and covenants of the Company contained in this Agreement (other than in Subsections 6.1 through 6.7, 6.9, 6.10 and 6.24 hereof) and in the Notes, (B) pays to the holders of the Notes a sum sufficient to pay all matured installments of interest upon the Notes and the principal of the Notes which shall have become due otherwise than by acceleration and any and all other amounts then due and payable under this Agreement (other than the principal of the Notes which shall have become

due by acceleration), (C) expressly acknowledges in writing that the Box-cars are subject to the lien and security interest created by this Agreement, (D) records and files at its sole expense, with the Interstate Commerce Commission in conformity with Section 20c of the Interstate Commerce Act, as amended, and in such other public offices as the holder of any Note may reasonably request, the assumption agreement and such other documents as any holder of a Note shall request in order to maintain and preserve the lien and security interest created by this Agreement in the Collateral, and (E) furnishes to the holders of the Notes and the Security Agent documents and opinions of counsel corresponding to those referred to in Subsections 4.1(a), 4.1(b), 4.1(c), 4.1(d), 4.2(b)(vii), 4.2(b)(viii) and 4.2(b) (ix) hereof, modified to the extent necessary to be applicable to such assumption and satisfactory in form and substance to the holders of the Notes, then the holders of the Notes shall waive all Defaults and Events of Default and rescind and annul such declaration and its consequences; but no such waiver or rescission and amendment shall extend to or shall affect any subsequent default by Weyerhaeuser Company or shall impair any right consequent thereon. Until such time as Weyerhaeuser Company no longer has the right to expressly assume the obligations set forth hereunder, the Security Agent will not exercise its remedies under Section 9(b) hereof.

#### SECTION 9. REMEDIES

If an Event of Default shall occur and be continuing:

(a) All payments received by the Company in connection with or arising out of any of the Collateral shall be held by the Company in trust for the Security Agent, shall be segregated from other funds of the Company and shall forthwith upon receipt by the Company be turned over to the Security Agent, in the same form as received by the Company (duly indorsed by the Company to the Security Agent, if required); any and all such payments so received by the Security Agent (whether from the Company or otherwise) shall be held by the Security Agent as collateral security for the Obligations, and shall be applied by the Security Agent, after deducting all reasonable costs and expenses of every kind incurred in the collection of such payments by the Security Agent,

including reasonable attorney's fees and legal expenses, first to the payment of the interest then due and payable on the Notes, second to the payment of the principal of (and premium, if any, on) the Notes and third to the pro rata payment of all other Obligations then due, all such payments to be made ratably, without discrimination or preference. Any balance of such payments held by the Security Agent and remaining after payment in full of all the Obligations shall be paid over to the Company or to whomsoever may be lawfully entitled to receive the same;

(b) The Security Agent may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the Uniform Commercial Code of the State of New York. Without limiting the generality of the foregoing, the Company expressly agrees that in any such event the Security Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Company or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral or any part thereof and may take possession of the Box-cars and/or may forthwith sell, assign, give option or options to purchase, or sell, lease or otherwise dispose of and deliver the Collateral, or any part thereof, in any manner permitted by applicable law (or contract to do so) in one or more parcels at public or private sale or sales, at the office of any broker or at any of the Security Agent's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk, with the right of the Security Agent or any holder of any of the Notes upon any such sale or sales, public or private, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Company, which right or equity of redemption is hereby expressly waived or released. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if mailed at least ten (10) days before such disposition, postage prepaid, addressed to the

Company at the address set forth in Subsection 10.2 hereof. The Company further agrees, at the Security Agent's request, to collect the Box-cars (to the extent possible) and make them available to the Security Agent at places which the Security Agent shall reasonably select. The Security Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization and sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of the Security Agent hereunder, including reasonable attorney's fees and legal expenses, first to the payment of the interest due and payable on the Notes, second to the payment of the principal of (and premium, if any, on) the Notes and third to the payment of all other Obligations then due, all such payments to be made ratably, without discrimination, preference or priority of any kind, the Company remaining liable for any deficiency remaining unpaid after such application, and only after so applying such net proceeds and after the payment by the Security Agent of any other amount required by any provision of law, including Section 9-504(1)(c) of the Uniform Commercial Code of the State of New York, need the Security Agent account for the surplus, if any, to the Company. To the extent permitted by applicable law, the Company waives all claims, damages and demands against the Security Agent and the holders of the Notes arising out of the repossession, retention or sale of the Collateral. The Company shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which the Security Agent and the holders of the Notes are entitled, the Company also being liable for the fees of any attorneys employed by the Security Agent or any holder of a Note to collect such deficiency. The Company hereby waives presentment, demand, protest and any notice (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral; and

(c) Beyond the use of reasonable care in the custody thereof the Security Agent shall not have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or as to any income therefrom.

## SECTION 10. MISCELLANEOUS

10.1 Reimbursement of Lenders. The Company agrees, whether or not the transactions contemplated by this Agreement shall be consummated, to pay, or reimburse the Lenders for, all out-of-pocket expenses (including the reasonable legal fees and disbursements of counsel for the Lenders) incurred by the Lenders in connection with the preparation, execution, enforcement (or the preservation of any rights hereunder) and any modification of this Agreement, the Notes and any Supplement. The Company also agrees to pay, and to save the Lenders harmless from, any and all liabilities with respect to, or resulting from any delay in paying documentary, excise, recording, filing, stamp or similar taxes, fees and other governmental charges (including interest and penalties), if any, which may be payable or determined to be payable in respect of the execution, delivery or recording of this Agreement, the Notes or any Supplement, or any modification of any thereof or any waiver or consent under or in respect of any thereof but not including any tax or charge calculated by reference to the Lenders' overall income. The obligations of the Company under this Subsection 10.1 shall survive payment of the Notes and termination of this Agreement.

10.2 Notices. All notices, requests and demands to or upon the respective parties to this Agreement shall be deemed to have been given or made when delivered by hand or deposited in the mail, first class postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company, or in the case of telex notice, when sent, addressed as follows, or to such other address as may be hereafter designated in writing by the respective parties hereto:

The Company	Brae Corporation 3 Embarcadero Center San Francisco, California 94111
Each Lender	Its address set forth in Annex I hereto
The Security Agent	Union Mutual Life Insurance Company 2211 Congress Street Portland, Maine 04112 Telex:

10.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Lenders, the Security Agent or the holders of the Notes, any right, power or privilege under this Agreement, any Note, any Supplement or any of the Collateral shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The acceptance by a Lender of a Consolidated Note pursuant to Subsection 4.3 hereof shall not be deemed to constitute a waiver by such Lender of any Default or Event of Default that may be in existence on the date of such acceptance.

The rights and remedies provided herein and therein are cumulative and not exclusive of any rights or remedies provided by law.

10.4 Acquisition for Investment. Each Lender represents that it is acquiring the Notes for its own account for investment and not with a view to, or for sale in connection with, the distribution of any of the Notes, nor with any present intention of selling any of the Notes, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

10.5 Amendments and Waivers. (a) Until the first borrowing hereunder, any term, covenant, agreement or condition of this Agreement may be amended, or compliance therewith may be waived, by one or more substantially concurrent written instruments signed by the Company and the Lenders.

(b) Any term, covenant, agreement or condition of this Agreement or of the Notes may, with the consent of the Company, be amended, or compliance therewith may be waived (either generally or in a particular instance and either retroactively or prospectively), by one or more substantially concurrent written instruments signed by the holder or holders of not less than 66 2/3% in aggregate unpaid principal amount of all Notes at the time outstanding; provided, however, that

(i) no such amendment or waiver shall

(1) reduce the amount of the principal of any of the Notes or change the amounts or dates

of payments of any payment or prepayment of principal due upon any of the Notes or reduce the rate or extend the time of payment of interest on any of the Notes, or modify any of the provisions of this Agreement or of the Notes with respect to the payment or prepayment thereof (including the amount of any premium payable on any prepayment), without the consent of the holder of each Note so affected, or

(2) release any of the Collateral, or adversely affect the priority of the lien and security interest of this Agreement in the Collateral or otherwise interfere with the lien and security interest created by this Agreement in the Collateral, without the consent of the holders of all the Notes then outstanding, or

(3) reduce the percentage of holders of Notes required to approve any such amendment or effectuate any such waiver, without the consent of the holders of all the Notes then outstanding; and

(ii) no such waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon.

(c) Any amendment or waiver pursuant to this Subsection 10.5 shall (except as provided in clause (1) of subparagraph (b)(i) above) apply equally to all the holders of the Notes and shall be binding upon them, upon each future holder of any Note and upon the Company. In the case of an amendment or waiver of the character described in subparagraph (b)(i) above, a notation shall be made on each outstanding Note the holder of which has consented to such amendment or waiver to indicate that such amendment or waiver has been effected, and no such amendment or waiver shall become effective with respect to any Note until such notation shall have been made on such Note. In the case of any other amendment or waiver, no notation need be made on the Notes at the time outstanding, but any Note executed and delivered thereafter may, at the option of the Company, bear a notation referring to any such amendment or waiver then in effect.

10.6 Successors. This Agreement shall be binding upon and inure to the benefit of the Company, each Lender and the Security Agent and their respective successors and assigns, except that the Company may not transfer or assign any of its rights hereunder without the prior written consent of each Lender.

10.7 Construction. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

10.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.9 Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BRAE CORPORATION

Attest:  
By George A. Mahood  
Title: Asst. Secretary  
(Seal)

By Lawrence W. Buisson  
Title: Vice President

UNION MUTUAL LIFE INSURANCE COMPANY

Attest:  
By Barbara A. Whitney  
Title: Assistant Secretary  
(Seal)

By David M. Tompkins  
Title: Second Vice President BK

UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA

Attest:  
By Barbara A. Whitney  
Title: Assistant Secretary  
(Seal)

By Edmund K. Worley  
Title: Second Vice President BK

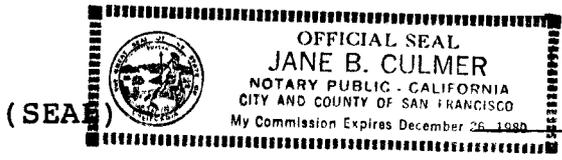
UNION MUTUAL LIFE INSURANCE COMPANY, as Security Agent

Attest:  
By Barbara A. Whitney  
Title: Assistant Secretary  
(Seal)

By Edmund K. Worley  
Title: Second Vice President BK

STATE OF *California*  
 ) SS  
COUNTY OF *San Francisco*

On this *6* day of *Nov* ~~September~~, 1978, before me personally appeared *Lawrence W. Biscoe*, to me personally known, who being by me duly sworn, says that he is the *Vice Pres* of BRAE CORPORATION, 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.



*Jane B Culmer*  
Notary Public

My commission expires: *December 26, 1980*

STATE OF MAINE )  
 ) SS  
COUNTY OF *Cumberland* )

On this *26<sup>th</sup>* day of *October* ~~September~~, 1978, before me personally appeared *David M. Tourangeau*, to me personally known, who being by me duly sworn, says that he is a *Second Vice President* of UNION MUTUAL LIFE INSURANCE 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, both in its individual capacity and as Security Agent, 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.

(SEAL) *Dorcas M. Demmons*  
Notary Public

My commission expires:

MY COMMISSION EXPIRES  
MAY 8, 1981

STATE OF MAINE )  
COUNTY OF Cumberland ) SS

On this 26<sup>th</sup> day of ~~September~~<sup>October</sup>, 1978, before me personally appeared Edmund R. Dooley, to me personally known, who being by me duly sworn, says that he is a Second Vice President of UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA, 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.

(SEAL)

Donna M. Demmons  
Notary Public

My commission expires:

MY COMMISSION EXPIRES  
MAY 8, 1981

ANNEX I

UNION MUTUAL LIFE INSURANCE COMPANY

(1) All payments on account of the Notes held by Union Mutual Life Insurance Company shall be made by wire transfer of immediately available funds, which shall provide sufficient information to identify the source and application of such funds, to:

Maine National Bank  
400 Congress Street  
Portland, Maine 04112  
For the account of Union Mutual  
Life Insurance Company  
Account No. 00-0062-0

(2) Address for all other communications:

Union Mutual Life Insurance Company  
2211 Congress Street  
Portland, Maine 04112  
Attention: Investment Division

UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA

(1) All payments on account of the Notes held by Unionmutual Stock Life Insurance Co. of America shall be made by wire transfer of immediately available funds, which shall provide sufficient information to identify the source and application of such funds, to:

Casco Bank and Trust Company through  
New England Merchants National Bank of Boston  
One Monument Square  
Portland, Maine 04104  
For the account of Unionmutual Stock Life  
Insurance Co. of America  
Account No. 00-039-976

(2) Address for all other communications:

Unionmutual Stock Life Insurance Co.  
of America  
2211 Congress Street  
Portland, Maine 04112  
Attention: Investment Division

Schedule I

Lease

<u>Lessor</u>	<u>Lessee</u>	<u>Date</u>	<u>Term</u>
Brae Corporation	Columbia & Cowlitz Railway Company	March 27, 1978	15 years

Schedule II

Jurisdictions in Which Company is  
Qualified to do Business

Arkansas

Alabama

Georgia

Idaho

Illinois

Indiana

Massachusetts

Nevada

Ohio

Tennessee

Vermont

EXHIBIT A

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF ANY APPLICABLE "BLUE SKY" LAWS AND UNLESS IT IS REGISTERED PURSUANT TO THE ACT OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

[Form of Interim Note]

BRAE CORPORATION

\$

New York, New York

Registration No.

, 197

FOR VALUE RECEIVED, BRAE CORPORATION (the "Company") hereby promises to pay to \_\_\_\_\_ or registered assigns, at the principal office of Maine National Bank, Portland, Maine, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ DOLLARS (\$) on December 31, 1978. The undersigned further promises to pay interest (calculated on the basis of a 365 or 366-day year, as applicable) at said office, in like money, on the unpaid principal amount hereof from the date hereof at the rate of 10% per annum until such principal amount shall be paid in full. Interest shall be payable at the maturity hereof, and after maturity on demand.

This Note is one of the Interim Notes of the Company issued pursuant to the Loan and Security Agreement dated as of September 12, 1978 among the Company, Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as Security Agent, as the same may from time to time be amended, supplemented or otherwise modified (the "Agreement"), and is entitled to the benefits thereof. As provided in the Agreement, this Note is subject to prepayment, in whole or in part, under certain conditions.

This Note, together with the other Notes referred to in the Agreement, is secured by the Collateral described in the Agreement. Reference is made to the Agreement for a description of the nature and extent of the security for this Note and the rights of the holder hereof with respect to such security.

This Note is transferable only by surrender hereof at the office of the Company maintained pursuant to Subsection 6.11(e) of the Agreement, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of this Note or his attorney duly authorized in writing.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

Upon the occurrence of any one or more of the Events of Default specified in the Agreement, the amounts then remaining unpaid on this Note may be declared to be immediately due and payable as provided in the Agreement.

BRAE CORPORATION

By \_\_\_\_\_  
Title:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF ANY APPLICABLE "BLUE SKY" LAWS AND UNLESS IT IS REGISTERED PURSUANT TO THE ACT OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

[Form of Consolidated Note]

BRAE CORPORATION

§ New York, New York  
Registration No. , 197

FOR VALUE RECEIVED, BRAE CORPORATION (the "Company") hereby promises to pay to \_\_\_\_\_ or registered assigns, at the principal office of Maine National Bank, Portland, Maine, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), and to pay interest on the unpaid principal amount hereof, in like money, from the date hereof at the rate of 10% per annum (calculated on the basis of a 365 or 366-day year, as applicable). Such principal and interest shall be due and payable in 60 consecutive quarterly installments, each in the amount of \$ \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, and \_\_\_\_\_ in each year, commencing \_\_\_\_\_, 19 \_\_\_\_\_, provided that, in any event, the 60th quarterly installment shall be in amount sufficient to pay in full all accrued interest on, and the entire unpaid principal amount of, this Note, and provided further, that in the event any partial prepayment of this Note is made pursuant to Subsection 2.5, 2.6 or 2.7 of the Agreement referred to below, each installment due and payable on this Note after such partial prepayment shall be reduced in the same proportion as the then outstanding principal amount of this Note shall have been reduced by such partial prepayment. Each installment of this Note, when paid, shall be first applied to the payment of interest accrued to the dated fixed for payment of the unpaid principal amount of this Note, and the balance thereof to the payment of principal. Interest on any overdue principal of and premium, if any, on this Note shall be payable from the due date thereof at the rate of 10% per annum for the period during which such principal or premium shall be overdue.

This Note is one of the Consolidated Notes of the Company issued pursuant to the Loan and Security Agreement dated as of September 12, 1978 among the Company, Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as Security Agent, as the same may from time to time be amended, supplemented or otherwise modified (the "Agreement"), and is entitled to the benefits thereof. As provided in the Agreement, this Note is subject to prepayment, in whole or in part, in certain cases without premium and in other cases with a premium as specified in the Agreement.

This Note, together with the other Consolidated Notes referred to in the Agreement, is secured by the Collateral described in the Agreement. Reference is made to the Agreement for a description of the nature and extent of the security for this Note and the rights of the holder hereof with respect to such security.

This Note is transferable only by surrender hereof at the office of the Company maintained pursuant to Subsection 6.11(e) of the Agreement, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of this Note or his attorney duly authorized in writing.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

Upon the occurrence of any one or more of the Events of Default specified in the Agreement, the amounts then remaining unpaid on this Note may be declared to be immediately due and payable as provided in the Agreement.

BRAE CORPORATION

By \_\_\_\_\_  
Title:

[Form of Legal Opinion of  
Counsel to the Company]

, 197

Union Mutual Life Insurance Company  
2211 Congress Street  
Portland, Maine 04112

Unionmutual Stock Life Insurance  
Co. of America  
2211 Congress Street  
Portland, Maine 04112

Dear Sirs:

We have acted as counsel for Brae Corporation, a corporation (the "Company"), in connection with the execution and delivery of the Loan and Security Agreement dated as of September 12, 1978 among the Company, Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as security agent thereunder (the "Agreement").

This opinion is furnished pursuant to paragraph (c) of Subsection 4.1 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, Supplement No. 1 thereto, the lease identified in Schedule I to the Agreement (the "Lease") and the lease schedules thereto, the executed Interim Notes delivered by the Company on the date hereof, and such corporate documents and records of the Company, certificates of public officials and of officers of the Company, and such other documents, as we have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of

the State of \_\_\_\_\_ \*, has the corporate power and authority to own its properties and assets and to transact the business in which it is presently engaged (including the purchase of the Box-cars and the leasing thereof under the Lease), and is duly qualified as a foreign corporation and in good standing under the laws of each state listed in Schedule II to the Agreement.

2. The Company has the corporate power and authority to execute, deliver and perform the Agreement, the Supplements, the Notes and the Lease, to grant the lien and security interest created by the Agreement and the Supplements and to lease the Box-cars to the lessee under the Lease, and the Company has taken all necessary corporate action to authorize the execution, delivery and performance of the Agreement, the Supplements, the Notes and the Lease. No consent of the stockholders of the Company, and no consent, license, permit, approval or authorization of, exemption by, or registration or declaration with, any governmental authority, is required in connection with the execution, delivery or performance by the Company of the Agreement, the Supplements, the Notes or the Lease, except for the filings and recordings referred to in paragraph 8 below.

3. The Agreement, Supplement No. 1, the Interim Notes executed and delivered by the Company on the date hereof and the Lease have been executed and delivered by duly authorized officers of the Company and constitute, and each other Supplement and Note when executed and delivered by the President or a Vice President of the Company will constitute, the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles, provided that such general equitable principles will not impair the ability of the holder of any Note to recover the principal, interest and premium (if any) thereon or make the remedies provided for in the Agreement inadequate for the practical realization of the benefits of the collateral security provided thereby.

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\* California, or if the Company has merged into its Delaware subsidiary, Delaware.

4. It is not necessary in connection with the execution and delivery to you of the Notes, under the circumstances contemplated by the Agreement, to register the Notes under the Securities Act of 1933, as now in effect, or to qualify the Agreement under the Trust Indenture Act of 1939, as now in effect.

5. The execution, delivery and performance by the Company of the Agreement, the Supplements, the Notes and the Lease will not violate any provision of, or constitute a default under, any existing law of the United States of America or the State of California to which the Company is subject, or any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company of which we have knowledge (having made due inquiry of the President and the Vice President of the Company), or the Articles of Incorporation, By-Laws or any preferred stock provision of the Company, or any mortgage, indenture, contract or other agreement of which we have knowledge (having made due inquiry of the President and the Vice President of the Company) to which the Company is a party or which is binding upon the Company or any of its properties or assets, and will not result in the creation or imposition of any Lien (other than the Lien created by the Agreement) on any of the properties or assets of the Company pursuant to the provisions of any such mortgage, indenture, contract or other agreement.

6. To the best of our knowledge (having made due inquiry of the President and the Vice President of the Company), there are no actions, suits or proceedings (whether or not purportedly on behalf of the Company) pending or threatened against the Company or any of its properties or assets in any court or before any arbitrator or before or by any governmental body, except as disclosed in the letter referred to in Subsection 3.4 of the Agreement, which (i) relate to any of the Collateral or to any of the transactions contemplated by the Agreement, or (ii) would, if adversely determined, materially impair the right or ability of the Company to carry on its business substantially as now conducted, or (iii) would, if adversely determined, have a materially adverse effect on the operating results or on the condition, financial or other, of the Company.

7. We have reviewed an opinion of even date herewith of counsel to the manufacturer of the Box-cars

described in Supplement No. 1, addressed to you and the Company, as to the transfer to the Company of legal title to such Box-cars. Relying solely on such opinion and on the certificate of an officer of the Company to the effect that the Company has not transferred title or any interest in such Box-cars except as contemplated by the Agreement, we are of the opinion that the Company has valid and legal title to, and is the lawful owner of, the Box-cars described in Supplement No. 1.

8. We have reviewed the opinion of even date herewith of Messrs. Connor, Moore & Corber, delivered to you pursuant to Subsection 4.1(c) of the Agreement, to the effect that the Agreement, Supplement No. 1, the Lease and the lease schedule thereto subjecting the Box-cars described in Supplement No. 1 to the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and to the effect that no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Box-cars or the Lease (to the extent that the Lease relates to the Box-cars). We have relied upon a certificate of the Company to the effect that such Box-cars have been marked as provided by Section 6.25 of the Agreement. A financing statement describing the Security Agent's security interest in the Lease (and the Proceeds thereof) has been duly filed with the Secretary of State of California, and no other financing statement asserting the grant by the Company of a security interest in the Lease (or the Proceeds thereof) has been so filed. We are informed that the Security Agent has possession of all of the Company's signed copies of the Lease. No other filing, registration or recording or other action is necessary in order to perfect, protect and preserve, as security for the Obligations, the lien on and security interest in the Box-cars and the Lease created by the Agreement in the United States of America, except that (i) each Supplement hereafter executed and delivered by the Company, and each lease schedule subjecting to the Lease the Box-cars described in such Supplement, must be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and (ii) a continuation statement must be filed within six months prior to the expiration of each five-year period following the date of filing of the financing statement filed with the Secretary of State of California and appropriate amendments or continuation statements must be filed in the event the Company changes its name or principal

place of business. The Agreement, as supplemented by Supplement No. 1, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Box-cars described in such Supplement and in the Lease to the extent that the Lease relates to such Box-cars, as security for the Obligations.

In rendering the opinions expressed in paragraph 8 above, we have relied as to matters governed by the Interstate Commerce Act, as amended, and as to the filings and recordings with the Interstate Commerce Commission (or the lack of such filings and recordings), upon the opinion of Messrs. Connor, Moore & Corber, delivered to you on the date hereof pursuant to paragraph (c) of Subsection 4.1 of the Agreement. Such opinion is satisfactory in form and substance to us, and we believe that we and you are justified in relying thereon.

Very truly yours,

[Form of Legal Opinion of  
Special Counsel to the Company]

, 1978

Union Mutual Life Insurance Company  
2211 Congress Street  
Portland, Maine 04112

Unionmutual Stock Life Insurance  
Co. of America  
2211 Congress Street  
Portland, Maine 04112

Dear Sirs:

We have acted as special counsel for Brae Corporation, a corporation (the "Company"), in connection with the execution and delivery of the Loan and Security Agreement dated as of September 12, 1978 between the Company, Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as security agent thereunder (the "Agreement").

This opinion is furnished pursuant to paragraph (c) of Subsection 4.1 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, Supplement No. 1 thereto, the lease identified in Schedule I to the Agreement (the "Lease") and the lease schedules thereto, and such other documents as we have deemed necessary or appropriate for the purposes hereof. We have assumed that the manufacturer of the Box-cars described in Supplement No. 1 transferred valid and legal title to such Box-cars to the Company free and clear of all Liens, other than the rights of the Security Agent under the Agreement.

Based upon the foregoing, we are of the opinion that:

1. The Agreement, Supplement No. 1, the Lease and the lease schedule thereto subjecting the

Box-cars described in Supplement No. 1 to the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended and no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Box-cars or the Lease (to the extent that the Lease relates to the Box-cars . No other filing, registration or recording is necessary in order to perfect, protect and preserve, as security for the Obligations, the lien on and security interest in the Box-cars and in the Lease created by the Agreement, except that each Supplement hereafter executed and delivered by the Company, and each lease schedule subjecting to the Lease the Box-cars described in such Supplement, must be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended.

2. The Agreement, as supplemented by Supplement No. 1, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Box-cars described in such Supplement and in the Lease to the extent that the Lease relates to such Box-cars, as security for the Obligations.

Very truly yours,

[Form of Legal Opinion of  
Special Counsel to the Lenders]

, 197

Union Mutual Life Insurance Company  
2211 Congress Street  
Portland, Maine 04112

Unionmutual Stock Life Insurance  
Co. of America  
2211 Congress Street  
Portland, Maine 04112

Dear Sirs:

We have acted as your special counsel in connection with the execution and delivery of the Loan and Security Agreement dated as of September 12, 1978 among Brae Corporation, a corporation (the "Company"), Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as security agent thereunder (the "Agreement").

This opinion is furnished pursuant to paragraph (c) of Subsection 4.1 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, Supplement No. 1 thereto, the lease identified in Schedule I to the Agreement (the "Lease") and the lease schedules thereto, the executed Interim Notes delivered by the Company on the date hereof, and such corporate documents and records of the Company, certificates of public officials and of officers of the Company, and such other documents, as we have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of \*, and has the corporate power and authority to own railroad rolling stock and to transact the business of leasing railroad rolling stock to others.

2. The Company has the corporate power and authority to execute, deliver and perform the Agreement, the Supplements, the Notes and the Lease, to grant the lien and security interest created by the Agreement and the Supplements and to lease the Box-cars to the lessee under the Lease, and the Company has taken all necessary corporate action to authorize the execution, delivery and performance of the Agreement, the Supplements, the Notes and the Lease.

3. The Agreement, Supplement No. 1, the Interim Notes executed and delivered by the Company on the date hereof and the Lease have been executed and delivered by duly authorized officers of the Company and constitute, and each other Supplement and Note when executed and delivered in accordance with the Agreement by the President or a Vice President of the Company will constitute, the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles, provided that such general equitable principles will not impair the ability of the holder of any Note to recover the principal, interest and premium (if any) thereon or make the remedies provided for in the Agreement inadequate for the practical realization of the benefits of the collateral security provided thereby.

4. It is not necessary in connection with the execution and delivery to you of the Notes, under the circumstances contemplated by the Agreement, to register the Notes under the Securities Act of 1933, as now in effect, or to qualify the Agreement under the Trust Indenture Act of 1939, as now in effect.

5. The opinion of Messrs. Heller, Ehrman, White & McAuliffe, counsel for the Company, and the opinion of

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\* California, or if the Company has merged into its Delaware subsidiary, Delaware.

Messrs. Connor, Moore & Corber, special counsel for the Company, which have been delivered to you on the date hereof pursuant to paragraph (c) of Subsection 4.1 of the Agreement, are satisfactory in form and substance to us and we believe that you are justified in relying thereon.

Very truly yours,

NOTICE TO LESSEE

BRAE CORPORATION, as lessor under the lease agreement dated 1978 between Brae Corporation and ("Lessee"), hereby notifies Lessee of the assignment to Union Mutual Life Insurance Company, as Security Agent for holders of certain Notes issued by Brae Corporation, of the portion of said lease, and the rentals payable thereunder, related to the Box-cars listed on the schedule attached hereto.

You are hereby directed to pay to Union Mutual Life Insurance Company as Security Agent, or as it may direct, all rentals and other sums payable to us under said lease which are attributable to, or constitute rentals in respect of, the Box-cars listed on the schedule attached hereto.

BRAE CORPORATION

By \_\_\_\_\_  
Title:

[Form of Lease Schedule]

Brae Corporation hereby leases the following Cars  
to pursuant to that certain Lease  
Agreement dated as of , 197 .

<u>A.A.R.</u> <u>Mech.</u> <u>Design</u>	<u>Description</u>	<u>Numbers</u>	<u>Length</u>	<u>Dimensions</u> <u>Inside</u> <u>Width</u>	<u>Height</u>	<u>Doors</u> <u>Width</u>	<u>Number</u> <u>of</u> <u>Cars</u>
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Lessee acknowledges that Brae Corporation, as collateral security for loans made and to be made to it by Union Mutual Life Insurance Company and Unionmutual Stock Life Insurance Co. of America (the "Lenders"), has granted to Union Mutual Life Insurance Company, as Security Agent, a first lien on and first security interest in the above Box-cars and has assigned to Union Mutual Life Insurance Company, all of its right, title and interest in and to the aforesaid Lease Agreement insofar as it pertains to the above Box-cars.

BRAE CORPORATION

[Name of Lessee]

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

[Form of Legal Opinion of  
Counsel to the Company]

, 197

Union Mutual Life Insurance Company  
2211 Congress Street  
Portland, Maine 04112

Unionmutual Stock Life Insurance  
Co. of America  
2211 Congress Street  
Portland, Maine 04112

Dear Sirs:

We have acted as counsel for Brae Corporation, a corporation (the "Company"), in connection with (i) the execution and delivery of the Loan and Security Agreement dated as of September 12, 1978 among the Company, Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as security agent thereunder (the "Agreement"), and (ii) the execution and delivery to you of the Company's Consolidated Notes in the aggregate principal amount of \$ , dated the date hereof (the "Consolidated Notes").

This opinion is furnished pursuant to paragraph (d) of Subsection 4.3 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, the Supplements, the lease identified in Schedule I to the Agreement (the "Lease") and the lease schedules thereto, the executed Consolidated Notes, and such corporate documents and records of the Company, certificates of public officials and of officers of the Company, and such other documents as we have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the

State of \*, and has the corporate power and authority to own its properties and assets and to transact the business in which it is presently engaged (including the purchase of the Box-cars and the leasing thereof under the Lease).

2. The Company has the corporate power and authority to execute, deliver and perform the Consolidated Notes, and has taken all necessary corporate action to authorize the execution, delivery and performance thereof. No consent of the stockholders of the Company, and no consent, license, permit, approval or authorization of, exemption by, or registration or declaration with, any governmental authority, is required in connection with the execution, delivery or performance by the Company of the Consolidated Notes, except for the filings referred to in paragraph 7 below.

3. The Agreement, the Supplements, the Consolidated Notes and the Lease have been executed and delivered by duly authorized officers of the Company and constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles, provided that such general equitable principles will not impair the ability of the holders of the Consolidated Notes to recover the principal, interest and premium (if any) thereon or make the remedies provided for in the Agreement inadequate for the practical realization of the benefits of the collateral security provided thereby.

4. It is not necessary in connection with the execution and delivery to you of the Consolidated Notes, under the circumstances contemplated by the Agreement, to register the Consolidated Notes under the Securities Act of 1933, as now in effect, or to qualify the Agreement under the Trust Indenture Act of 1939, as now in effect.

5. The execution, delivery and performance by the Company of the Agreement, the Supplements, the Consolidated Notes and the Lease will not violate any provision of, or constitute a default under, any existing law

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\* California, or if the Company has merged into its Delaware subsidiary, Delaware.

of the United States of America or the State of California to which the Company is subject, or any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company of which we have knowledge (having made due inquiry of the President and the Vice President of the Company), or the Articles of Incorporation, By-Laws or any preferred stock provision of the Company, or any mortgage, indenture, contract or other agreement of which we have knowledge (having made due inquiry of the President and the Vice President of the Company) to which the Company is a party or which is binding upon the Company or any of its properties or assets, and will not result in the creation or imposition of any Lien (other than the Lien created by the Agreement) on any of the properties or assets of the Company pursuant to the provisions of any such mortgage, indenture, contract or other agreement.

6. We have reviewed opinions of counsel to the manufacturer of the Box-cars described in the Supplements, heretofore delivered to you and the Company, as to the transfer to the Company of legal title to such Box-cars. Relying solely on such opinions and on the certificate of an officer of the Company to the effect that the Company has not transferred title or any interest in such Box-cars except as contemplated by the Agreement, we are of the opinion that the Company has valid and legal title to, and is the lawful owner of, the Box-cars described in the Supplements.

7. We have reviewed the opinion of even date herewith of Messrs. Connor, Moore & Corber, delivered to you pursuant to Subsection 4.3(d) of the Agreement, to the effect that the Agreement, the Supplements, the Lease and the lease schedule thereto subjecting the Box-cars described in the Supplements to the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and to the effect that no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Box-cars or the Lease (to the extent that the Lease relates to the Box-cars). We have relied upon a certificate of the Company to the effect that such Box-cars have been marked as provided by Section 6.25 of the Agreement. A financing statement describing the Security Agent's security interest in the Lease (and the Proceeds thereof) has been duly filed with the Secretary of State of California, and no other financing statement asserting

the grant by the Company of a security interest in the Lease (or the Proceeds thereof) has been so filed. We are informed that the Security Agent has possession of all of the Company's signed copies of the Lease. No other filing, registration or recording or other action is necessary in order to perfect, protect and preserve, as security for the Consolidated Notes and the other Obligations, the lien on and security interest in the Box-cars and the Lease created by the Agreement in the United States of America, except that (i) each Supplement hereafter executed and delivered by the Company, and each lease schedule subjecting to the Lease the Box-cars described in such Supplement, must be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and (ii) a continuation statement must be filed within six months prior to the expiration of each five-year period following the date of filing of the financing statement filed with the Secretary of State of California and appropriate amendments or continuation statements must be filed in the event the Company changes its name or principal place of business. The Agreement, as supplemented by the Supplements, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Box-cars described in the Supplements and in the Lease to the extent that the Lease relates to such Box-cars, as security for the Consolidated Notes and the other Obligations.

In rendering the opinions expressed in paragraph 7 above, we have relied as to matters governed by the Interstate Commerce Act, as amended and as to the filings and recordings with the Interstate Commerce Commission (or the lack of such filings and recordings), upon the opinion of Messrs. Connor, Moore & Corber, delivered to you on the date hereof pursuant to paragraph (d) of Subsection 4.3 of the Agreement. Such opinion is satisfactory in form and substance to us, and we believe that we and you are justified in relying thereon.

Very truly yours,

[Form of Legal Opinion of Special  
Counsel to the Company]

, 197

Union Mutual Life Insurance Company  
2211 Congress Street  
Portland, Maine 04112

Unionmutual Stock Life Insurance  
Co. of America  
2211 Congress Street  
Portland, Maine 04112

Dear Sirs:

We have acted as special counsel for Brae Corporation, a corporation (the "Company"), in connection with (i) the execution and delivery of the Loan and Security Agreement dated as of September 12, 1978 among the Company, Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as security agent thereunder (the "Agreement"), and (ii) the execution and delivery to you of the Company's Consolidated Notes in the aggregate principal amount of \$ , dated the date hereof (the "Consolidated Notes").

This opinion is furnished pursuant to paragraph (d) of Subsection 4.3 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, the Supplements, the lease identified in Schedule I to the Agreement (the "Lease") and the lease schedules thereto, the execution form of the Consolidated Notes, and such other documents as we have deemed necessary or appropriate for the purposes hereof. We have assumed that the manufacturer of the Box-cars described in the Supplements transferred valid and legal title to such Box-cars to the Company free and clear of all Liens, other than the rights of the Security Agent under the Agreement.

Based upon the foregoing, we are of the opinion that:

1. The Agreement, the Supplements, the Lease and the lease schedules thereto subjecting the Box-cars described in the Supplements to the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended and no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Box-cars or the Lease (to the extent that the Lease relates to the Box-cars). No other filing, registration or recording is necessary in order to perfect, protect and preserve, as security for the Consolidated Notes and the other Obligations, the lien and security interest in the Box-cars and in the Lease created by the Agreement, except that any Supplements hereafter executed and delivered by the Company, and each lease schedule subjecting to the Lease the Box-cars described in such Supplement, must be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended.

2. The Agreement, as supplemented by the Supplements, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Box-cars described in the Supplements and in the Lease to the extent that the Lease relates to such Box-cars, as security for the Consolidated Notes and the other Obligations.

Very truly yours,

[Form of Legal Opinion of  
Special Counsel to the Lender]

, 197

Union Mutual Life Insurance Company  
2211 Congress Street  
Portland, Maine 04112

Unionmutual Stock Life Insurance  
Co. of America  
2211 Congress Street  
Portland, Maine 04112

Dear Sirs:

We have acted as your special counsel in connection with (i) the execution and delivery of the Loan and Security Agreement dated as of September 12, 1978 among Brae Corporation, a corporation (the "Company"), Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as security agent thereunder (the "Agreement"), and (ii) the execution and delivery to you of the Company's Consolidated Notes in the aggregate principal amount of \$ , dated the date hereof (the "Consolidated Notes").

This opinion is furnished pursuant to paragraph (d) of Subsection 4.3 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, the Supplements, the lease identified in Schedule I to the Agreement (the "Lease") and the lease schedules thereto, the executed Consolidated Notes, and such corporate documents and records of the Company, certificates of public officials and of officers of the Company, and such other documents as we have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the

State of \_\_\_\_\_ \*, and has the corporate power and authority to own railroad rolling stock and to transact the business of leasing railroad rolling stock to others.

2. The Company has the corporate power and authority to execute, deliver and perform the Consolidated Notes, and has taken all necessary corporate action to authorize the execution, delivery and performance thereof.

3. The Agreement, the Supplements, the Consolidated Notes and the Lease have been executed and delivered by duly authorized officers of the Company and constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles, provided that such general equitable principles will not impair the ability of the holders of the Consolidated Notes to recover the principal, interest and premium (if any) thereon or make the remedies provided for in the Agreement inadequate for the practical realization of the benefits of the collateral security provided thereby.

4. It is not necessary in connection with the execution and delivery to you of the Consolidated Notes, under the circumstances contemplated by the Agreement, to register the Consolidated Notes under the Securities Act of 1933, as now in effect, or to qualify the Agreement under the Trust Indenture Act of 1939, as now in effect.

5. The opinion of Messrs. Heller, Ehrman, White & McAuliffe, counsel for the Company, and the opinion of Messrs. Connor, Moore & Corber, special counsel for the Company, which have been delivered to you on the date hereof pursuant to paragraph (d) of Subsection 4.3 of the Agreement, are satisfactory in form and substance to us and we believe that you are justified in relying thereon.

Very truly yours,

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\* California, or if the Company has merged into its Delaware subsidiary, Delaware.

ICC Recordation No.

SUPPLEMENT

Supplement No. \_\_\_\_\_ to Loan and Security Agreement ("Agreement") dated as of \_\_\_\_\_, 1978 among BRAE CORPORATION (the "Company"), UNION MUTUAL LIFE INSURANCE COMPANY and UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA (the "Lenders"), and UNION MUTUAL LIFE INSURANCE COMPANY, as security agent thereunder (the "Security Agent").

1. This Supplement is executed and delivered pursuant to the Agreement in order to more particularly identify certain of the Collateral in which the Company has granted a lien and security interest to the Security Agent on behalf of and for the benefit of the Lenders and any other holders of the Notes, and to confirm the lien and security interest created by the Agreement on such Collateral. Any term defined in the Agreement and used herein shall have its defined meaning herein.

2. The Company has assigned, conveyed, mortgaged, pledged and transferred to the Security Agent and granted to the Security Agent a security interest in, and does hereby assign, convey, mortgage, pledge and transfer to the Security Agent and grant to the Security Agent a security interest in, on behalf of and for the benefit of the Lenders and any other holders of the Notes, the following Collateral:

(a) the Box-cars described in the schedule attached hereto and any Proceeds thereof;

(b) a lease agreement and all rentals and Proceeds thereunder and thereof, described in the schedule attached hereto, to the extent such lease covers the Box-cars identified in paragraph (a) above.

3. All the terms and conditions of the Agreement are hereby incorporated in this Supplement and made a part hereof. By their execution and delivery of this

Supplement the parties hereto hereby reaffirm all of the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Supplement on \_\_\_\_\_, 197 .

BRAE CORPORATION

By \_\_\_\_\_  
Title:

UNION MUTUAL LIFE INSURANCE COMPANY

By \_\_\_\_\_  
Title:

UNIONMUTUAL STOCK LIFE INSURANCE CO.  
OF AMERICA

By \_\_\_\_\_  
Title:

UNION MUTUAL LIFE INSURANCE COMPANY,  
as Security Agent

By \_\_\_\_\_  
Title:

BILL OF SALE

(the "Builder"), in consideration of the sum of One Dollar and other good and valuable consideration paid by Brae Corporation (the "Buyer"), receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer and set over unto the Buyer, its successors and assigns, the following described equipment which has been delivered by the Builder to the Buyer, to wit:

<u>Number of Units</u>	<u>Description</u>	<u>Serial Numbers</u>
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TO HAVE AND TO HOLD all and singular the equipment above described to the Buyer, its successors and assigns, for its and their only use and behoof forever.

And the Builder hereby warrants to the Buyer, its successors and assigns, that at the time of delivery to the Buyer the Builder is the lawful owner of said equipment; that title to said equipment is free from all prior claims, liens and encumbrances suffered by or through the Builder; and that the Builder has good right to sell the same as aforesaid; and the Builder covenants that it will warrant and defend such title against all claims and demands whatsoever.

By: \_\_\_\_\_  
Title:

Dated: \_\_\_\_\_, 1978

LITHCOTE SERVICE AGREEMENT

This agreement covers the terms and services Lithcote Company is to furnish Brae Corporation in connection with their rail car fleet.

CONTRACT SHOP MAINTENANCE

1. Lithcote Company is currently operating car repair facilities at Altoona, Pennsylvania (ConRail delivery); Ville Platte, Louisiana (T & P delivery); and Longview, Texas (MoPac delivery). Lithcote presently expects to have two additional, full service repair facilities operating by mid-1979. Work required on your cars will be scheduled into these shops in such a manner as to optimize your out-of-service time and transportation costs, if any. Cars will be scheduled for uncommitted space as shopping becomes necessary and other customers will not be given preferential treatment over this schedule.

2. Labor charges for such work will be based on our normal shop rate for labor, which is currently as follows:

Altoona	\$21
Ville Platte	20
Longview	20

Changes in these rates will be announced one month before effective date, and in no event will this rate exceed the freight car labor rate as published in the AAR Interchange Rules. This rate is currently \$25.47. If desired, routine functions such as repainting, FRA inspections, etc., will be quoted on a firm basis subject to revision at six month intervals.

3. Lithcote maintains a repair inventory of rail car components needed for normal running gear repairs. In the event materials from the inventory are used in the repair of Brae Corporation cars, such materials shall be charged at cost plus 20% for profit and handling. If some special inventory items are to be inventoried which are peculiar to the Brae Corporation cars, we propose that this special inventory can either be purchased outright by Brae and held at our plant or purchased with our funds.

In the event you elect to purchase the inventory of special items for your cars, we will charge you a 10% handling charge at the time of application. If you prefer to have us purchase these items, we will charge an inventory fee of 1% per month of the value of the special parts. Brae Corporation shall approve establishing any inventory subject to the 1% monthly fee. At the time the parts owned by us under this arrangement are installed, they will be charged at cost plus 10%. In the event the agreement is cancelled or terminated, all special items unique to the Brae fleet which were purchased by Lithcote shall be purchased by Brae from Lithcote at cost plus 10% for handling.

4. Lithcote will be given the option to perform all contract shop work prior to it being offered to others. Lithcote will handle shopping of cars at other contractors' facilities when, in Lithcote's judgment, it appears to be to Brae Corporation's advantage from the standpoint of total cost, including out-of-service time. In such cases, Brae will be charged a fee equivalent to any out-of-pocket costs incurred by Lithcote in connection with shopping inspection, etc., including inspector's time at \$150 per day plus 2% of contractor's invoice charge for work performed. Inspections made for Brae Corporation's expense will be subject to their prior approval. This daily charge for the inspector's time is subject to escalation. The rate will be escalated in proportion to increases in the AAR freight car labor rate (currently \$25.47). This service will include the review and approval of the contractor's invoice for payment by Brae.

#### RAILROAD MAINTENANCE

1. Lithcote will provide the following services for processing, auditing, and approving for payment all billing repair cards received from railroads for repairs made in interchange service to Brae Corporation cars. The billing repair cars will be audited for:

- (a) Car ownership.
- (b) Correctness of pricing and arithmetic accuracy.
- (c) Determination that guaranteed repairs or periodic time limitation charges are falling within the time limits specified in the AAR Interchange Rules.

d. Verification that handling line responsibility repairs are billed at no charge.

e. Penalty credit verification and application.

f. Rule 72 and 95 application.

g. Duplicate charges.

h. Repairs valid or standard for car.

2. All audit exceptions to billing repair cards will be processed for recovery from the responsible railroad for the account of Brae Corporation.

3. The following monthly reports covering repairs made by railroads to Brae Corporation cars will be provided:

(a) A report, in car number sequence, showing by railroad and date of repair the job code (description of repair) the why made code (reason for repair) and the total repair charges.

(b) A summary report showing by job code the total repair costs for the Brae Corporation fleet.

4. These services will be provided for a monthly charge consisting of \$70 for each of the two reports, plus \$20 for each different reporting initial, plus a per car charge based on fleet size as follows:

<u>Fleet Size</u>	<u>Service Charge</u>
0 - 500	\$1.00
501 - 2,000	.82
2,001 - 4,000	.75
4,001 - 6,000	.70
6,001 & larger	.66

These fees will be escalated annually in proportion to the increases in the AAR freight car labor rate (currently \$25.47).

The agreement is subject to cancellation by either party with three months written notice.

ACCEPTED AND AGREED TO:

<u>Name</u>	<u>Title</u>	<u>President</u>
<u>Brae Corporation</u>		<u>Lithcote Corporation</u>
<u>Representing</u>	<u>Date</u>	<u>June 27, 1978</u>
		<u>Representing</u>
		<u>Date</u>