

RECORDATION NO. 10844 Filed 1425

SEP 25 1979 -10 05 AM

INTERSTATE COMMERCE COMMISSION LAW OFFICES

CONNER, MOORE & CORNER INTERSTATE COMMERCE COMMISSION INTERSTATE COMMERCE COMMISSION

1747 PENNSYLVANIA AVENUE, N. W.

WASHINGTON, D. C. 20006

Date SEP 25 1979

Fee 250.00

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RECEIVED

SEP 25 1979 -10 05 AM September 24, 1979

ROBERT J. CORBER

INTERSTATE COMMERCE COMMISSION

Ms. Agatha L. Mergenovich
INTERSTATE COMMERCE COMMISSION
Office of the Secretary - Room 2209
Washington, DC 20423

Dear Ms. Mergenovich:

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

1. Security Agreement, Chattel Mortgage and Lease Agreement dated as of September 20, 1979 between Brae Corporation and Citicorp Industrial Credit Inc.
2. Agreement between Brae Corporation and American Grain and Related Industries dated as of July 20, 1979.
3. Railroad Car Lease Agreement between Brae Corporation and American Grain and Related Industries dated as of July 20, 1979.
4. Assignment Agreement between Brae Corporation and States Marine Corporation dated as of August 6, 1979
5. Lease Agreement between Brae Corporation and North Stratford Railroad Corporation dated as of April 21, 1978.

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

1. Security Agreement, Chattel Mortgage and Lease Agreement:

a. Lessor--^{Top line} Mortgagor: Brae Corporation, Three Embarcadero Center, Suite 1760, San Francisco, CA 94111

b. Mortgagee: Citicorp Industrial Credit, Inc. 44 Montgomery Street, San Francisco, CA 94104

2. Agreement between Brae Corporation and American Grain and Related Industries:

Handwritten signature: Conner Moore & Corber

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CABLE ADDRESS: ATOMLAW
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INTERSTATE COMMERCE COMMISSION

- a. Lessor - Assignor: Brae Corporation, Three Embarcadero Center - Suite 1760, San Francisco, CA 94111
- b. Lessee: Warrenton Railroad, Post Office Box 518, Warrenton, NC 27519
- c. Assignee: American Grain and Related Industries, 1501 42nd Street, 2 Corporate Place, West Des Moines, IA 50265

Cross index

3. Railroad Car Lease Agreement between Brae and American Grain and Related Industries:

- a. Lessor: Brae Corporation, Three Embarcadero Center - Suite 1760, San Francisco, CA 94111
- b. Lessee: American Grain and Related Industries, 1501 42nd Street, 2 Corporate Place, West Des Moines, IA 50265

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4. Assignment Agreement between States Marine Corporation and Brae Corporation:

- a. Assignor: States Marine Corporation, 280 Park Avenue, New York, NY 10017
- b. Assignee: Brae Corporation, Three Embarcadero Center - Suite 1760, San Francisco, CA 94111
- c. Lessee: Genesee and Wyoming Railroad Company, 270 Greenwich Avenue, Greenwich, CT 06830

Cross index

5. Lease Agreement between North Stratford Corporation and Brae Corporation:

- a. Lessor: Brae Corporation, Three Embarcadero Center - Suite 1760, San Francisco, CA 94111
- b. Lessee: North Stratford Railroad Corporation, Post Office Box 275, Beecher Falls, VT 05902

Cross index under

Please file and record the enclosed documents. It is requested that they be indexed in accordance with the names of the parties to the transactions stated above. Please index and file under one primary number.

September 24, 1979

Enclosed is a check payable to the Interstate Commerce Commission in the amount of \$250, the prescribed fee for filing and recordation of the enclosed documents.

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

Very truly yours,



Robert J. Corber
Attorney for Brae Corporation.

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Enclosures

10844-A

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AGREEMENT

SEP 25 1979 10 02 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT entered this 20th day of July, 1979, by and between Brae Corporation (hereinafter referred to as "Brae"), a Delaware corporation, and American Grain and Related Industries (a Farmer-owned Cooperative) (hereinafter referred to as "AGRI") an Iowa corporation.

WHEREAS, Brae will acquire certain covered hopper railroad cars; and

WHEREAS, Brae is desirous of offering the use of certain covered hopper railroad cars to AGRI; and

WHEREAS, AGRI is desirous of using certain covered hopper railroad cars which will be acquired by Brae.

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

1. Description of Covered Hopper Cars. Brae shall provide to the Warrenton Railroad, which will assign to originating carriers for assignment to AGRI the following covered hoppers cars: One Hundred (100) new, 4,650 cubic-foot capacity, lined, covered hopper cars manufactured by National Steel Car Corporation, Limited, Hamilton, Ontario, Canada (hereinafter referred to as "the Cars" or "Cars"). A description of the Cars is set forth in Exhibit "A", attached hereto and by this reference made a part hereof.

2. Confirmation of Originating Carriers. AGRI has obtained written confirmation by an originating carrier or originating carriers accepting the Cars in Assignment and will deliver such confirmation to Brae prior to the effective date of this Agreement.

3. Delivery Instructions. Brae shall bear the cost of initial delivery of the Cars to the loading point(s) specified by AGRI. In the event that any Cars are rejected by AGRI because of defects or nonconformity to specification, all costs and charges incurred in connection with the return of said Cars shall be borne by Brae.

4. Term of Agreement. The term of the agreement for each Car for the purpose of calculating extension dates shall run for a period of five (5) years commencing on September 1, 1979. ~~AGRI, at its option, may elect to extend this Agreement for a maximum of two consecutive five (5) year periods. AGRI shall have the right to extend this Agreement with respect to either all or fifty of the Cars at AGRI's option. Should AGRI elect to extend the agreement for the first five (5) year period, AGRI shall deliver written notice to BRAE's place of business on or before May 1, 1984, which notice shall state AGRI's intent to extend the agreement and indicate whether all or only fifty of the Cars shall be the subject of the extended agreement. Should AGRI elect to extend the agreement for the second five (5) year period, AGRI shall deliver the~~



~~same form of written notice as specified for the first extension on or before May 1, 1989.~~

5. Agreement for Utilization. AGRI agrees to use its best efforts to insure that the Cars subject to this Agreement will travel an average of sixty-five (65) miles per day for each day the Cars are available for use by AGRI during the term of this Agreement. For purposes of calculating this mileage obligation on individual Cars, the date each Car is loaded at the first loading point specified by AGRI and as provided in Paragraph 3 shall be deemed to be the date the mileage obligation commences. The fiscal year for determination of computations hereunder shall commence September 1, 1979.

AGRI shall use its best efforts to load Cars as quickly as possible upon their arrival from the manufacturing plant at AGRI's first loading point(s) and also on all future loadings. In the event that the average usage of all Cars in service is less than sixty-five (65) miles per day per Car, AGRI shall pay Brae compensation based on the "mileage car hire rate" prescribed in AAR Circular OT-10 (or any mileage car hire rate regulation replacing it).

The amount, if any, owed to Brae by AGRI pursuant to its mileage guarantee shall be determined as follows: multiply 65 times the aggregate number of "Car Days" during the applicable period and subtract from that product the total number of

miles actually travelled by all Cars during that period. If the difference is a positive number, then such number shall be multiplied by the then applicable mileage rate prescribed by the Interstate Commerce Commission and that product shall be the mileage deficiency for such period. If the difference is a negative number, then there shall be no deficiency for such period and the difference (multiplied by the then applicable mileage rate prescribed by the Interstate Commerce Commission) shall be a credit available for application as provided in the next paragraph. Brae shall determine the mileage deficiency quarterly commencing September 1, 1979 and shall make an annual computation on December 31st of each year during the term of this Agreement. For the purpose of making these determinations, "Car Day" shall mean one day on which one Car is subject to this Agreement, commencing upon the loading of such Car at the first loading point specified by AGRI.

AGRI shall pay Brae the mileage deficiency, if any, quarterly in arrears not later than 15 days after Brae has notified AGRI of its quarterly determination of the mileage deficiency. Notwithstanding the fact that mileage deficiencies are to be paid quarterly, they shall be computed on an annual basis. Accordingly, if during any quarter the Cars have an average daily mileage exceeding 65 miles per day, the credit available from such excess mileage shall be used to offset any mileage deficiency from any preceding quarter during such year

and, to the extent not so used, shall be used as a credit to offset any mileage deficiency which may occur in any subsequent quarter of such year. In the event that the average daily mileage during any quarter is less than 65 miles per day, the resulting mileage deficiency shall be offset, if possible, by utilizing credits from prior or subsequent quarters during such year. If, at the end of any year, the Cars have an average daily mileage in excess of 65 miles per day and because of quarterly variations AGRI has paid mileage deficiency fees to Brae during such year, Brae shall refund such mileage deficiency fees to AGRI within 15 days after making the determination referred to in the preceding paragraph. Except as provided in the preceding sentence, Brae shall be entitled to all mileage payments made by railroads with respect to Cars. Credits resulting from excess mileage shall terminate if not used or refunded at the end of each year.

6. Termination of Payments. In no case shall AGRI be required to meet minimum mileage obligations with respect to a Car when such Car is used in unauthorized service by a third party without AGRI's knowledge and/or consent. If a Car is used in unauthorized service, Brae agrees to help recover any and all penalties assessed against the unauthorized third party inuring to the benefit of AGRI.

7. Obtaining Exception to ICC Service Orders. Brae shall endeavor to obtain exceptions from ICC Service Orders or

directives or orders from other properly authorized governmental agencies or bodies which by their terms would deprive AGRI of the use of the Cars in its assigned service. In the event Brae is unable to obtain exceptions to ICC Service Orders or has failed to complete registration requirements and Cars are not available for AGRI's use, no mileage obligation or lease rental payment shall be required of AGRI with respect to Cars which are not available for use. Mileage obligations under the Agreement shall cease on any and all cars hereunder which are "bad ordered" or subject to Mechanical Rule 108 of the AAR Interchange Rules, or where repair parts are being awaited to repair any Car subject hereto.

8. Compliance with Interstate Commerce Commission.

It is agreed that the utilization of the Cars shall be in compliance with the provisions of the Interstate Commerce Act, the Interstate Commerce Commission's Regulations promulgated thereunder, and the Car Service Rules established by the Association of American Railroads.

9. Private Lease Between AGRI and Brae. In the

event that the assignment with the originating carrier referred to in Paragraph 2 is terminated or is no longer in effect with respect to some or all of the Cars and AGRI has not obtained an assignment from another originating carrier, AGRI's obligations under Paragraph 5 shall immediately cease with respect to such Car or Cars and such Cars without action by either party shall

immediately be subject to the full service lease agreement annexed hereto. The fixed rental under such lease shall be \$494 per Car per month. However, AGRI, at its option, upon notification to Brae, may postpone the immediate changeover from the terminated assignment to the full service lease agreement in order to secure another originating carrier and subsequent assignment. In such event, AGRI shall guarantee Brae revenues equal to that which the Cars would earn if utilization of the Cars off the shortline were 100% and the Cars travelled an average of 65 miles per day. Furthermore, should the Cars be subject to the full service lease and should AGRI thereafter find an originating carrier or carriers providing a subsequent assignment or assignments, AGRI shall have the right, at its option, to revert to the terms of this Agreement. Should AGRI switch a Car or Cars from assignment with an originating carrier or carriers to the full service lease agreement or the reverse, the only cost to be borne by AGRI, aside from those described in this paragraph, shall be for the remarking and restenciling of the Cars. AGRI shall change a Car from the mileage obligation status to a full service lease, or the reverse, only upon ten (10) days notice in writing to Brae. Upon receipt of such notice, Brae shall be responsible for all registrations with or approvals from the appropriate governmental authorities and other required parties. Should AGRI suffer any loss of use because of delay due to the fault of Brae, Brae

shall cause an abatement of AGRI's obligations on a pro rata basis, to be effected on AGRI's mileage obligation or rent under the full service agreement. The provisions of this paragraph shall apply to any or all of the Cars at AGRI's option.

10. Repairs of Cars.

A. AGRI shall use the Cars with due care and in services which will not damage the Cars as the result of the products being transported and AGRI will not alter the physical structure of any of the Cars without the approval in writing of Brae. AGRI agrees to give Brae prompt written notice of the need to repair or perform maintenance upon any Car. Except where responsibility is placed upon others as provided in Paragraphs 10C or 12A hereof, Brae, at its expense, agrees to maintain the Cars in good condition and repair according to the Code of Rules (as defined in Paragraph 12A).

B. Brae's obligation under Paragraph 10A to maintain and repair the Cars shall not extend to mandatory changes in the design of any Car, its components, configurations or safety appliances or other changes required by separate legislative act or regulation effective after the Effective Date, which requires an expenditure in excess of \$2,000. In the event of such a change applicable to any Car, Brae may terminate this Lease with respect to such Car, provided, however, that prior to termination, AGRI may, at its own expense, cause to have made the mandatory changes

to such Car or Cars, and this Agreement shall continue until expiration.

C. Brae's maintenance obligations shall not extend to repair or maintenance required as a result of, or attributable to: (i) defects in the manufacture or workmanship of any Car or any component thereof or any material incorporated therein by the manufacturer or by any person other than Brae, its agents or representatives; provided that Brae shall use its best efforts to enforce the warranty rights with respect to the Cars; (ii) damage caused by AGRI, its agents or representatives; (iii) damage caused to the Car by any corrosive or abrasive substance loaded therein or used in connection therewith; (iv) damage to substance loaded therein or used in connection therewith or damage to any Car caused by open flames, vibrations, sledges or other similar devices during loading or unloading; (v) excessive or unbalanced loading; and (vi) special interior linings. AGRI agrees, at its expense, to maintain all special interior linings on the Cars in good condition and repair.

D. Brae may elect to terminate this Agreement with respect to any Car which has suffered damage in excess of 25% of its then fair market value or any Car for which the cost of repairs exceeds the available insurance proceeds. In the event this Agreement is terminated with respect to

any Car, Brae may at its election substitute for such Car another Car of approximately the same age and type.

11. Mileage Payment Abatement.

A. If any Car becomes unfit for any reason unrelated to the matters described in Paragraph 10C hereof and if such condition is not due to damage to such Car for which AGRI is responsible under this Agreement, the provisions of Paragraph 11B shall govern the abatement of the mileage guarantee for such Car.

B. Guaranteed mileage payments as provided in Paragraph 5 for any Car damaged or destroyed for any reason unrelated to the matters described in Paragraph 10C which cause a Car to be bad ordered shall be abated from the date such Car is bad ordered until the date such Car is returned to service or replaced by another Car of approximately the same age and type as the damaged Car.

12. Destruction or Damage to Cars.

Responsibility for loss or destruction of or damage to Cars or parts thereof or appurtenances thereto furnished under this Agreement shall be as fixed by the then prevailing Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic promulgated by the Association of American Railroads (the "Code of Rules"). The Code of Rules shall establish the rights, obligations, liabilities of Brae, AGRI, and any railroad

subscribing to the Code of Rules and moving the Cars over its lines in respect of matters to which the Code of Rules relate. Brae and AGRI agree to cooperate with and to assist each other in any reasonable manner requested but without affecting their respective obligations under this Article to establish proper claims against parties responsible for loss, or destruction of or damage to the Cars.

13. Effective Date of Agreement. This Agreement will become effective when it has been signed by all parties and the confirmation referred to in Paragraph 2 has been delivered to Brae. This document contains the entire agreement of the parties with respect to the subject matter thereto, and no modifications hereto shall be effective unless in writing and signed by all parties. This Agreement shall be governed and construed according to the laws in effect in the State of Iowa. Any waiver of any terms and conditions of this Agreement by all parties shall apply to said instance only and shall not operate as a waiver of any of the terms and conditions with respect to future acts or omissions.

14. Cancellation Rights. AGRI shall have the right to cancel this Agreement without penalty, either in its entirety or with respect to a portion of the Cars, upon written notice to Brae in the event that its operations are reduced substantially for a substantial period of time because of war, fire, flood, embargo, accident, explosion, or other causes beyond the

control of AGRI, an Act of God, or by strike or lockout, or by any proceeding at law or equity. AGRI shall be entitled to exercise this right only with respect to all of the Cars or in increments of fifty Cars.

15. Arbitration. Any disputes or controversies arising under this Agreement shall be determined by submitting them to the American Arbitration Association in Des Moines, Iowa, subject to its rules then obtaining, with each party bearing its proportionate share of the costs.

16. Special Obligations. All insurance, tax, maintenance, and any other legal or financial obligations on the Cars not specifically so stated in this Agreement as being for AGRI's account shall be the responsibility of Brae. Furthermore, it shall be the duty of Brae to warrant no interference with AGRI's use of the Cars because of any failure on the part of Brae to comply with the terms and conditions of this Agreement.

17. Bankruptcy. Either party shall have the right to declare this Agreement null and void should the other party be declared bankrupt.

18. Communications. All written communications from AGRI to Brae shall be directed at the following address: Brae Corporation, Three Embarcadero Center, San Francisco, California 94111. All written communications from Brae to AGRI shall be directed at the following addresses: AGRI Industries, Attention:

Traffic Department, P.O. Box 4887, Des Moines, Iowa 50306
and Wilbur N. Bump, 712 Financial Center, Des Moines,
Iowa 50309.

19. Assignment. Except as permitted in Paragraph 20D, Brae shall not assign its rights under this Agreement except with the written consent of AGRI, which consent shall not be unreasonably withheld.

20. Miscellaneous.

A. The delivery of any car to AGRI shall be subject to the manufacturer's delivery schedules, and the availability of financing on terms satisfactory to Brae.

B. In the event that the Cars are no longer subject to lease to the Shortline Railroad described in Provision 1, Brae shall notify AGRI, and shall make every effort to secure a substitute shortline railroad without interrupting the availability of cars to AGRI. If a substitute shortline railroad cannot be found, Brae may, upon not less than ten (10) days prior written notice to AGRI, convert this Agreement to the Full Service Lease Agreement annexed hereto.

C. Upon the termination of this Agreement (unless the Full Service Lease Agreement is then in effect), AGRI shall redeliver the Cars to Brae in Des Moines, Iowa, free of all residue. AGRI, at its option, may redeliver any or all of the Cars to Brae during the thirty (30) calendar day period

immediately preceding the date on which the term of this Agreement expires.

D. This Agreement and all of AGRI's rights under this Agreement, and all rights of any person who claims rights under this Agreement through AGRI are subject and subordinate to the terms, covenants and conditions of all chattel mortgages, conditional sales agreements, assignments, equipment trust agreements, finance leases or other security documents covering the Cars or any of them heretofore or hereafter created and entered into by Brae and to all of the rights of any such chattel mortgagee, assignee, trustee, owner or other holder of interest in the Cars. Brae may assign its rights in whole or in part under this Agreement as security in connection with financing transactions. In the event of any such assignment, mortgage or transfer, AGRI agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's interest in and to the Cars and this Agreement, and to confirm the subordination provisions contained in this Section 20.

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

ATTEST:

AMERICAN GRAIN AND RELATED INDUSTRIES
(a Farmer-owned Cooperative)

Daniel F. B... By P. P. Kerlin
Assistant Vice-President Title 1st Vice President

ATTEST:

BRAE CORPORATION

[Signature] By [Signature]
Assistant Secretary Title President

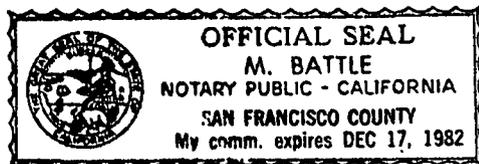
STATE OF Iowa)
COUNTY OF Polk) ss.

On this 20th day of July, 1979, before me personally appeared R.P. Wever, to me personally known, who being by me duly sworn says that such person is Assistant Vice-President of AMERICAN GRAIN AND RELATED INDUSTRIES (a Farmer-owned Cooperative), and that the foregoing Agreement was signed on behalf of said entity with due authorization and such person acknowledged that the execution of the foregoing instrument were the free acts and deeds of such entity.

John A. Kussman
Notary Public

STATE OF CALIFORNIA)
CITY AND COUNTY OF SAN FRANCISCO) ss.

On this 7th day of August, 1979, before me personally appeared W.G. Texido, to me personally known, who being by me duly sworn says that such person is President of BRAE CORPORATION, and that the foregoing Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument were the free acts and deeds of such corporation.



M. Battle
Notary Public

**EXHIBIT A
EQUIPMENT SCHEDULE**

A.A.R. Mech. Design	Description	Numbers	Length	Dimensions Inside Width Height		Doors Width	No. of Cars
LO	Covered Hopper 4650 Cubic Ft.	WAR 15000 15099 14000 - 14099					100

BRAE CORPORATION

BY: _____

TITLE: _____

DATE: _____

AMERICAN GRAIN AND RELATED IND.
(a Farmer-owned Cooperative)

BY: _____

TITLE: _____

DATE: _____

[Handwritten Signature]
President
August 7/79

[Handwritten Signature]
Assistant Vice President
August 14, 1979