

BRAE
CORPORATION

RECORDATION NO. **10203** Filed 1425

MAR 14 1979 - 10 15 PM

INTERSTATE COMMERCE COMMISSION

9-073A430

Date MAR 8 1979

Fee \$100.00

ICC Washington, D. C.

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

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INTERSTATE COMMERCE COMMISSION

RECEIVED
MAR 14 10 15 PM '79
FEE \$100.00
INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for filing and recordation pursuant to former Section 20(c) of the Interstate Commerce Act (49 U.S.C. §11303) are the following documents relating to the railroad equipment described and marked in accordance with Schedule I hereto:

- (1) Lease Agreement dated as of March 8, 1979 between Brae Corporation and Seafirst Leasing Corporation ("Lease").
- (2) Assignment of Rents and Security Agreement dated as of March 8, 1979 between Brae Corporation and Seafirst Leasing Corporation ("Assignment").
- (3) Lease Agreement dated as of December 20, 1978 between Brae Corporation and Michigan Interstate Railway Company ("Sublease").

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

A. Lease

Owner-Lessor: Seafirst Leasing Corporation
P.O. Box 3586
Seattle, Washington 98124

Lessee: Brae Corporation
Three Embarcadero Center
San Francisco, California 94111

B. Assignment

Assignee: Seafirst Leasing Corporation
P.O. Box 3586
Seattle, Washington 98124

Handwritten signatures and notes on the left margin.

H. G. Homme, Jr.
3/8/79
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Assignor: Brae Corporation
Three Embarcadero Center
San Francisco, California 94111

C. ~~Sub~~lease

Lessor: Brae Corporation
Three Embarcadero Center
San Francisco, California 94111

Assignee: Seafirst Leasing Corporation
P.O. Box 3586
Seattle, Washington 98124

Lessee: Michigan Interstate Railway
Company
P.O. Box 619
Owosso, Michigan 48867

Please file and record the enclosed documents and cross-index them, in the case of the Lease, under the names of the Lessor and the Lessee, and in the case of the Sublease, under the names of the Lessor, the Assignee and the Lessee.

The Sublease also relates to additional equipment not described on Schedule I hereto. However, the Assignment relates only to the equipment described on Schedule I hereto and the interest of the Assignee in the Sublease is limited to the equipment described on Schedule I hereto.

A check payable to the order of the Interstate Commerce Commission in the amount of \$100, the prescribed fee for filing, recording the enclosed documents is also enclosed.

Please return to the person presenting this letter, together with your letter confirming filing and recordation and your fee receipt therefor, all copies of the enclosed documents not required for filing.

Very truly yours,


Michael T. Everett
Assistant Secretary

10203

RECORDATION NO. Filed 1425

LEASE AGREEMENT

MAR 14 1979 - 10 15 PM

INTERSTATE COMMERCE COMMISSION

Lease Agreement dated as of March 8, 1979, between BRAE CORPORATION, a Delaware corporation (the "Lessee") and SEAFIRST LEASING CORPORATION, a Washington corporation (the "Lessor").

1. LEASE OF EQUIPMENT.

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, upon the terms and conditions hereinafter set forth --

100 70-Ton 50' General Purpose Boxcars

(the "Cars") (the Cars are sometimes referred to as the "Equipment" and each such Car is sometimes referred to as a "unit" or a "unit of Equipment") described on annexed Exhibit A. The aggregate cost for the acquisition and delivery of all the Cars ("Lessor's Cost of Cars") shall not exceed \$4,200,000.

Lessee shall assign the purchase orders for the Cars to the Lessor and the Lessee shall direct the manufacturer of the Cars to submit its invoices for the Cars to the Lessee. The Cars shall be conveyed to the Lessor by bills of sale (the "Bills of Sale").

2. LEASE TERM.

A. Basic Lease Term. The basic term of lease under this Lease Agreement of each Car shall end 234 months after the date (the "Commencement Date") which is the earlier of (i) the date as of which all Cars have been delivered and accepted by Lessee for lease hereunder or (ii) December 31, 1979.

B. Interim Lease Term. The interim term of lease under this Lease Agreement of each Car shall commence on the date Lessor purchases such Car from the owners thereof and shall end on the Commencement Date.

3. RENT, NET LEASE.

Lessee shall pay to Lessor rent during the basic lease term (as defined in Section 2.A), semiannually in arrears, for the Cars in 39 installments, each of which shall be in an amount equal to 5.48557% of Lessor's Cost of Cars. The first installment of rent shall be payable on the first semiannual anniversary of the Commencement Date. Subsequent installments of rent shall be payable thereafter on each successive semiannual anniversary of the Commencement Date.

Lessee shall also pay Lessor interim rent quarterly for the period commencing with the date of payment by Lessor of any part of Lessor's Cost of Cars and ending on the last day of each calendar quarter and on the Commencement Date. Interim rent shall be in an amount equal to .03006% per day of any part of Lessor's Cost of Cars paid by Lessor prior to the Commencement Date computed from the dates so paid to the date of payment of such interim rent, and computed for the actual number of days elapsed.

All rent and other amounts due from Lessee to Lessor shall be paid to Lessor at P.O. Box 3586, Seattle, Washington 98124, Attention Large Ticket and Leveraged Leasing, or at such other place as Lessor shall specify in writing. In the event any rent or other amounts due hereunder shall not be made promptly when due, Lessee shall pay Lessor, as additional rent hereunder, interest on such overdue amount from the due date thereof to the date of payment thereof at a rate equal to the lesser of (i) twelve percent (12%) per annum or (ii) the maximum rate permitted by law.

This Lease Agreement provides for a net lease and the rent and other amounts due hereunder from Lessee to Lessor shall not be subject to any defense, claim, reduction, setoff, abatement or adjustment for any reason whatsoever. Lessee shall promptly pay all costs, expenses and obligations of every kind and nature incurred in connection with the use or operation of the Equipment which may arise or be payable during the lease term of such Equipment hereunder, whether or not such cost, expense or obligation is specifically referred to herein.

This Lease Agreement shall not, except as otherwise expressly provided herein, terminate, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease Agreement.

4. PAYMENTS FOR EQUIPMENT.

Lessor shall from time to time prior to the Commencement Date make such payments as Lessee may request under a Certificate of Acceptance in the form of annexed Exhibit B (a "Certificate of Acceptance").

5. ACCEPTANCE OF EQUIPMENT.

Lessee shall act as Lessor's agent for the purpose of accepting units of Equipment from the manufacturer of the Equipment and at the time of accepting a unit of Equipment from the manufacturer as such agent, the Lessee shall simultaneously accept

such units of Equipment under a Certificate of Acceptance which shall constitute Lessee's acknowledgement that a unit of Equipment is in good order and condition; is of the manufacture, design and capacity selected by Lessee; and is suitable for Lessee's purposes. If Lessee has not accepted all of the Cars by the Commencement Date, then this Lease Agreement shall cover only those units of Equipment which have theretofore been so accepted and on the Commencement Date Lessor's obligation to purchase any additional Cars shall terminate.

6. DISCLAIMER OF LESSOR'S WARRANTIES.

Lessee agrees and acknowledges that all units of Equipment have been or will be ordered by Lessee in accordance with Lessee's specifications, that Lessee leases all of the units of Equipment in their "as is" condition and that LESSOR DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER OF TITLE, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, DESIGN OR CONDITION, OR OTHERWISE REGARDING THE EQUIPMENT OR ANY UNIT THEREOF. So long as no event of default and no event which might mature into an event of default (as defined in Section 16) exists, Lessor shall, at Lessee's sole expense, take all action reasonably required to make available to Lessee to the fullest extent possible any rights of Lessor with respect to the Cars under any express or implied warranties it may have with respect to acquisition of the Equipment.

7. LESSEE'S WARRANTIES.

Lessee represents and warrants that:

A. Lessee is a corporation duly organized and existing in good standing under the laws of the State of Delaware and is qualified to do business in each jurisdiction where such qualification is required.

B. Lessee is duly authorized to execute and deliver this Lease Agreement, and is and will continue to be duly authorized to lease Equipment hereunder and to perform its obligations hereunder and thereunder.

C. The execution and delivery of this Lease Agreement and the Assignment of Rents (as defined in Section 23.D) by Lessee, and the performance by Lessee of its obligations hereunder and thereunder, do not and will not conflict with any provision of law (including without limitation the provisions of 15 U.S.C. § 20) or of the charter or bylaws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party.

D. The execution, delivery and performance of this Lease Agreement and the Assignment of Rents by Lessee and the consummation by Lessee of the transactions contemplated hereby and thereby do not require the consent, approval or authorization of, or notice to, any Federal or State governmental authority or public regulatory body.

E. Lessee's financial statements as at December 31, 1978, a copy of which has been furnished to Lessor, have been prepared in accordance with generally accepted accounting principles on a basis consistent with that of the preceding fiscal year and present fairly the financial condition of Lessee as at the date thereof, and the results of its operations for the period then ended, and since such date there has been no material adverse change in its financial condition.

F. This Lease Agreement and Assignment of Rents constitute the legal, valid and binding obligations of Lessee and are enforceable in accordance with their respective terms.

G. There are no pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Lessee (except as previously disclosed in writing by Lessee to Lessor).

H. Each Car on the date of delivery thereof will have an estimated useful life of at least five years beyond the expiration of the term of lease* under this Lease Agreement for such Car, an estimated fair market value at the end of such lease term of at least 20% of Lessor's Costs of Cars for such Car, without including in such fair market value any increase or decrease for inflation or deflation during the term of the lease for such Car, and the original use of such Car will not have commenced prior to such date of delivery.

I. The Equipment will not be used in connection with the performance of any prime government contract, or subcontract or purchase order thereunder, with respect to which the provisions of the Renegotiation Act of 1951, as amended, are applicable.

J. Upon the purchase by the Lessor of the Cars, no mortgage, deed of trust, indenture, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interest of Lessee will attach or thereafter will attach to the Equipment or in any manner affect or will affect adversely Lessor's right, title and interest herein.

* (excluding, for purposes of this paragraph, optional renewals thereof)



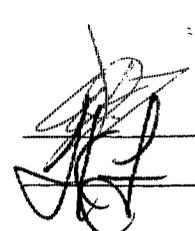
8. OWNERSHIP, LOCATION, USE OF AND LIENS
ON EQUIPMENT.

A. The Equipment shall be the exclusive property of Lessor, and Lessee shall have no rights therein except the right to use it so long as Lessee is not in default hereunder. It is the intention of the parties hereto that the Equipment shall be and remain personal property and Lessee shall not permit the Equipment to become or remain a fixture to any real estate or an accession to any personalty not leased hereunder.

B. Lessee agrees that the Equipment will be used solely in the conduct of its business, with due care to prevent injury thereto or to any person or property and in conformity with all applicable laws, ordinances, rules, regulations and other requirements of any insurer or governmental body (including, without limitation, any requirements regarding licensing or registration, or evidencing title to the Equipment, all of which shall be done in such manner as shall have previously been approved in writing by Lessor). Lessor, or any duly authorized representative thereof, may during reasonable business hours from time to time inspect the Equipment and Lessee's records with respect thereto wherever the same may be located, at Lessor's own risk and expense.

C. Lessee agrees to comply in all respects with all laws of the jurisdictions in which the units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the units * the event that such laws or rules require the alteration of the units, or in case any equipment or appliance on any such unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such unit in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and Lessee agrees at its own expense to use, maintain and operate such unit in full compliance with such laws, regulations, requirements and rules so long as the units are subject to this Lease Agreement; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not adversely affect the property or rights of the Lessor hereunder; and further provided, that, subject to the provisions of Section 14 hereof, any such additions to the units made by Lessee which can be removed without material damage to the units shall become the property of Lessee on the termination of this Lease Agreement.

* Subject to the provision of section 25, in



D. Except as provided in Section 17, Lessee shall not permit any lien, charge, encumbrance, security interest, or other similar interest to arise or remain on any Equipment other than (i) liens placed by Lessor or liens of persons claiming against Lessor but not Lessee, which arise out of obligations which Lessee is not required by this Lease Agreement to pay or discharge, (ii) liens of current taxes not delinquent, (iii) inchoate materialmen's or mechanics' liens arising in the ordinary course of business and not delinquent,* and (iv) any liens attaching to the leasehold interest of Lessee under this Lease Agreement by reason of any existing or future mortgage to which Lessee is a party covering substantially all of Lessee's railroad property.

E. Lessee shall place and maintain on each side of each Car a notice (in letters not less than one inch in height) conspicuously disclosing Lessor's ownership thereof as follows:

"OWNED BY A FINANCIAL INSTITUTION AND LEASED
UNDER A LEASE FILED WITH THE ICC"

or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such unit and the rights of Lessor under this Lease Agreement. Lessee will not place any such unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee shall maintain on each unit of Equipment the serial and other identifying numbers, if any, set forth on the applicable Certificate of Acceptance. Lessee will not change the identifying number of any Car except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with Lessor by Lessee and filed, recorded or deposited by Lessee in all public offices where this Lease Agreement shall have been filed, recorded or deposited. Except as above provided, Lessee, so long as this Lease Agreement shall remain in effect, will not allow the name of any person, association or corporation to be placed on the units as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the units to be lettered with the names or initials or other insignia customarily used by Lessee or its sublessees on railroad equipment used by them of the same or a similar type for convenience of identification of their right to use the units as permitted under this Lease Agreement.

F. Lessor shall not permit any lien, charge, encumbrance, security interest, or other similar interest to arise or remain on the Equipment which will affect or impair Lessee's

* or which are being contested by Lessee in good faith in a reasonable manner, which does not adversely affect the property or rights of the Lessor hereunder.

right to use the Equipment as contemplated by this Lease Agreement.

9. MAINTENANCE OF EQUIPMENT.

Lessee shall at all times keep the Equipment in good repair and efficient condition and working order, reasonable wear and tear excepted. Lessee shall supply all parts, service, and other items required in the operation and maintenance of the Equipment. Lessee shall not, without the written consent of Lessor, make any additions to the Equipment,* All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and the property of Lessor; provided, however, that, subject to the provisions of Section 14 hereof, any additions to the Equipment which can be removed without material damage to the Equipment shall become the property of Lessee on the termination of this Lease Agreement. Lessee assumes all risk of, and Lessee's obligations under this Lease Agreement shall continue unmodified despite, any loss, theft, destruction, damage, condemnation, requisition or taking by eminent domain or other interruption or termination of use of any Equipment regardless of the cause thereof, except as provided in Section 10.

10. EVENT OF LOSS.

A. Upon the happening of any loss, theft, destruction, damage, condemnation, requisition, taking by eminent domain or other interruption or termination of use of any unit of Equipment regardless of the cause thereof (herein collectively called an "Event of Loss"), Lessee shall promptly make all repairs and replacements necessary to restore or repair such unit of Equipment so that the Equipment thereafter subject to lease hereunder is substantially equivalent to, and of a value not less than, the Equipment subject to lease hereunder prior to such Event of Loss; provided, however, that Lessee may instead on the next semiannual rent payment date following such Event of Loss, furnish Lessor with an affidavit of an officer of Lessee setting forth the fact of such Event of Loss and pay to Lessor the Stipulated Loss Value (as defined in annexed Exhibit C, determined as of such next subsequent rent payment date) of such unit of Equipment. Upon payment of (i) such Stipulated Loss Value, (ii) any rent accrued and unpaid on such unit of Equipment to and including such next rent payment date and (iii) any other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such unit of Equipment it may have. Upon such transfer the lease of such unit of Equipment hereunder shall end.

B. When Lessee has fulfilled the requirements of Paragraph A regarding an Event of Loss, Lessor shall (if no event

* which substantially reduces its value.

of default has occurred and is continuing), reimburse Lessee for its costs thus incurred to the extent of any proceeds received by Lessor (i) from the sale of the unit of Equipment involved in such Event of Loss and (ii) received by Lessor either under any policies of insurance provided for in Section 11 or as satisfaction of any claim (other than one to which an insurer is or may be subrogated) by Lessor against any person or persons liable in respect of such Event of Loss, after subtracting in each instance all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor and not otherwise reimbursed by Lessee in respect thereto.

11. INSURANCE.

A. Lessee will cause to be carried and maintained at all times during the term of this Lease Agreement physical damage and liability insurance covering the Equipment in the name of Lessor and Lessee in such amounts, in such form and with such deductibles as is commonly maintained by companies in comparable businesses, on comparable equipment, provided, that Lessee shall not self insure without the prior written consent of Lessor. Such insurance policy or policies shall provide that all losses thereunder will be adjusted with Lessee and will be payable to Lessor and Lessee as their respective interests shall appear.

B. The policies of insurance required under this Section 11 shall be valid and enforceable policies issued by insurers of recognized responsibility comparable to Lessee's present insurers. Upon the execution of the first Certificate of Acceptance, and thereafter not less than 30 days (if insurance industry practice so allows) prior to the expiration dates of any expiring policies theretofore furnished under this Section 11, certificates of insurance shall be delivered by Lessee to Lessor. Such policies may be blanket policies covering other equipment not covered by this Lease Agreement, provided that any blanket policy shall in an accompanying certificate of insurance or rider specifically designate the units of Equipment described in such Certificate of Acceptance as being included therein and covered thereby to the full extent of the amounts herein required and shall name Lessor as an additional insured party thereunder with respect to such units of Equipment. All such policies shall contain an agreement by the insurers that such policies shall not be cancelled without at least 30 days' (if insurance industry practice so allows) prior written notice to Lessor.

12. TAXES.

Lessee agrees to pay and discharge (and does hereby agree to indemnify and hold Lessor harmless from and against) all sales, use, personal property, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any

nature (together with any penalties, fines or interest thereon) imposed against Lessor, Lessee or the Equipment by any Federal, state or local government or taxing authority upon or with respect to the Equipment or upon the purchase, rehabilitation, ownership, delivery, lease, possession, use, operation, return, sale or other disposition thereof hereunder or in connection herewith, or upon the rentals, receipts, or earnings arising therefrom, or upon or with respect to this Lease Agreement (excluding, however, taxes on, or measured by, the net or gross income of Lessor imposed by the United States or the jurisdiction in which the principal office of Lessor is located) unless, and to the extent only that, any such tax, levy, impost, duty, charge or withholding is being contested by Lessee in good faith and by appropriate proceedings which do not adversely affect the property or rights of the Lessor hereunder. In addition, Lessee shall pay on demand the amount of any Federal, state and local taxes required to be paid by Lessor in respect of the receipt of amounts referred in this Section 12. Lessee agrees to file, on behalf of Lessor, or where Lessee is not permitted to file on behalf of Lessor, then Lessee shall prepare and deliver to Lessor all required tax returns and reports concerning the Equipment with all appropriate governmental agencies and to furnish Lessor upon request a copy of each such return or report, including evidence of payment, within 30 days after the due date of such filing. To the extent that any taxes hereinabove referred to in this Section 12 are included in Lessor's Cost of Cars for any unit, Lessee shall not be obligated under this Section 12 for indemnification with respect to such taxes.

13. INDEMNIFICATION AND EXPENSES.

A. Lessee agrees to and does hereby indemnify and hold Lessor and its agents, employees, stockholders, officers and directors, harmless from and against any and all expense, liability or loss whatsoever, including (without limitation) reasonable legal fees and expenses, relating to or in any way arising out of the Bills of Sale or this Lease Agreement, or the purchase, ownership, delivery, lease, possession, rental, use, operation, return, sale or disposition of the Equipment hereunder or in connection herewith (including without limitation, expense, liability or loss relating to or in any way arising out of injury to persons or property, patent or invention rights or strict liability in tort). Lessor shall give Lessee and Lessee shall give Lessor notice of any event or condition which requires indemnification by Lessee hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof, and, to the extent that Lessee makes or provides to the reasonable satisfaction of Lessor for payment under the indemnity provisions hereof, Lessee shall be subrogated to Lessor's rights with respect to such event or condition and shall have the right to determine the settlement of claims thereon, it being agreed

that except to the foregoing extent, Lessor shall have the right to determine such settlement. Lessee shall pay all amounts due hereunder promptly on notice thereof from Lessor.

B. The Lessee understands that the Lessor expects to realize depreciation deductions for federal, state or local income tax purposes for each unit of Equipment based on depreciation of the Lessor's Cost of Cars for such unit over a depreciable life of 12 years to a net salvage value of 10% using any of the depreciation methods described in Section 167(b) of the Internal Revenue Code of 1954, as amended (the "Code"), computed initially under the double declining balance method of depreciation provided in Section 167(b)(2) of the Code and then changing to the sum of the years-digits method of depreciation provided in Section 167(b)(1) of the Code, all without consent of the Commissioner, with the annual allowance determined without reduction for salvage and with the first year's depreciation deduction being maximized by the election of either the "half-year convention" or the "modified half-year convention" pursuant to Treasury Regulation Section 1.167(a)-11(c)(2), including, without limitation, that the benefit of such depreciation deductions shall not be lost due to the operation of Section 1245 of the Code. If the Lessor shall, for any taxable year or portion thereof, fail to realize all or any portion of the depreciation deductions described in the preceding sentence as a direct result of an act or omission of the Lessee (whether or not permitted by this Lease Agreement), including, without limitation, a breach of the Lessee's representations, warranties or agreements contained in this Lease, then Lessee shall pay Lessor on each rent payment date during the remaining lease term of such unit, as additional rent hereunder, an amount which, after deduction of all Federal, state and local taxes required to be paid by Lessor in respect of the receipt thereof, shall be sufficient to yield to Lessor the same after-tax cash flow as of each rent payment date as would have been realized by Lessor in respect of this Lease Agreement if such loss, disallowance, or recapture of depreciation deductions or the right to claim the same had not occurred, which amount shall, if subsequent circumstances require, be thereafter adjusted (or further appropriate adjustments shall be made in respect thereof) when and to the extent necessary so that Lessor's after-tax cash flow as of each rent payment date shall be as aforesaid. In addition, Lessee shall also pay Lessor on demand, as additional rent hereunder, an amount which, after deduction of all Federal, state and local taxes required to be paid by Lessor in respect of the receipt thereof, shall be equal to the amount of any interest (net of any actual decrease in Federal, state or local income tax caused by any allowable deduction of such interest from taxable income) or penalties, including any additions to tax because of underpayment of estimated tax, which may be assessed against Lessor in connection with such loss, disallowance, or recapture of depreciation deductions or the right to claim the same.

C. Lessee shall not be required to pay Lessor the amounts provided for in Paragraph B above if the loss or disallowance of depreciation deductions or the right to claim the same, shall result from the occurrence of any of the following events:

i. Lessor shall fail to claim such depreciation deductions in its income tax returns for the appropriate years or shall fail to follow the proper procedures in claiming such depreciation deductions and such failure to claim or follow such procedures, as the case may be, shall preclude Lessor from claiming such depreciation deductions;

ii. Lessor shall not have sufficient income to benefit from such depreciation deductions;

iii. Lessor shall voluntarily transfer legal title to the Equipment or Lessor shall dispose of or reduce its interest in such Equipment, if such transfer, disposal or reduction (A) shall be the direct cause of such loss, (B) shall occur at any time when no event of default has occurred and is continuing, and (C) shall not be pursuant to the written consent of Lessee;

iv. Lessor shall fail to take timely action in contesting a claim made by the Internal Revenue Service or any state or local taxing authority with respect to the disallowance of the depreciation deductions pursuant to Paragraph D below and the failure to take such action in a timely manner shall preclude all rights to contest such claim, unless Lessee shall agree to such failure; or

v. Lessee shall have paid Lessor the Stipulated Loss Value of such unit of Equipment pursuant to Section 10.A hereof, except as provided in Paragraph G of this Section 13; or

vi. Lessee shall have paid Lessor the Termination Value of such unit of Equipment pursuant to Section 25, except as provided in Paragraph G of this Section 13.

D. In the event a claim shall be made by the Internal Revenue Service or any state or local taxing authority which, if successful, would result in a loss of such depreciation deductions under circumstances which would require Lessee to indemnify Lessor for such loss, Lessor hereby agrees to notify Lessee promptly of such claim, to not make payment of the tax claimed

for at least 30 days after giving such notice, to give to Lessee any relevant information requested by it relating to such claim which may be particularly within the knowledge of Lessor and, if Lessee shall request within 30 days after the giving of such notice that such claim be contested, to take such action in connection with contesting such claim, including appropriate appeals from lower court decisions, as Lessee shall reasonably request in writing from time to time, but only if Lessee shall, contemporaneously with such initial request, have (i) made provision for Lessor's indemnification in a manner satisfactory to Lessor for any liability or loss which Lessor may from time to time incur as the result of contesting such claim and reimbursement for all costs and expenses, including legal fees and disbursements, which Lessor may incur in connection with the contesting of such claim and (ii) furnished Lessor with an opinion of independent tax counsel satisfactory to Lessor to the effect that a meritorious defense exists to such claim; provided, however, that at any time after having received such request from Lessee, Lessor at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service or any state or local taxing authority, as the case may be, in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court, the United States Court of Claims, or appropriate state courts, as the case may be, as Lessor shall elect, or contest such claim in the United States Tax Court, or appropriate state court, as the case may be, considering, however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed.

E. Omitted.

F. References in Section 12 and this Section 13 and in Paragraph A of Section 25 to "Lessor" shall be deemed to include any affiliated group of which Lessor is a part which files a consolidated or combined return for Federal, state or local income tax purposes, provided that only Lessor shall be obligated with respect to the covenants and duties therein expressed to be imposed on Lessor.

G. All of the indemnities and agreements of Lessee contained in Section 12 and in this Section 13 shall survive and continue in full force and effect notwithstanding termination of this Lease Agreement or of the lease of any or all units of Equipment hereunder.

H. Any adjustment to rent required under Section 13.B shall be made based on a statement from an officer of the tax department of Lessor that he has examined the determination of the amount due and that, in his opinion, such amount due has been properly calculated pursuant to Section 13.B. If Lessee disagrees with such determination, then Lessor and Lessee shall mutually designate an independent person to make such determination.

I. Additional rent required under Section 13.B shall commence to be payable, in the case of a contest as permitted by Section 13.D, when a final determination has been made by a court of competent jurisdiction, and in all other cases when the amount had been determined as provided in Section 13.H.

14. RETURN OF EQUIPMENT.

Upon final termination of the lease term hereunder of any unit of Equipment (other than a termination under Section 10.A), Lessee shall forthwith deliver possession of the units to Lessor in the same condition as when received, ordinary wear and tear excepted, and such units shall meet the standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction over such units and the applicable standards then in effect for such units under the interchange rules of the Association of American Railroads, subject to Lessee's good faith contest, pursuant to Section 8.C hereof, of the validity or application of any standard, law, regulation, requirement or rule, which contest is made in a reasonable manner and does not adversely affect the property or rights of Lessor. For the purposes of delivering possession of any unit or units to Lessor as above required, Lessee shall at its own cost, expense and risk:

i. Forthwith place such units upon such storage tracks as Lessor reasonably may designate; and

ii. Store such units on such tracks at the risk of Lessee until such units have been sold, leased or otherwise disposed of by Lessor, provided that Lessor agrees to pay Lessee's reasonable storage charges for any storage after 180 days; and

the removal, assembling, delivery, storage (except as above provided) and transporting of the units as hereinabove provided shall be at the expense and risk of Lessee and are of the essence of this Lease Agreement, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to remove, assemble, deliver, store and transport the units. During any storage period, Lessee shall maintain insurance on the units of Equipment in accordance with Section 11 hereof and shall upon notice permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such unit, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 14, Lessee hereby irrevocably appoints Lessor as the agent and attorney-in-fact of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any unit to Lessor, to demand and take possession of such unit in the name and on behalf of Lessee from whomsoever shall be in possession of such unit at the time.

15. FINANCIAL STATEMENTS.

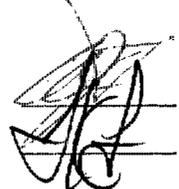
Lessee shall furnish or cause to be furnished to Lessor (i) within 120 days after each fiscal year of Lessee, a copy of the annual audited report of Lessee and any consolidated subsidiaries, prepared in conformity with generally accepted accounting principles and certified by nationally recognized independent certified public accountants, (ii) within 45 days after each quarter (except the last quarter) of each fiscal year of Lessee, a copy of its unaudited consolidated financial statement, prepared in conformity with generally accepted accounting principles consistently applied and consisting of at least a balance sheet as at the close of such quarter and a profit and loss statement and analysis of surplus for such quarter and for the period from the beginning of such fiscal year to the close of such quarter, and signed by a proper accounting officer of Lessee, (iii) with the annual audited report each year, a certificate of a responsible officer of Lessee to the effect that, except as otherwise specified therein, (x) all units of Equipment are in existence and in good and efficient condition and have been marked as required by Section 8.E hereof and (y) no event of default, or event which might mature into an event of default, has occurred and is continuing under this Lease Agreement, and (iv) from time to time, such other information as Lessor may reasonably request.

16. EVENTS OF DEFAULT.

A. The following shall be events of default hereunder:

i. Default, and continuance thereof for ten days, in the payment of any rent or other amount hereunder;

ii. Any obligation of Lessee for borrowed money or payment of rent becomes or is declared to be due and payable prior to its express maturity by reason of default by Lessee in the performance or observation of any obligation or condition, and the aggregate amount which becomes due shall exceed \$100,000;



iii. Default in the performance of any of Lessee's agreements herein set forth (and not constituting an event of default under either of the preceding clauses of this Paragraph A) and continuance of such default for 30 days after notice thereof from Lessor to Lessee;

iv. Any representation or warranty made by Lessee in this Lease Agreement is untrue in any material respect, or any statement, report, schedule, notice or other writing furnished by Lessee to Lessor in connection herewith is untrue in any material respect on the date as of which the facts set forth are stated or certified; or

v. Lessee becomes insolvent or admits in writing its inability to pay its debts as they mature, or applies for, consents to or acquiesces in the appointment of a trustee or a receiver for Lessee or any property of Lessee; or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Lessee or for a substantial part of its property, and is not discharged within 60 days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or against Lessee, and, if instituted against Lessee is consented to or acquiesced in by Lessee or remains for 60 days undismissed.

When used herein, unless the context otherwise requires, the term "event of default" shall mean any event described in the foregoing clauses (i) through (v) and the term "event which might mature into an event of default" shall mean any event which with the lapse of time, or with notice to Lessee and lapse of time, would constitute an event of default. Lessee shall give Lessor prompt notice of any event of default or of any event which might mature into an event of default.

B. Upon the happening of an event of default, Lessor shall (except to the extent otherwise required by law) be entitled to:

i. Proceed by appropriate court action or actions to enforce performance by Lessee of the applicable covenants and terms of this Lease Agreement or to recover damages for the breach thereof;

ii. Repossess any or all units of Equipment without prejudice to any remedy or claim hereinafter referred to;

iii. Elect to sell any or all units of Equipment, after giving fifteen (15) days' notice to Lessee, at one or more public or private sales and recover from Lessee as liquidated damages for Lessee's default hereunder an amount equal to the amount, if any, by which (A) the sum of (i) the aggregate Stipulated Loss Value of such units of Equipment on the date such notice is given, (ii) all rent owing hereunder to and including the rent payment date immediately following the date such notice is given, (iii) all costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing, restoring, and selling such units of Equipment, (iv) all other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, and (v) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder, exceeds (B) the amount received by Lessor upon such public or private sales of such units of Equipment;

iv. Upon notice to Lessee receive prompt payment from Lessee of an amount equal to the aggregate Stipulated Loss Value on the date such notice is given of all units of Equipment which have not been sold by Lessor pursuant to clause (iii) above plus, to the extent not otherwise recovered from Lessee pursuant to said clause (iii) above, (1) any rent and other amounts owing hereunder to and including the rent payment date immediately following the date such notice is given, (2) all costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing and restoring such units of Equipment, and (3) all other amounts owing by Lessee hereunder whether as additional rent, indemnification or otherwise, and (4) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder; provided that upon receipt of payment in full of such amount, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such units of Equipment it may have;

v. By notice to Lessee, declare this Lease Agreement terminated without prejudice to Lessor's rights in respect of obligations then accrued and remaining unsatisfied; or

vi. Avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity, or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative. The references to additional rent in clauses iii and iv of this Paragraph B shall each include, without limitation, interest at the applicable rate specified in the third paragraph of Section 3, to the date of receipt by Lessor of the amount payable under said clause, on installments of rent owing hereunder to and including the rent payment date immediately following the date on which notice is given under said clause, from the respective due dates of such installments, and interest on all other costs, expenses and losses for which Lessor is entitled to payment under said clause from the respective dates incurred by Lessor.

17. SUBLEASE, ASSIGNMENT, ETC., BY LESSEE.

A. So long as Lessee shall not be in default under this Lease Agreement, Lessee shall be entitled to the possession of the units in accordance with the terms of this Lease Agreement and to the use thereof upon the lines of railroads over which Lessee or any permitted sublessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract, and also to permit the use of the units upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease Agreement. Lessee may receive and retain compensation for such use from other railroads to using any of the Cars. Lessee agrees that during the term of this Lease Agreement Lessee will use its best efforts to cause substantially all of the Cars to be used within the United States of America. No assignment, sublease or interchange entered into by Lessee hereunder shall relieve Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

B. So long as Lessee shall not be in default under this Lease Agreement, Lessee may sublease the Equipment to others, provided, however, that the rights of any such sublessee shall be subject and subordinate to, and any such sublease shall be made expressly subject and subordinate to, all the terms of this Lease Agreement. The Lessee's interest in any such sublease shall be fully assignable to the Lessor, and the Lessee shall, upon the request of the Lessor, assign and grant a security interest to Lessor in any such sublease with a term of one year or more to secure all existing and future obligations of Lessee under this Lease Agreement and at the expense of Lessee take such action and make such filings and recordings as Lessor may reasonably request to perfect such assignment and security interests. No sublease of any Car shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder.

18. ASSIGNMENT BY LESSOR.

Lessor and any direct or remote assignee of any right, title or interest of Lessor hereunder shall have the right at any time or from time to time to assign part or all of its right, title and interest in and to this Lease Agreement. Without limiting the foregoing, Lessor and any such assignee shall have the right at any time or from time to time to transfer, subject to Lessee's rights under this Lease Agreement, any unit or units of Equipment.

19. LESSOR'S RIGHT TO PERFORM.

If Lessee fails to make any payments required by this Lease Agreement, or to perform any of its other agreements contained herein, Lessor may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Lessor's expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Lessee to Lessor upon demand as additional rent hereunder.

20. RECORDING; FURTHER ASSURANCES.

Lessee will, at its expense, prior to the delivery and acceptance hereunder of any unit of Equipment (i) execute and file such Uniform Commercial Code financing statements as Lessor may reasonably request from time to time and (ii) cause this Lease Agreement and any assignment hereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's interest in the units, or for the purpose of carrying out the intention of this Lease Agreement or the assignment thereof by Lessor; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

21. PURCHASE OPTION.

Lessee shall have an option (the "Purchase Option") to purchase for cash all of the Cars then under lease upon the last business day of or prior to the expiration of the lease term hereunder for such units of Equipment provided no event of default or event which might mature into an event of default has occurred and is then continuing hereunder. If Lessee desires to

exercise the Purchase Option, it shall give to Lessor written notice of its election to purchase at least 90 days (and not more than 180 days) before the expiration of the lease term for such units of Equipment, stating Lessee's opinion as to the fair market value of the Equipment to be purchased, and upon expiration of such lease term, Lessee shall purchase such Equipment and shall pay to Lessor in immediately available funds the purchase price for such Equipment, determined as hereinafter provided. The purchase price of the Equipment shall be the fair market value thereof as of the date of purchase. If Lessee and Lessor are unable to agree upon the fair market value of the Equipment within 30 days after receipt by Lessor of such notice, such fair market value shall be determined by an independent appraiser selected by mutual agreement of Lessor and Lessee. The fee of such appraiser shall be shared equally by Lessee and Lessor. Upon payment by Lessee to Lessor of the purchase price for the Equipment at such expiration, and upon payment by Lessee of all rent and other amounts owing to Lessor under this Lease Agreement, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such Equipment Lessor may have free and clear of any lien or encumbrance created by or through Lessor.

22. RENEWAL OPTION.

Lessee shall have an option to renew for a number of consecutive whole year terms, not to exceed five years in total, the lease term of all of the Cars then under lease provided no event of default or event which might mature into an event of default has occurred and is then continuing immediately prior to the commencement of the renewal term being then elected by Lessee. If Lessee desires to exercise such option to renew, it shall give Lessor written notice of its election to renew at least 90 days (and not more than 180 days) prior to the commencement of the renewal term then being elected stating Lessee's opinion as to the fair market rental value for the Equipment to be leased during such renewal term, and upon the expiration of the then current term the lease of such Equipment shall be renewed for such renewal term at the fair market rental value as hereinafter provided. A determination shall be made of the fair market rental value of the Equipment as of the date of the expiration of such current term. If Lessee and Lessor are unable to agree upon such fair market rental value within 30 days after receipt by Lessor of such notice, such fair market rental value shall be determined by an independent appraiser selected by mutual agreement of Lessor and Lessee. The fee of such appraiser shall be shared equally by Lessee and Lessor. All of the provisions of the Lease shall be applicable during any such renewal term except for the amount of each installment of rent which shall be as hereinabove provided. "Lease Term" as used in the Lease shall, except where the context otherwise requires, be deemed to include any renewal terms.

23. CONDITIONS TO LESSOR'S OBLIGATIONS.

Lessor shall not be obligated to make payment for any unit of Equipment hereunder unless at the date such payment is requested by Lessee:

A. All of Lessee's representations and warranties in Section 7 of this Lease Agreement shall be true and correct as though made as of such date;

B. No litigation or governmental proceedings shall be threatened or pending against Lessee or any material subsidiary of Lessee which in Lessor's reasonable opinion will to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis (except as previously disclosed in writing by Lessee to Lessor);

C. No event of default, or event which might mature into an event of default, shall have occurred or be continuing hereunder;

D. Lessee shall have executed and delivered to Lessor an Assignment of Rents and Security Agreement (the "Assignment of Rents") substantially in the form of annexed Exhibit D.

E. Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor, the following on or prior to the date of the first requested payment hereunder:

i. Resolutions of the Board of Directors of Lessee, certified by its Secretary or an Assistant Secretary, authorizing the lease of such Equipment hereunder, the execution, delivery and performance by Lessee of this Lease Agreement and the Assignment of Rents, and the execution and delivery of the Certificates of Acceptance, designating the title of the officers of Lessee authorized to execute and deliver the Certificates of Acceptance;

ii. A favorable opinion of counsel for Lessee, acceptable to Lessor, to the effect that:

a. Lessee is a corporation duly organized and existing in good standing under the laws of the State of Delaware and is qualified to do business in each other jurisdiction where Lessee maintains an office.

b. Lessee is duly authorized to execute and deliver this Lease Agreement, and is duly authorized to lease Equipment hereunder and to perform its obligations hereunder and thereunder.

c. The execution and delivery of this Lease Agreement and the Assignment of Rents, and the performance by Lessee of its obligations hereunder and thereunder do not and will not conflict with any provision of law (including without limitation the provisions of 15 U.S.C. § 20) or of the charter or bylaws of Lessee or, based on such counsel's knowledge after reasonable inquiry, of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party.

d. The execution, delivery and performance of this Lease Agreement and the Assignment of Rents and the consummation by Lessee of the transaction contemplated hereby and thereby does not require the consent, approval or authorization of, or notice to, any Federal or state governmental authority or public regulatory body.

e. This Lease Agreement and the Assignment of Rents are legal, valid, and binding obligations of Lessee and are enforceable in accordance with their respective terms (except as may be affected by bankruptcy, reorganization, insolvency and similar laws affecting the rights of creditors generally and except as the remedies of Lessor may be affected by laws and judicial doctrines affecting the availability of such remedies).

f. There are to the knowledge of such counsel no pending or threatened actions or proceedings before any court or administrative agency which will, in the opinion of such counsel, to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis.

g. This Lease Agreement and the Assignment of Rents have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and such filings will protect Lessor's interests in and to the units of Equipment and the rentals assigned under the Assignment of Rents, and no further filing or recording (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of Lessor in and to the units and such rentals;

iii. Certificates of insurance required by Section 11 hereof.

F. Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor, the following on or prior to the date of each requested payment hereunder:

i. An invoice or invoices covering the units of Equipment for which such payment is requested;

ii. A Certificate of Acceptance signed by an officer of Lessee confirming acceptance by Lessee of the units of Equipment for which such payment is requested;

iii. An opinion of Arent, Fox, Kintner, Plotkin & Kahn, satisfactory to Lessor, that acceptance by Lessor of the units of Equipment for which such payment is requested and payment therefor by Lessor shall be effective to transfer to Lessor good title to such units of Equipment, free of all claims, liens or encumbrances of any nature; and

iv. Such other releases, financing statements, waivers and other documents as Lessor may reasonably request to insure that the Equipment will not be subject to any lien, charge, encumbrance, security interest or other similar interest.

24. COMMENCEMENT DATE.

On or prior to the Commencement Date Lessee shall furnish to Lessor in form and substance satisfactory to Lessor:

A. A certificate of the President or a Vice President of the Lessee, dated such Commencement Date, to the effect that:

i. All of Lessee's representations and warranties in Section 7 of this Lease Agreement are true and correct as though made as of such date;

ii. No litigation or governmental proceedings are threatened or pending against Lessee or any material subsidiary of Lessee which will, in the opinion of such officers, to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis; (except as previously disclosed in writing by Lessee to Lessor);

iii. No event of default, or event which might mature into an event of default, has occurred and is continuing hereunder;



iv. Since the date of this Lease Agreement, there has been no material adverse change in the financial condition of the Lessee from that shown by the financial statement referred to in Section 7.E hereof; and

v. The Cars have been delivered to and accepted by Lessee for lease under this Lease Agreement, and the Lease Agreement is in full force and effect.

B. An opinion of counsel for Lessee, acceptable to Lessor, dated such Commencement Date and addressed to Lessor, to the same effect as the opinion given to Lessor pursuant to Section 23.D(ii) hereof on the first payment date hereunder.

25. TERMINATION OPTION.

A. If no event of default or event which might mature into an event of default has occurred and is continuing and all of the Equipment in Lessee's reasonable judgment, as expressed in a duly adopted resolution of its Board of Directors or the executive committee thereof, has become surplus or economically obsolete to Lessee's requirements, then Lessee may at its option, upon not less than 180 days' prior written notice to Lessor, terminate this Lease Agreement with respect to all of the Equipment, provided that (i) the effective date (hereinafter called the Termination Date) of such termination is a rental payment date as set forth in Section 3 hereof, (ii) such Termination Date occurs on or after the fifth anniversary after the Commencement Date, and (iii) no such termination shall be effective until ~~the Equipment shall have been sold and~~ all sums payable by the Lessee pursuant to Section 25 hereof have been paid in full.

B. During the period from the giving of such notice until the Termination Date, Lessor and Lessee, on behalf of Lessor, shall use reasonable efforts to obtain bids for the cash sale of the Equipment. Lessor and Lessee shall certify to each other in writing the amount and the terms of each bid received by them and the names and addresses of the parties submitting such bids. Subject to Lessor's right to reject bids as set forth in Section 25.C hereof, on the Termination Date Lessor shall without recourse, representation or warranty, sell the Equipment to the highest bidder who shall have submitted such bid prior to such date on terms and conditions acceptable to Lessor in its sole and absolute discretion; provided that neither the Lessee or any person, firm or corporation affiliated with the Lessee may bid on or purchase the Equipment. An "affiliate" of the Lessee shall mean any person who possesses, directly or indirectly, the right to vote at least 10% of the voting securities of the Lessee and any person who, directly or indirectly, controls or is controlled

by or is under common control with the Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise. Upon such sale the Lessee shall pay to the Lessor an amount equal to (i)(A) the Termination Value of the Equipment plus (B) the actual expenses incurred by Lessor in making the sale, including without limitation storage, insurance, advertising, brokerage and attorneys' fees and expenses incurred in connection with such sale, plus (C) if not previously paid, the rental installment due on such Termination Date and any other sums accrued and unpaid through and including such date, less (ii) the proceeds of such sale, to the extent that the proceeds of such sale do not exceed the sum of the Termination Value paid by Lessee and the actual expenses incurred by Lessor in making such sale.

C. If, within 60 days prior to the Termination Date, neither Lessor nor Lessee shall have received any bid for the sale of the Equipment or there shall not have been received any bid which shall be acceptable to Lessor, in its sole and absolute discretion, Lessor shall so advise Lessee. Thereupon, Lessee shall have the right (i) to notify Lessor, within 15 days following the giving of such advice, that Lessee will continue to lease the Equipment with the same effect as if Lessee had not given notice of termination with respect thereto, or (ii) to pay to Lessor, on the Termination Date, the Termination Value of the Equipment, the rental installment due on such Termination Date and any other sums accrued and unpaid through and including such date, and thereupon Lessee shall have no further right with respect to the Equipment and no further obligations with respect to the Equipment except those which survive the expiration of the term of this Lease. In the event of a termination pursuant to this Section 25.C the Equipment shall be returned by the Lessee to the Lessor in accordance with the provisions of Section 14 hereof.

D. Notwithstanding the foregoing, if the Termination Value exceeds the amount of any bid which is acceptable to Lessor, Lessee may at its option upon written notice given to Lessor not less than 45 days prior to the Termination Date, elect to rescind Lessee's notice of termination, whereupon this Lease shall not terminate but shall, provided that no event of default has occurred and is continuing and Lessor has not by reason thereof declared this Lease to be in default, continue in full force and effect as though no such notice of termination had been given by Lessee. In the event Lessee shall elect to rescind its notice of termination in accordance with the provisions of this Section 25.D, Lessee shall reimburse Lessor for all expenses

which have been incurred in reliance upon any notice of termination by Lessee.

E. Except as Lessee shall, in a timely fashion, have either exercised its right to continue to lease the Equipment pursuant to Section 25.C hereof, or elected to rescind Lessee's notice of termination pursuant to Section 25.D hereof, Lessee shall pay to Lessor all sums due pursuant to Section 25.B hereof on the Termination Date, without asserting any setoff, counterclaim, or other defense for any reason whatsoever.

F. The Termination Value of the Equipment shall be an amount determined as of the Termination Date equal to that percentage of Lessor's Cost of Cars set forth in the schedule of Termination Value for Cars attached hereto as Exhibit E opposite such next rental payment due date.

26. INVESTMENT TAX CREDIT ELECTION.

Lessor agrees to make the necessary election under Section 48(d) of the Code to permit the Lessee to claim the investment tax credit under the Code.

27. MISCELLANEOUS.

A. Notwithstanding any other provisions of this Lease Agreement, Lessor shall not be obligated to make payment of all or any portion of the Lessor's Cost of Cars for such Cars if on or prior to the requested date of payment there shall have been (i) an amendment to the Internal Revenue Code of 1954, as amended (the "Code") which changes the federal income tax rate (in excess of the corporate surtax exemption) of Lessor from 46%, or (ii) any amendment, modification, addition or change made in or to the provisions of the Code, the Treasury Regulations under the Code (including the Treasury Regulations relating to the Asset Depreciation Range System of depreciation under Section 167(m) of the Code), published Internal Revenue Service Revenue Procedures, Revenue Rulings or other administrative interpretations, or applicable judicial precedents (all of the foregoing amendments, modifications, additions or changes referred to in this clause (ii) being hereinafter collectively referred to as a "Change in Tax Law"), which Change in Tax Law in the opinion of Lessor or in the opinion of its counsel might preclude Lessor from taking the depreciation deduction on Lessor's Cost of Cars over a depreciable life of 12 years to a net salvage value of 10% thereof, computed initially under the double declining balance method of depreciation provided in Section 167(b)(2) of the Code and then changing to the sum of the years-digits method of depreciation provided in Section 167(b)(1) of the Code, all without the consent of the Commissioner, with the annual allowance determined without reduction for salvage and with the first year's

depreciation deduction being maximized by the election of either the "half year convention" or the "modified half year convention" pursuant to Treasury Regulation Section 1.167(a)-11(c)(2) (as in effect on the date of execution of this Lease Agreement).

B. Any provision in this Lease Agreement that Lessee shall take any action shall require Lessee to do so at its sole cost and expense.

C. Any notice hereunder shall be in writing and, if mailed, shall be deemed to be given when sent by registered or certified mail, postage prepaid, and addressed: (i) if to Lessee, at its address shown below, (ii) if to Lessor, to Seafirst Leasing Corporation, P. O. Box 3586, Seattle, Washington 98124, or to either party at such other address as it may, by written notice received by the other, designate as its address for purposes of notice hereunder.

D. If this Lease Agreement or any provision hereof shall be deemed invalid, illegal, or unenforceable in any respect or in any jurisdiction, the validity, legality and enforceability of this Lease Agreement in other respects and other jurisdiction shall not be in any way impaired or affected thereby. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Lease Agreement unless such waiver is in writing, and such writing shall be binding only to the extent therein provided and only upon the party signing it. A waiver on any one occasion shall not be construed as a waiver on any future occasion. Without limiting the foregoing, Lessor's rights and Lessee's duties shall in no way be affected by Lessor's inspection of, or failure to inspect, the Equipment or any of the documents referred to in this Lease Agreement or by Lessor's failure to inform Lessee of any failure to comply with any of Lessee's obligations under this Lease Agreement. Lessee hereby waives any right to assert that Lessor cannot enforce this Lease Agreement or that this Lease Agreement is invalid because of any failure of Lessor to qualify to do business in any jurisdiction. This Lease Agreement has been delivered for acceptance by Lessor in Seattle, Washington, shall be governed by the laws of the State of Washington, shall be binding upon Lessor and Lessee and their respective successors and assigns, and shall inure to the benefit of Lessor and Lessee and the successors and assigns of Lessor.

E. The section headings in this Lease Agreement are for convenience of reference only and shall not be considered to be a part of this Lease Agreement.

F. This Lease Agreement may be signed in any number of copies, any one of which shall be considered as the original Lease Agreement.

EXHIBIT A

70-Ton 50' General Purpose Boxcars

Car Numbers:

AA 5000 through AA 5099 inclusive.

EXHIBIT B

CERTIFICATE OF ACCEPTANCE

Seafirst Leasing Corporation
P. O. Box 3586
Seattle, Washington 98124

Attention: Large Ticket and
Leveraged Leasing

Gentlemen:

1. The undersigned, Brae Corporation ("Lessee"), is the Lessee under the Lease Agreement dated as of _____, 1979 (the "Lease Agreement"), between you and the Lessee. As such Lessee, we hereby request you to pay the attached invoices for the delivery of the cars described below. We hereby represent and certify to you as follows:

(a) That all of our representations and warranties set forth in Section 7 of the Lease Agreement are true and correct as of the date hereof as though made on this date;

(b) That the cars described below have been delivered to us, as Lessee under the Lease Agreement, on the dates indicated and have been duly inspected and are hereby accepted by us for lease under the Lease Agreement;

(c) That each such Car was at its delivery properly marked on each side thereof with the legend provided in Section 8.E of the Lease; and

(d) That no event of default, or event which might mature into an event of default, has occurred and is continuing under the Lease Agreement.

2. This Certificate of Acceptance shall be and become a part of the Lease Agreement, and the cars described below are hereby declared to be leased by us thereunder. The Lease Agreement was filed and recorded with the Interstate Commerce Commission on _____, 1979, at _____ .m., with Recordation No. _____.

BRAE CORPORATION, Lessee

By _____
Its _____

Dated _____, 1979

DESCRIPTION OF CARS

Total No.
of Cars

Lessee's Identifying
Nos.

Invoice
Amount

EXHIBIT C

STIPULATED LOSS VALUE FOR CARS

"Stipulated Loss Value" of any Car as of a particular date shall mean the amount derived by multiplying (i) the percentage figure opposite the notation for the appropriate rental period set forth in the table appearing below by (ii) Lessor's Cost of Cars applicable to such Car. Stipulated Loss Value does not include any amounts for which Lessor may be entitled to indemnification under Sections 12 and 13 of the Lease Agreement.

STIPULATED LOSS VALUE TABLE

| | <u>Percentage</u> |
|--|-----------------------------------|
| On or before Commencement Date | 100% + expenses + interim rent |
| Thereafter, but on or before Rent Payment Date No. 1 | 101.492 |
| Thereafter, but on or before Rent Payment Date No. 2 | 102.085 |
| Thereafter, but on or before Rent Payment Date No. 3 | 102.476 |
| Thereafter, but on or before Rent Payment Date No. 4 | 102.667 |
| Thereafter, but on or before Rent Payment Date No. 5 | 102.666 |
| Thereafter, but on or before Rent Payment Date No. 6 | 102.479 |
| Thereafter, but on or before Rent Payment Date No. 7 | 102.109 |
| Thereafter, but on or before Rent Payment Date No. 8 | 101.557 |
| Thereafter, but on or before Rent Payment Date No. 9 | 100.830 |
| Thereafter, but on or before Rent Payment Date No. 10 | 99.925 |
| Thereafter, but on or before Rent Payment Date No. 11 | 98.853 |
| Thereafter, but on or before Rent Payment Date No. 12 | 97.608 |
| Thereafter, but on or before Rent Payment Date No. 13 | 96.205 |
| Thereafter, but on or before Rent Payment Date No. 14 | 94.634 |

| | | |
|---|----|--------|
| Thereafter, but on or before Rent Payment Date No. | 15 | 92.914 |
| Thereafter, but on or before Rent Payment Date No. | 16 | 90.032 |
| Thereafter, but on or before Rent Payment Date No. | 17 | 89.010 |
| Thereafter, but on or before Rent Payment Date No. | 18 | 86.833 |
| Thereafter, but on or before Rent Payment Date No. | 19 | 84.581 |
| Thereafter, but on or before Rent Payment Date No. | 20 | 82.242 |
| Thereafter, but on or before Rent Payment Date No. | 21 | 79.837 |
| Thereafter, but on or before Rent Payment Date No. | 22 | 77.341 |
| Thereafter, but on or before Rent Payment Date No. | 23 | 74.775 |
| Thereafter, but on or before Rent Payment Date No. | 24 | 72.111 |
| Thereafter, but on or before Rent Payment Date No. | 25 | 69.372 |
| Thereafter, but on or before Rent Payment Date No. | 26 | 66.530 |
| Thereafter, but on or before Rent Payment Date No. | 27 | 63.608 |
| Thereafter, but on or before Rent Payment Date No. | 28 | 60.576 |
| Thereafter, but on or before Rent Payment Date No. | 29 | 57.457 |
| Thereafter, but on or before Rent Payment Date No. | 30 | 54.223 |
| Thereafter, but on or before Rent Payment Date No. | 31 | 50.896 |
| Thereafter, but on or before Rent Payment Date No. | 32 | 47.446 |
| Thereafter, but on or before Rent Payment Date No. | 33 | 43.895 |
| Thereafter, but on or before Rent Payment Date No. | 34 | 40.215 |
| Thereafter, but on or before Rent Payment Date No. | 35 | 36.427 |
| Thereafter, but on or before Rent Payment Date No. | 36 | 32.502 |
| Thereafter, but on or before Rent Payment Date No. | 37 | 28.461 |
| Thereafter, but on or before Rent Payment Date No. | 38 | 24.274 |
| Thereafter, but on or before Rent Payment Date No. | 39 | 20.029 |
| Thereafter | | 20.000 |

EXHIBIT D.

ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

This Assignment of Rents and Security Agreement is entered into as of March 8, 1979 between BRAE CORPORATION, a California corporation (the "Assignor") and SEAFIRST LEASING CORPORATION, a Washington corporation (the "Assignee").

RECITALS

The Assignee and the Assignor have entered into a Lease Agreement ("the Lease Agreement") of even date herewith whereby the Assignee has agreed to lease to the Assignor 100 70-Ton 50' General Purpose Boxcars (the "Equipment") to which Lease Agreement reference is hereby made for a more complete description of the Equipment.

The Assignor and Michigan Interstate Railway Company, a Michigan corporation (the "Sublessee"), with its principal place of business at Owosso, Michigan, have entered into a Lease Agreement (the "Sublease") dated December 20, 1978, whereby the Assignor, as Sublessor has subleased the Equipment to Sublessee.

The Assignee's consent to the subleasing of the Equipment by the Assignor to the Sublessee is conditioned upon the Assignor's assigning to the Assignee, as security for the Assignor's obligations to the Assignee under the Lease Agreement, all of the Assignor's right, title and interest in and to the Sublease and the proceeds deriving therefrom.

It is mutually agreed as follows:

1. Assignment of Rents and Grant of Security Interest.

The Assignor, in order to secure the prompt performance of its obligations to the Assignee under the Lease Agreement, does hereby assign and transfer to and grant a security interest in favor of the Assignee in the Sublease, and all proceeds thereof, including, without limitation, all rentals, insurance and insurance proceeds, indemnity payments, termination payments, and all other monies due or to become due thereunder, and all rights of the Assignor to execute any election or option or to give any notice, consent, waiver or approval under or in respect of the Sublease, as well as all rights, powers or remedies on the part of the Assignor whether arising under the Sublease or by statute, at law, in equity or otherwise, arising out any event of default (as defined in the Sublease), provided, however, the foregoing

assignment and security interest shall relate only to the Equipment and not to other equipment which is also subject to the Sublease.

2. No Assignment of Assignor's Obligation. It is expressly agreed, notwithstanding anything herein to the contrary, that the Assignor shall remain liable under the Sublease to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions of the Sublease, and Assignor does hereby covenant with the Assignee that it will keep and perform all of the obligations to be performed on the part of the Assignor under the Sublease and will save the Assignee harmless from any failure to do so. The Assignee shall have no obligation or liability under the Sublease by reason of or arising out of this Assignment of Rents and Security Agreement, nor shall the Assignee be required or obligated in any manner, except as herein expressly provided, to perform or fulfill any obligation of the Assignor under or pursuant to the Sublease, or except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

3. Assignee May Act For Assignor. The Assignor does hereby constitute the Assignee the true and lawful attorney of the Assignor, irrevocably, with full power (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due and to become due from the Sublessee under or arising out of the Sublease, or any document contemplated thereby, to endorse any checks or other instruments or orders in connection therewith and to file claims or take any actions or to institute any proceedings which the Assignee may deem to be necessary or advisable in the premises. Assignor authorizes and empowers the Assignee to collect and receive directly from the Sublessee all monies now due or to become due under the Sublease. If any assigned monies are received by the Assignor, the same will be received by the Assignor as trustee for the Assignee and will be immediately delivered in kind to the Assignee without commingling. In addition, the Assignee shall have all of the rights and remedies afforded a secured party under the Uniform Commercial Code.

4. Representations, Warranties and Covenants of the Assignor. The Assignor hereby warrants and represents that it has not assigned, pledged, or otherwise encumbered, and hereby covenants that it will not assign, pledge, or otherwise encumber so long as this Assignment of Rents and Security Agreement shall remain in effect, any of its right, title or interest hereby assigned to anyone other than the Assignee, and that it has full

right and authority to enter into and perform this Assignment of Rents and Security Agreement in accordance with its terms. The Assignor will not, without the prior written consent of the Assignee, agree to, consent to or permit any assignment with respect to the Sublease as it relates to the Equipment, or any amendment, modification, or waiver which would impair the security of the Assignee in the Sublease. Assignor covenants to reimburse the Assignee upon demand for any expense, including legal fees reasonably incurred by the Assignee in the exercise of the powers conferred upon Assignee hereunder, together with interest thereon at the rate of 12% per annum, or the highest lawful rate, whichever is the lesser, from the date upon which such expenses are incurred.

5. Assignee's Rights Prior to Event of Default. So long as no event of default (as defined in Section 16.A of the Lease Agreement) has occurred and is continuing or so long as no event has occurred and is continuing which would be such an event of default but for the lapse of time or the giving of notice or both, all amounts which would otherwise be assigned and payable to the Assignee pursuant to Section 1 hereof shall be paid directly to and retained by the Assignor, and Assignor shall have the right to exercise all rights as Lessor under the Sublease.

6. Notice of Assignment. Assignor shall promptly give Sublessee written notice of this Assignment of Rents and Security Agreement and provide Assignee with evidence that it has given such notice to Sublessee.

Assignor further agrees that it shall conspicuously mark all of its copies of the sublease with the following legend:

"With respect to the Equipment identified or Schedule Number 1, this Lease Agreement is subject to an Assignment of Rents and Security Agreement made by BRAE Corporation to Seafirst Leasing Corporation," and

that it will deliver to Assignee the copy of the Sublease marked "Original," that it will file a copy of this Assignment of Rents and Security Agreement with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commerce Act and will file all Uniform Commercial Code financing statements and continuations thereof, and take such other actions, all at its own expense, as may be required from time to time in order to perfect and continue the perfection of this Assignment of Rents and Security Agreement.

7. Miscellaneous. This Assignment of Rents and Security Agreement may be executed by the parties hereto in separate counterparts. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be

ineffective to the extent of such prohibition without invalidating the remaining provisions hereof, and any such provision or unenforceability in any jurisdiction shall not invalidate or render unenforceable such a provision in any other jurisdiction. To the extent permitted by applicable law, the Assignor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No provision hereof may be changed, waived, or otherwise modified unless done in writing signed by the party against which the enforcement of the change, waiver or other modification is sought. This Assignment of Rents and Security Agreement shall in all respects be governed by and construed in accordance with the laws of the state of Washington.

IN WITNESS WHEREOF, the parties have executed the foregoing agreement as of the day and year first above written.

BRAE CORPORATION, Lessee

By _____
Title _____

Address: Three Embarcadero Center
San Francisco, California

SEAFIRST LEASING CORPORATION

By _____
Title _____

By _____
Title _____

By _____
Title _____

EXHIBIT E

TERMINATION VALUE FOR CARS

"Termination Value" of any Car as of a particular date shall mean the amount derived by multiplying (i) the percentage figure opposite the notation for the appropriate rental period set forth in the table appearing below by (ii) Lessor's Cost of Cars applicable to such Car. Termination Value does not include any amounts for which Lessor may be entitled to indemnification under Sections 12 and 13 of the Lease Agreement.

TERMINATION VALUE TABLE

| | <u>Percentage</u> |
|--|-----------------------------------|
| On or before Commencement Date . . . | 100% + expenses + interim rent |
| Thereafter, but on or before Rent Payment Date No. 1 | 101.388 |
| Thereafter, but on or before Rent Payment Date No. 2 | 101.878 |
| Thereafter, but on or before Rent Payment Date No. 3 | 102.165 |
| Thereafter, but on or before Rent Payment Date No. 4 | 102.251 |
| Thereafter, but on or before Rent Payment Date No. 5 | 102.146 |
| Thereafter, but on or before Rent Payment Date No. 6 | 101.854 |
| Thereafter, but on or before Rent Payment Date No. 7 | 101.380 |
| Thereafter, but on or before Rent Payment Date No. 8 | 100.722 |
| Thereafter, but on or before Rent Payment Date No. 9 | 99.889 |
| Thereafter, but on or before Rent Payment Date No. 10 | 98.878 |
| Thereafter, but on or before Rent Payment Date No. 11 | 97.699 |
| Thereafter, but on or before Rent Payment Date No. 12 | 96.346 |
| Thereafter, but on or before Rent Payment Date No. 13 | 94.834 |
| Thereafter, but on or before Rent Payment Date No. 14 | 93.154 |

| | | |
|---|----|--------|
| Thereafter, but on or before Rent Payment Date No. | 15 | 91.323 |
| Thereafter, but on or before Rent Payment Date No. | 16 | 89.330 |
| Thereafter, but on or before Rent Payment Date No. | 17 | 87.195 |
| Thereafter, but on or before Rent Payment Date No. | 18 | 84.904 |
| Thereafter, but on or before Rent Payment Date No. | 19 | 82.536 |
| Thereafter, but on or before Rent Payment Date No. | 20 | 80.078 |
| Thereafter, but on or before Rent Payment Date No. | 21 | 77.552 |
| Thereafter, but on or before Rent Payment Date No. | 22 | 74.932 |
| Thereafter, but on or before Rent Payment Date No. | 23 | 72.239 |
| Thereafter, but on or before Rent Payment Date No. | 24 | 69.446 |
| Thereafter, but on or before Rent Payment Date No. | 25 | 66.575 |
| Thereafter, but on or before Rent Payment Date No. | 26 | 63.599 |
| Thereafter, but on or before Rent Payment Date No. | 27 | 60.539 |
| Thereafter, but on or before Rent Payment Date No. | 28 | 57.367 |
| Thereafter, but on or before Rent Payment Date No. | 29 | 54.105 |
| Thereafter, but on or before Rent Payment Date No. | 30 | 50.724 |
| Thereafter, but on or before Rent Payment Date No. | 31 | 47.248 |
| Thereafter, but on or before Rent Payment Date No. | 32 | 43.646 |
| Thereafter, but on or before Rent Payment Date No. | 33 | 39.940 |
| Thereafter, but on or before Rent Payment Date No. | 34 | 36.102 |
| Thereafter, but on or before Rent Payment Date No. | 35 | 32.153 |
| Thereafter, but on or before Rent Payment Date No. | 36 | 28.063 |
| Thereafter, but on or before Rent Payment Date No. | 37 | 23.854 |
| Thereafter, but on or before Rent Payment Date No. | 38 | 19.497 |
| Thereafter, but on or before Rent Payment Date No. | 39 | 15.013 |
| Thereafter | | 15.000 |

SCHEDULE I

| <u>AAR Mechanical Designation</u> | <u>Type of Equipment</u> | <u>No. of Units</u> | <u>Identifying Numbers (Both Inclusive)</u> |
|---------------------------------------|------------------------------|-------------------------|---|
| XM | Boxcars | 100 | AA 5000 - AA 5099 |

Interstate Commerce Commission
Washington, D.C. 20423

3/14/79

OFFICE OF THE SECRETARY

Michael T. Everett
Assistant Secretary
Brae Corporation
Three Embarcadero Center
San Francisco, Calif. 94111

Dear

Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on

3/14/79

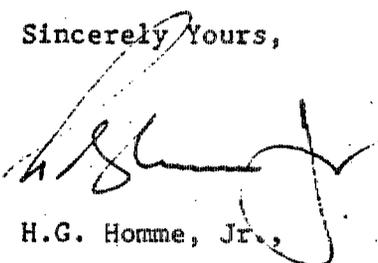
at

1:15pm

and assigned recordation number(s)

10203, 10203-A & 10203-B

Sincerely Yours,



H.G. Homme, Jr.,

Secretary

Enclosure(s)

SE-30-T
(2/78)