BRAE CORPORATION

13737

RECORDATION NO. ..... Filed 1982

AUG 17 1982 9 05 AM

INTERSTATE COMMERCE COMMISSION

2-229A040

No.

Date AUG 17 1982

Fee $ 50.00

ICC Washington, D. C.

August 4, 1982

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
12th & Constitution, Room 2215
Washington, D.C. 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303 are one original and four copies of the following document:

Management Agreement dated as of December 18, 1980 between BRAE Corporation and John J. Cannella, Rose Ann Cannella.

This document relates to 2 covered hopper railcars marked as follows:

BRAX 260219
BRAX 260220

The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

AGENT: BRAE Corporation
Four Embarcadero Center, Suite 3100
San Francisco, CA 94111

OWNER: John J. Cannella
Rose Ann Cannella
2912 Independence Ave.
Grand Island, Nebraska 68801

It is requested that this document be filed and recorded under the names of the parties as set forth above:

I also enclose a check for $50.00 for the required recordation fee.

Please return: (1) your letter acknowledging the filing, (2) a receipt for the $50.00 filing fee paid by check drawn on this firm, (3) the enclosed copy of this letter and (4) the original and three copies of the document, (retaining one copy for your files) all stamped with your official recordation information.

Very truly yours,

Leann Lloyd

Leann Lloyd
Paralegal

Encls.

RECEIVED AUG 16 5 01 PM '82

FOUR EMBARCADERO CENTER • SAN FRANCISCO, CALIFORNIA 94111 • (415) 951-1500

[This Agreement is Subject to Arbitration]

13737

Owner: John J. Cannella
Rose Ann Cannella

RECORDATION NO. ..... Filed 1425

AUG 17 1982 - 9 00 AM

INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT

THIS AGREEMENT made by and between BRAE Corporation, a Delaware corporation (hereinafter called "BRAE"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has, pursuant to a Covered Hopper Railcar Purchase Contract (the "Purchase Contract") with BRAE agreed to purchase the number of covered hopper railcars set forth in Exhibit A attached hereto and incorporated herein by reference (such covered hopper railcars, which shall be identified as provided in Section 1, being hereinafter referred to as the "Cars");

WHEREAS, Owner may elect to finance a portion of the purchase price for the Cars from the proceeds of the borrowing identified or to be identified in Schedule B attached hereto and incorporated herein by reference (hereinafter referred to as the "Loan") from the institution (hereinafter referred to as the "Lender") identified or to be identified in said Schedule B and repayable in the periodic payments of principal and interest identified in, and payable at the times and in the amounts referred to in, said Schedule B (hereinafter referred to as "Debt Service");

WHEREAS, BRAE engages in the business of managing railcars for railcar owners, and Owner desires to retain BRAE as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

WHEREAS, initially the Cars will be subject to a lease agreement or agreements (the "Leases") with a shipper, railroad or other; and

WHEREAS, BRAE intends to manage covered hopper railcars similar in most respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially

identical to those which BRAE will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses of all cars managed by BRAE under BRAE Covered Hopper Car Management Program 1980 (the "Management Program"), all on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and BRAE, intending to be legally bound, hereby agree as follows:

Engagement of BRAE.

Subject to all the terms and conditions set forth herein, Owner hereby engages BRAE as agent of Owner to manage the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and BRAE accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof. Upon identification of the Cars by insertion by BRAE in Schedule 1 to the Purchase Contract of the name of the manufacturer of the Cars, the number of Cars, the description of the Cars and the reporting marks and serial numbers of the Cars, BRAE shall insert the same information with respect to reporting marks and the serial numbers of the Cars in Exhibit A hereto.

2. Term.

(a) The term of this Agreement and the agency created hereby shall commence on the execution of this Agreement by both parties and, unless terminated earlier pursuant to this Section 2, shall continue for a period of 15 years following delivery under the Leases of the last of the Cars to be delivered under the Leases.

(b) Anything herein to the contrary notwithstanding, except for Sections 10, 11(a) and 11(c) and 16, which shall remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement:

(i) shall terminate with respect to any Car which is sold, foreclosed upon, lost or totally destroyed as of the date that such

sale or foreclosure is consummated or such Car is lost or destroyed.

(ii) shall terminate if BRAE shall dissolve, or shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the institution of bankruptcy proceedings against it, or shall file a petition or answer or consent seeking reorganization under the Bankruptcy Act of the United States, or shall consent to the filing of any such petition or the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of it or all or a substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if there shall have continued undischarged or unstayed for 90 days an order of a court of competent jurisdiction adjudging BRAE a bankrupt or insolvent or approving as properly filed a petition seeking reorganization of BRAE under the Bankruptcy Act or any similar Federal or State law or appointing a receiver, trustee or assignee in bankruptcy or insolvency of BRAE or all or a substantial part of its property or winding up or liquidating the affairs of BRAE on the application of any creditor in any insolvency or bankruptcy proceedings or other creditor's suit, which termination shall be effective as of the 5th day following the giving of written notice of such termination.

(iii) may be terminated by Owner, in Owner's sole discretion, if:

(x) there shall have occurred and be continuing uncured and unwaived any default under any instrument covering a debt obligation of BRAE arising from any failure to pay an obligation when due or from any act indicating the insolvency or bankruptcy of BRAE; or

(y) there shall have occurred and continued uncured and unwaived for 90 days and be continuing uncured and unwaived any

default under any instrument covering a debt obligation of BRAE arising from any failure to observe any material financial covenant (other than as provided in the preceeding subparagraph(x)); or

(z) there shall have occurred and be continuing uncured and unwaived any default under any instrument covering a debt obligation of BRAE resulting in the acceleration of the maturity of such debt obligation.

(c) Except for Sections 10, 11(d) and 16, which shall remain in effect notwithstanding the termination of this Agreement pursuant to this Section 2(c), this Agreement may be terminated by Owner, in Owner's sole discretion,

(i) by the giving of written notice of such termination within 30 days after the effective date of any increase in the compensation payable to BRAE under Section 6(a); or

(ii) if for any period of 12 consecutive months commencing after the month in which the last car to be managed under the Management Program is delivered under the lease initially covering such car the following fraction exceeds 1/12:

$$\frac{\text{number of car days off lease during such 12-month period}}{\text{number of car days during such 12-month period}}$$

For the purpose of this Section 2(c)(ii), the "number of car days off lease during such 12-month period" shall mean the sum for each car managed under the Management Program of the number of days during such 12-month period on which such car was not subject to a lease, or was subject to a lease or other arrangement that provided for rental or other fees at a rate lower than rental rates generally prevailing for leases of a similar term for railcars similar to such car at the time such lease or other arrangement was entered

into; but shall not include (y) any day after a lease covering the car has expired or otherwise terminated but prior to delivery of such car to the next lessee thereof and the commencement of accrual of rentals under such lease, if such car is then subject to a successor lease that has been signed and delivered and provides for the delivery of cars subject thereto as soon as may be reasonably practicable, and (z) any day on which there is a "force majeure event". For the purpose of this Section 2(c)(ii), "force majeure event" shall mean any delay caused by any alterations, modifications, improvements or additions to the car of the type referred to in Section 7(d); the failure of Owner to consent to such alterations, modifications, improvements or additions; any acts of God; acts of a public enemy; riot; civil commotion; storms; fire; floods; earthquakes; strikes; lockouts; material shortages; inability to procure labor, materials or supplies after diligent efforts to do so; delays in the delivery of materials or supplies; defaults on the part of any repair facility, repairman, contractor, subcontractor, supplier or materialman; and other events or circumstances of a similar nature beyond BRAE's reasonable control. The "number of car days during such 12-month period" shall mean the sum for each car managed under the Management Program of the number of days during the same 12-month period as is used in computing the numerator on which such car was managed under the Management Program.

Within 60 days after the end of any such 12-month period, BRAE shall notify Owner of Owner's right to terminate this agreement and such termination shall be effective only if written notice thereof shall be given to BRAE within 90 days of notice to Owner.

If Owner terminates this Agreement pursuant to this Section 2(c), BRAE may, in its sole discretion, at or after the date of such termination, require pursuant to Section 11(d) the transfer to BRAE, without recourse, of all of Owner's

right, title and interest under the Leases or any other leases to which the Cars may then be subject; withdraw the Car from such Leases or leases; and substitute thereunder a car identical to the Cars so withdrawn.

(d) Except for Sections 10, 11(d) and 16, which shall remain in effect notwithstanding the termination of this Agreement pursuant to this Section 2(d), this Agreement may be terminated by BRAE, in BRAE's sole discretion, if Owner is in default for a period of 90 days after notice and demand from BRAE in the payment of obligations pursuant to Section 7(c) if at the date of such notice and demand and thereafter during such 90-day period the total of Owner's obligations so owed equals or exceeds three times the amount of the aggregate monthly management fee for which Owner is responsible for the month in which such notice and demand is given; and BRAE may also, in its sole discretion, at or after the date of such termination, require pursuant to Section 11(d) the transfer to BRAE, without recourse, of all of Owner's right, title and interest under the Leases or any other leases to which the Cars may then be subject; withdraw the Cars from such Leases or leases; and substitute thereunder cars identical to the Cars so withdrawn.

(e) Notwithstanding any termination of this Agreement, whether upon the expiration of 15 years after delivery under the Leases of the last of the Cars to be delivered under the Leases or pursuant to Section 2(b), 2(c) or 2(d), BRAE shall continue to be obligated to collect all rental payments, time and mileage charges and other sums (including insurance benefits, payments under manufacturers' warranties covering the Cars or lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars as to which this Agreement has been terminated, due for or with respect to periods prior to such termination of this Agreement.

(f) At least six months prior to the expiration of the term of this Agreement on account of the passage of the period of 15 years after delivery under the Leases of the last Car to be so delivered, but in no event more than 12 months prior to such expiration, BRAE shall give to Owner written notice of such pending expiration of this Agreement, which notice shall state whether BRAE proposes to negotiate a new agreement for the management of the Cars and, if BRAE does so propose, the terms of such new agreement which it proposes.

(g) Not earlier than nine months and not later than six months prior to the effective date of any anticipated

change in the monthly management fee payable to BRAE under Section 6(a), BRAE shall give Owner written notice of the effective date of the next increase in such fee and of the approximate amount by which such fee would be increased pursuant to Section 6(a) if such increase were effective as of the date of such notice.

(h) Upon termination of this Agreement, BRAE shall cooperate with Owner either to sell or otherwise dispose of the Cars or to effect an orderly transition of the management or use of the Cars to any new manager or any new lessee thereof, as the case may be (it being understood that any costs of constructive or physical redelivery of Cars to Owner will be borne by Owner).

3. Duties of BRAE.

In consideration of the compensation to be paid to BRAE by Owner pursuant to Section 6(a), subject to any provisions herein requiring BRAE to obtain the consent of Owner, and subject to the agreement of Owner to reimburse BRAE pursuant to Section 7, BRAE shall, and is hereby authorized to, provide and perform the services on behalf of Owner and to take the action described below during the term of this Agreement:

(a) Immediately upon execution of this Ageement, or as soon thereafter as reasonably practicable, inspect the Cars in order to ascertain their conformity to the Manufacturer's specifications and applicable governmental regulations and, if found to be so in conformity, accept and take delivery of the Cars as agent and attorney for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Seek, observing the standards of performance specified in Section 17(g), to keep the Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to railroads, shippers or other financially responsible parties for that purpose on terms and conditions which are customary in the industry (provided, however, that BRAE may not enter into a lease of a Car for a term longer than six years unless BRAE gives written notice to Owner that it intends to enter into such lease and Owner does not object thereto in writing within 25 days of the date of such notice) and using its best efforts to take such steps as may, based on its good faith judgment, be desirable and prudent to insure that all obligations and duties arising under such leases, whether of lessors or lessees, are performed or complied with in an orderly and timely fashion; it being understood that, subject to the

business needs of prospective lessees and to applicable regulations, BRAE shall remarket first those railroad cars (including the Cars) owned, leased or managed by BRAE and its affiliates which have been off lease and available for the longest period of time.

(c) In the event that the Cars are not leased to a railroad, use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the rules of the Association of American Railroads ("AAR") as required by the terms of any lease or otherwise.

(d) Take such steps as BRAE may, based on its good faith judgment, deem desirable, prudent and in the best interests of Owner to collect or cause to be collected all rental payments and time and mileage charges payable with respect to the Cars, identifying itself as agent for that purpose, and account for and remit all sums due to Owner as hereinafter provided. In determining the amount of such time and mileage charges, BRAE shall be entitled to rely upon reports received from railroads or other persons upon whose tracks the Cars have traveled and lessees of the Cars and other cars managed under the Management Program after such investigation, if any, as BRAE in its good faith judgment shall deem reasonable.

(e) Terminate leases and recover possession of Cars and enforce all rights of Owner with respect thereto, including the payment of all amounts owed under the leases or otherwise with respect to the Cars as shall be appropriate or necessary in the judgment of BRAE exercised in good faith; and institute and prosecute such legal proceedings in the name of Owner as are permitted by applicable laws in order to terminate such leases and/or recover possession of the Cars and enforce all rights of Owner with respect thereto; and, when expedient, settle, compromise and/or release such actions or suits or reinstate such leases.

(f) Review all maintenance and repair costs incurred or to be incurred by the Cars, use its best efforts to ensure that only necessary or appropriate maintenance or repair work at the proper charges therefor is performed and cause the Cars to be maintained in good condition, which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, Interstate Commerce Commission ("ICC") or U.S. Department of Transportation ("DOT"), (ii) any standard set by a lessee, whether by terms of a lease or by other understanding or agreement between lessee and BRAE, as agent for Owner, and (iii) any standard set by any insurance policy under which any of the Cars shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions

to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be made without the consent of Owner, which consent shall be deemed to have been granted if, within thirty days of BRAE giving notice to Owner of the alteration, modification, improvement or addition required and of the approximate cost thereof, Owner shall not have given BRAE notice that Owner objects to the making of such alteration, modification, improvement or addition.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with BRAE, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and bodily injury, (ii) loss of or damage to the Cars and (iii) loss of revenues with respect to the Cars; provided, however, that if BRAE effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that, if BRAE determines that the cost of insurance described above is unreasonably high, or cannot be obtained, BRAE need not place or acquire such insurance and shall so notify Owner 60 days before expiration of such insurance.

(h) Pay on behalf, and in the name, of Owner all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in BRAE's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, and, where BRAE deems such action prudent and desirable, seek rulings and determinations of the Internal Revenue Service ("IRS") with respect to Federal tax issues affecting the ownership, use and/or operations of the Cars, all such actions to be in the name of Owner.

(i) Make all efforts reasonable under the circumstances to monitor and record and cause any lessee of the Cars to monitor and record movement of the Cars.

(j) Make all efforts reasonable under the circumstances to maintain and cause any lessee of the Cars to maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives (including BRAE) during reasonable business hours.

(k) Paint the Cars such colors and with such designs as BRAE may from time to time approve and place reporting marks or such other marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the ICC or the AAR.

(l) Provide Owner with advice and recommendations concerning the sale of the Cars.

(m) Use its best efforts to collect all sums due Owner, including, without limitation, insurance benefits, payments under manufacturers' warranties covering the Cars or railroad or lessee indemnity payments, in the event of damage to, or loss or total destruction of, a Car which is incurred during the term of this Agreement and to remit all sums due Owner in accordance with Section 7(f).

(n) Furnish factual information reasonably requested by Owner in connection with Federal, State, Canadian, Provincial and Mexican tax returns.

(o) If Owner has elected to borrow to finance a portion of the purchase price for the Cars from the Loan and any "balloon payment" identified as such in Schedule B hereto will be due prior to the expiration of the term of this Agreement, and, Owner shall have requested that BRAE assist in arranging refinancing of all or part of the amount borrowed, to the extent permitted by applicable laws, rules and regulations (including without limitation any regulation issued by the Board of Governors of the Federal Reserve System), use reasonable efforts to arrange such refinancing. Neither BRAE nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to such refinancing. If Owner is contemplating financing, or has financed, a portion of the purchase price for the Cars, BRAE will consult with Owner's lender concerning how to file documents giving rise to a security interest in the Cars with the ICC, will provide such information concerning the Cars as may be reasonably requested by the lender and will use its best efforts, if requested by Owner, to make such lender an additional loss payee under any casualty and liability insurance policies covering the Cars.

(p) Pay all Operating Expenses (as defined in Section 5(b)) and pay the management fees payable under Section 6.

(q) Pay to the party to whom they are owed any amounts in respect of costs of storage, transit or switching of any Car owed by Owner to BRAE pursuant to Section 6 of the Purchase Contract.

(r) Pursue any claim arising with respect to Cars under manufacturers' warranties covering the Cars which BRAE, based on its good faith judgment, deems desirable, prudent and in the best interests of Owner to pursue.

(s) Provide such advice and perform such services incidental to the foregoing for Owner in connection with the provisions hereof and of the Purchase Contract as may from time to time be reasonably necessary in respect of the purchase, leasing and operation of the Cars.

4. Authority, and Limitations on Authority, of BRAE.

(a) It is recognized that BRAE will manage as part of the Management Program covered hopper railcars, including the Cars, purchased by investors who contract with BRAE for the management thereof pursuant to management agreements substantially identical to this Agreement. It is recognized that BRAE will receive from owners of other cars managed under the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that BRAE's services for and obligations to and rights with respect to Owner and the owners of other cars managed under the Management Program are several. Except as expressly provided in Section 4(b), BRAE will not act or purport to act for or in the name of the Management Program or the owners of cars managed under management agreements substantially identical to this Management Agreement collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars managed under the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming BRAE as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement and such other management agreements are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars managed under the Management Program and/or BRAE. BRAE shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between owners of cars managed under the Management Program or that such owners are acting collectively or as an entity and BRAE shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) Notwithstanding the provisions of Section 4(a), Owner recognizes that the IRS might assert that there exists among Owner and the other owners of cars managed under the Mangement Program and/or BRAE a partnership for Federal income tax purposes and that, pursuant to Section 6698 of the Internal

Revenue Code of 1954, as amended (the "Code"), Owner and the other owners of cars managed under the Management Program might be liable for a penalty for failure to file a Federal information return with respect to the Management Program. Solely in order to avoid any such liability, until there shall have been an IRS or judicial determination that pooling arrangements such as those embodied in the several management agreements (including this Agreement) constituting the Management Program do not constitute partnerships for Federal income tax purposes, BRAE is authorized and directed either (i) in the event that it is determined, either by an IRS ruling or an opinion of counsel, that the owners (including Owner) of cars managed under the Management Program are eligible to elect to be excluded from the application of subchapter K of the Code, to make such election or (ii) in the event that it is so determined that such election may not be made, to file a Federal information return on Form 1065 with respect to the operations of the Management Program and, solely for such purpose, Owner consents to being identified in such election or return as a "partner". For the purpose of making such election or preparing and filing such information return, Owner hereby constitutes and appoints BRAE as the agent and attorney-in-fact of Owner and, with the consent of the other owners of cars managed under the Management Program, of the Management Program for and on behalf of, and in the name, place and stead of, the Management Program to prepare and sign as agent and attorney-in-fact and file such election or such Federal information returns for the Management Program, as the case may be. In furtherance of such designation of BRAE as agent and attorney-in-fact, Owner will, if BRAE shall so request, execute and deliver a Power of Attorney on Form 2848 and/or an Authorization and Declaration on Form 2848-D.

(c) BRAE shall not have any authority to:

(i) offer for sale, contract or agree to sell or sell any Cars, except as Owner may from time to time hereafter expressly request or direct; or

(ii) make any alterations, modifications, improvements or additions to the Cars of the type referred to in Section 7(d) without the consent of Owner, which consent shall be deemed to have been granted if, within 30 days of BRAE giving notice to Owner of the alteration, modification, improvement or addition required and of the approximate cost thereof, Owner shall not have given BRAE notice that Owner objects to the making of such alteration, modification, improvement or addition; or

(iii) permit any loan to it or any of its affiliates of Owner's funds or funds of any other owner of a car managed under the Management Program.

5. Owner's Revenues, Expenses and Net Earnings.

(a) The actual Gross Revenues (as hereinafter defined) and the actual Operating Expenses (as hereinafter defined) derived from and incurred by the Cars shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

(b) (i) As used in this Agreement, and except as provided in Section 7(f), the term "Gross Revenues" for any fiscal period shall mean all revenues for such fiscal period (unreduced by any expenses or costs) derived from the ownership, use and/or operation of cars managed under the Management Program, including, but not limited to, rentals under leases and time and mileage charges payable or creditable to a person which is not a railroad, and all income for such period from interim investment of funds held for the account of owners of cars managed under the Management Program.

(ii) As used in this Agreement, the term "Operating Expenses" for any fiscal period shall mean all expenses and costs for such fiscal period incurred in connection with the ownership, management, use and/or operation of cars managed under the Management Program including, but not limited to:

(A) maintenance;

(B) repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f) of this Agreement or the agreements with other owners of cars managed under the Management Program;

(C) freight charges, empty car movement charges or other transportation expenses incurred in delivering the Cars or any other cars managed under the Management Program to the lessee thereof, except to the extent such charges or expenses are the responsibility of Owner under Section 6(c) of the Purchase Contract or the owners of such other cars under the comparable provision of the purchase contracts therefor between such other owners and BRAE or are the responsiblity of such lessee under the lease of the Cars or such other cars;

(D) legal fees and expenses incurred in connection with pursuing, enforcing or realizing on claims under manufacturers' warranties covering, or insurance or lessee or railroad payment or indemnity obligations in respect of, the Cars or other cars managed under the Management Program;

(E) mileage credits or payments under the rules of the AAR creditable or payable to a lessee of the Cars or of other cars managed under the Management Program;

(F) painting;

(G) costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(d) of this Agreement or the agreements with other owners of cars managed under the Management Program;

(H) legal fees incurred in connection with enforcing lease rights or repossessing the Cars or other cars managed under the Management Program;

(I) legal fees and expenses incurred in connection with seeking determinations by the IRS with respect to tax issues affecting the ownership, use and/or operation of cars managed under the Management Program;

(J) insurance premiums (or, if such insurance has been effected under a blanket insurance policy, or insurance policy covering cars in the Management Program and other cars of other owners, the portion of such insurance cost allocable to the cars managed under the Management Program, it being understood that BRAE will use its best

efforts to allocate to cars managed under the Management Program only such portion of such insurance cost as is attributable to such cars);

(K) charges, assessments or levies imposed upon or against cars managed under the Management Program of whatever kind or nature;

(L) losses from liabilities which are not the responsibility of Owner under Section 7(g) or of owners of other cars managed under the Management Program under Section 7(g) of management agreements with such owners;

(M) fees payable for the recording under the Interstate Commerce Act and under the Uniform Commercial Code of any state of the Leases and any other leases to which the Cars are subject; and

(N) that portion of ad valorem, gross receipts and other property taxes which are determined by BRAE (or, in the event that cars managed under the Management Program are subject to a lease or leases and bear the reporting marks of the lessee or lessees thereunder, such lessee or lessees) to be attributable to the cars managed under the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that BRAE will use its best efforts, and will cause such lessee or lessees to use its or their best efforts, to allocate to the cars managed under the Management Program only such taxes as are attributable to such cars).

(iii) Gross Revenues and Operating Expenses shall be accounted for hereunder on a monthly basis on the cash receipts and disbursements method, rather than on the accrual method, of accounting, except as otherwise expressly provided in this Agreement.

(c) Owner's Gross Revenues and Owner's Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues or Operating Expenses, as the case may be, for such fiscal period multiplied by (ii) a fraction the numerator of which is the product of the number of Cars multiplied by the numbers of days in such fiscal period that the Cars are managed under the Management Program and the denominator of which is the product of the total number of cars (including the Cars) managed under the Management Program multiplied by the number of days in such fiscal period that such cars (including the Cars) are managed under the Management Program. The number of cars (or Cars, as the case may be) managed under the Management Program shall be the number of cars actually managed under the Management Program from time to time during such fiscal period and, if any cars are destroyed, lost, foreclosed upon, sold, disposed of or withdrawn from the Management Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, foreclosure, sale, disposition or withdrawal; provided, however, that (x) notwithstanding that the owner of any cars managed under the Management Program shall have entered into a management agreement with BRAE, the cars owned by such owner (who may be Owner) shall not be considered to be managed under the Management Program until BRAE shall have accepted and taken delivery of such cars as agent and attorney for Owner, as provided in Section 3(a), and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction.

(d) As used in this Agreement, the term "Net Earnings" for any fiscal period shall mean Owner's Gross Revenues for that fiscal period less the sum of (i) Owner's Operating Expenses for that fiscal period; (ii) all compensation due and payable to BRAE hereunder pursuant to Sections 6(a), 6(b) or 9 not theretofore paid; (iii) such reserves (allocated among owners in the same proportion as Operating Expenses are allocated under Section 5(c) as BRAE shall, in its sole discretion, have reasonably created during that fiscal period to provide for the efficient administration of this Agreement and for payment of Operating Expenses; (iv) any amount due and payable from Owner pursuant to Section 7(c) and not theretofore paid; and (v) the amount of any additional payment in respect of the Purchase Price (as defined in Section 6 of the Purchase Contract) of any Car pursuant to Section 6 of the Purchase Contract and not theretofore reimbursed to BRAE; provided, however, that (x) Owner's Operating Expenses for such fiscal period which are of the type described in Section 5(b)(ii)(C) and are incurred in delivering the Cars or any other cars managed under the Management Program to the initial lessee

thereof under the Leases shall be paid, first, from any remaining portion of Owner's Subcription Price (defined in Section 6 of the Purchase Contract) and only after the full amount of the Subscription Price has been applied or returned as provided in Section 6 of the Purchase Contract, this proviso (x) to Section 5(d) and/or Section 7(i) shall such Operating Expenses be included in the computation of Owner's Net Earnings for such fiscal period and (y) Net Earnings distributed to Owner upon the expiration or termination of this Agreement shall include any reserves previously excluded from Net Earnings pursuant to clause (iii) of this Section 5(d), to the extent such reserves are not applicable to expenses arising or payable after the termination or expiration of this Agreement.

6. Compensation.

(a) Management Fee to BRAE.

(i) (A) Owner shall pay BRAE a monthly management fee equal to $70 for each Car managed under this Agreement in such month. Such fee shall commence, as to any Car, as of the date on which rent begins to accrue with respect to such Car under the Lease thereof and shall continue through December 31, 1986.

(B) Commencing January 1, 1987 and continuing through December 31, 1991, Owner shall pay BRAE a monthly management fee for each Car managed under this Agreement in such month equal in amount to the greater of (i) $70 and (ii) the product of $70 multiplied by a fraction (x) the numerator of which is the aggregate fixed rental plus other amounts generated during the period from September 1, 1986, through December 31, 1986, for all cars managed under the Management Program on January 1, 1987, divided by the number of cars managed under the Management Program on such day, and (y) the denominator of which is four times the average monthly fixed rental for all cars managed under the Management Program during the 12-month period beginning the first month

following the month in which rent begins to accrue under the Lease thereof with respect to the last such car to be delivered under the Leases, divided by the number of cars managed under the Management Program on the date of the commencement of accrual of such rent.

(C) Commencing January 1, 1992 and continuing through the date of termination of this Agreement, Owner shall pay BRAE a monthly management fee for each Car managed under this Agreement in such month equal in amount to the greater of (i) $70 and (ii) the product of $70 multiplied by a fraction (x) the numerator of which is the aggregate fixed rental plus other amounts generated during the period from September 1, 1991, through December 31, 1991, for all cars managed under the Management Program on January 1, 1992, divided by the number of cars managed under the Management Program on such day, and (y) the denominator of which is four times the average monthly fixed rental for all cars managed under the Management Program during the 12-month period beginning the first month following the month in which rent begins to accrue under the Lease thereof with respect to the last car such to be delivered under the Leases, divided by the number of cars managed under the Management Program on the date of the commencement of the accrual of such rent.

(D) The amount of stated rental plus other amounts generated during any period by a car managed under the Management Program for the purposes of this Section 6(a) (i) shall mean the stated rental as set forth in the applicable lease, if any, for the period in question and all other amounts payable for the use of the car and properly

allocable to such period, including, but not limited to, rentals and fees for any arrangement for the use of the car. In computing such amount, no effect shall be given to the fact that rental may have abated with respect to any car pursuant to the terms of the lease covering such car if on that day such lease is in full force and effect.

(ii) The monthly management fee payable to BRAE for any Car for any partial month during which such Car is managed under this Agreement shall be the monthly management fee then payable to BRAE for a car for a full month reduced proportionately to reflect the portion of such month for which such car was so managed under this Agreement.

(iii) The monthly management fee payable to BRAE shall be payable monthly in the manner provided in Sections 5(c), 7(b) and 7(c).

(iv) The monthly management fee payable to BRAE for any Car managed under the Management Program shall accrue only so long as such Car is managed under the Management Program. For the purposes of this Section 6, management of a Car under the Management Program shall be deemed to begin on the day on which rent begins to accrue with respect to such Car under the Lease thereof and shall be deemed to continue until the termination or expiration of the management agreement (including this Agreement) with respect to such Car.

(b) Refinancing Fee to BRAE. If, as provided in Section 3(o), BRAE shall have arranged refinancing of a balloon payment on the Loan and Owner shall have elected to accept such refinancing, Owner shall pay to BRAE a refinancing fee equal to 1% of the principal amount refinanced, one-quarter of which fee shall be payable 30 days after the closing of such refinancing, one-quarter on the same day of the third month following the date of the first payment, one-quarter on the same day of the sixth month following the date of the first payment and the final quarter on the same day of the ninth month following the date of the first payment.

7. Distribution to Owner of Net Earnings; Payment of Costs and Expenses.

(a) Special Distributions of Net Earnings. If Owner has financed a portion of the purchase price for the Cars

from the Loan and the Owner has requested that BRAE assist Owner in providing for timely payment of Debt Service, BRAE shall, not later than three full business days prior to the time that Debt Service for any month is due and payable, distribute to Owner, as hereinafter provided, the lesser of (i) the Net Earnings attributable to the Cars for the next preceding month ending not less than ten (10) days prior to the time BRAE shall be required to make such distribution under this Section 7(a) and (ii) the Debt Service then to be due and payable. Such distribution shall be made by transfer to the Lender (which transfer may be made by sending by regular first-class mail a check for the amount transferred), in the name of Owner, of the amount so distributed. If the amount distributed for the benefit of Owner pursuant to the first sentence of this Section 7(a) is less than the full amount of the Debt Service then to be due and payable, shall, not later than three full business days prior to the time that Debt Service for such month is due and payable, advise Owner in writing (which advice may be sent by first-class mail) of the existence and amount of such deficiency. Distributions pursuant to this Section 7(a) shall commence for the month during which the Owner shall request that such distributions be made (which request may be made by execution of the request form on the signature page of this Agreement or by written notice to BRAE) and, unless the Owner shall have advised BRAE that distributions shall continue (notwithstanding any instructions from the Owner to the contrary) until the Lender shall have advised BRAE that the Loan has been repaid in full, shall terminate after the distribution for the monthd during which, by written notice to BRAE, Owner shall request that no further such distributions be made.

(b) Regular Distributions of Net Earnings. As soon as practicable, but in any event within 45 days after the end of each calendar quarter, BRAE shall distribute to Owner the excess of (i) Net Earnings, if any, for such quarter over (ii) Net Earnings, if any, for such quarter which have been distributed for the benefit of Owner by BRAE pursuant to Section 7(a).

(c) Payment of Operating Deficits. Within 10 days of receipt of notice and demand from BRAE, Owner shall pay to BRAE the amount by which Net Earnings, if any, for a calendar quarter reduced by Net Earnings, if any, for such quarter distributed for the benefit of the Owner by BRAE pursuant to Section 7(a), shall be less than zero.

(d) Payment for Special Improvements. The cost of any alterations, modifications, improvements or additions which are required by the AAR, ICC or DOT or other regulatory agency

or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. BRAE shall have the right to require Owner, if Owner consents to such alterations, modifications, improvements or additions as provided in Section 4(c)(ii), to pay the approximate cost thereof to BRAE upon 10 days prior written notice. Upon completion, BRAE shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, BRAE shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to BRAE the amount of such difference.

(e) Payment for Additional Insurance. If BRAE determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance, the cost thereof shall be the sole responsibility of Owner. Within 10 days of receipt of notice and demand from BRAE, Owner shall pay to BRAE the cost of any such insurance placed or purchased by Owner through BRAE.

(f) Payment for Certain Property Damage. The cost of repair of damage to any Car (other than (i) the amount of the deductible(s) under any insurance for property damage to the Car and (ii) the costs of repairs which BRAE determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits (except to the extent of the deductible(s) under the insurance policies under which such benefits are paid, if costs of repair had not, to the extent of such deductible(s), been the sole responsibility of Owner) or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). BRAE shall have the right to require Owner to pay to BRAE upon 10 days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner, or, at BRAE's election, such portion of such cost as BRAE believes will not be covered by any such payments which may be received by BRAE (as co-insured or additional insured, as provided in Section 3(g)) to cover the cost of such damage (it being understood that BRAE may apply to such cost of such repair any payments so received by BRAE to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by BRAE and applied to payment of the cost of such damage, BRAE shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has

already paid more than the amount of such costs not paid from such payments received and applied by BRAE to such repair, BRAE shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by BRAE to such repairs, Owner shall promptly pay to BRAE the amount of such difference. BRAE shall promptly remit to Owner any payments to cover such damage to such Car which are received by BRAE and not applied to payment of the cost of repair of such damage.

(g) Payment of Uninsured Losses. Losses from liability to a third party or parties for bodily injury or property damage caused by any Car, to the extent not covered by insurance, are the sole responsibility of Owner. Within 10 days of receipt of notice and demand from BRAE, Owner shall pay to BRAE the amount of such liability.

(h) Receipts and Payments as Acts of Owner; Obligations of Owner. In collecting or receiving any Gross Revenues and in paying or disbursing any Operating Expenses BRAE is acting solely as agent for Owner. The provisions of Sections 3, 5 and 7 of this Agreement shall not be understood to diminish or modify the rights of Owner to receive Gross Revenues or the obligation of Owner to pay Operating Expenses.

(i) Return of Subscription Price. Prior to purchase of the Cars under the Purchase Contract Owner deposited with an escrow agent the Subscription Price toward the Purchase Price of the Cars. As soon as practicable after initial delivery of the last Car to the lessee thereof under the Leases (and not, in any event, later than 60 days thereafter) BRAE will distribute to Owner any portion of the Subscription Price not applied to payment of the Purchase Price, as provided in Section 6 of the Purchase Contract, or applied to payment of Operating Expenses, as provided in proviso (x) to Section 5(d).

8. Indemnification and Subrogation.

(a) In addition to any other obligations of Owner hereunder (including Section 7(c)) or otherwise, Owner shall defend (if such defense is tendered to Owner), indemnify and hold BRAE harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses, settlements or liabilities incurred or asserted against BRAE (i) as a result of any failure (unless caused by the gross negligence, bad faith or misconduct of BRAE) on the part of Owner to perform Owner's obligations under this Agreement, the Purchase Contract or any Lease (or any lease entered

into subsequent to any Lease to which any one or more of the Cars may be subject); (ii) arising as a result of or in any way connected with the negligence, bad faith or willful misconduct of Owner; or (iii) arising as a result of or in any way connected with the use, operation, possession, control, maintenance, repair or storage of any Car if it shall be determined that the claimant against BRAE did not have a valid claim or was otherwise not entitled to relief against BRAE. BRAE shall be entitled to indemnification under Section 8(a)(ii) or 8(a)(iii) only after a determination to that effect (which determination shall include a finding that the cost, liability or expense in question was not a result of BRAE's gross negligence, bad faith or misconduct) by a sole arbitrator, whose jurisdiction shall be exclusive, under the then-effective rules of the American Arbitration Association (to which arbitration Owner and BRAE hereby consent). For the purpose of Section 8(a)(ii), Owner shall be deemed to have acted with gross negligence if Owner withholds consent under Section 4(c) to any alteration, modification, improvement or addition to the Cars of the type referred to in Section 7(d), or if Owner takes any action, or omits to take any action after due notice of the necessity therefor, preventing BRAE from providing for the maintenance or repair of any Car or from pursuing any claim arising with respect to Cars under manufacturers' warranties covering any Car.

(b) If (i) BRAE incurs any cost or expense (including reasonable attorneys' fees) in connection with any claim, action, damage, loss or liability as a result of the use, operation, possession, control, maintenance, repair or storage of any Car, (ii) BRAE shall not have been found to have been grossly negligent or acting with bad faith or misconduct in connection therewith, and (iii) Owner is entitled to insurance or lessee or railroad indemnity payments in respect of such cost or expense, then to the extent of the lesser of BRAE's cost or expense or Owner's said entitlement, BRAE shall be subrogated to Owner's said entitlement.

9. Sales Agency.

(a) During the terms of this Agreement, upon the request of Owner, BRAE shall act as agent in the sale of the Cars.

(b) Except in the case of any sale or other disposition of a Car to BRAE or any of its affiliates (that is, any company, person or firm controlling, controlled by or under common control with, BRAE) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to BRAE a sales commission determined as follows:

(i) Upon the sale of a Car arranged by BRAE, and consummated within four years from the date on which Owner purchased such Car the sales commission shall be 4% of the total sale proceeds of the Car.

(ii) Upon the sale of a Car arranged by BRAE and consummated after four years from the date on which Owner purchased such Car the sales commission shall be equal to the lesser of (A) 4% of the total sale proceeds of the Car or (B) the excess, if any, over the Purchase Price of the sum of (x) the investment tax credit allowable to Owner in respect of such Car in the year such Car was placed into service, (y) the aggregate amount of Net Earnings and amounts held in reserve distributed or to be distributed to Owner during the term of this Agreement (other than any amounts distributed pursuant to Section 7(i)) and (z) the total sale proceeds from the date of the Car.

(c) (i) If during the term of this Agreement, Owner has received a bona fide offer to purchase a Car otherwise than through BRAE acting pursuant to Section 9(a) on terms acceptable to Owner, then, immediately upon receipt of such offer and prior to consummating such sale, Owner shall promptly give BRAE written notice of the terms of such offer, including the amounts of any commissions and the net sale proceeds that would be payable in connection therewith, and the terms, if any, thereof that limit the period during which the offer shall remain open.

(ii) Except where the terms of an offer to purchase a Car referred to in Section 9(c)(i) provide that the offer shall remain open for a period less than 45 days (in which case Section 9(c)(iii) shall govern), then for a period of 45 days after the giving to BRAE of the notice provided for in Section 9(c)(i), Owner shall not consummate such sale, and BRAE shall have the right to find for Owner, and Owner shall be obligated to accept, an offer for the purchase of the Car that results in Owner receiving net sale proceeds that are the same as or greater than Owner would receive in making the sale referred to in Section 9(c)(i).

(iii) If the terms of the offer to purchase a Car referred to in Section 9(c)(i) provide that the offer shall remain open for a period less than 45 days,

then for the period that such terms provide that the offer shall remain open (or, if such offer would by its terms remain open for ten days or fewer after the giving to BRAE of the notice provided for in Section 9(c)(i), for ten days after the giving to BRAE of the notice provided in Section 9(c)(i)) Owner shall not consummate such sale, and BRAE shall have the right in its discretion either (A) to find for Owner, and Owner shall be obligated to accept, an offer for the purchase of the Car that results in Owner receiving net sale proceeds that are the same as or greater than Owner would receive in making the sale referred to in Section 9(c)(i), or (B) to purchase the Car at a price that results in Owner receiving the same net sale proceeds that Owner would receive in making the sale referred to in Section 9(c)(i). Any such purchase by BRAE shall be consummated at the time and in the manner provided in the offer referred to in Section 9(c)(i), except that BRAE shall not be required to consummate such purchase prior to 20 days after its election pursuant to Section 9(c)(iii)(B) to purchase such Car.

(d) For the purposes of this Section 9, "net sale proceeds" shall mean the gross sale proceeds from the sale of the Car less any commissions payable in connection therewith. For the purposes of this Section 9, BRAE shall be deemed to have found an offer for the purchase of a Car or to have purchased a Car if there is tendered to Owner on or prior to the second full business day prior to the date on which Owner may consummate the third party sale under Section 9(c)(ii) or (c)(iii) an offer for the purchase and sale of the Car signed by the purchaser and subject only to inspection to determine the Car's suitability for interchange according to the rules of the Association of American Railroads, cleaning, painting, restenciling, the delivery of the Car to a point reasonably designated by the purchaser, and other standard conditions and warranties.

10. Subordination.

This Agreement and BRAE's authority and rights hereunder (i) are subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any lender to whom Owner has granted a security interest in the Cars and (ii) are subject and subordinate to the terms of any chattel mortgage, mortgage, security agreement or other financing document given by Owner to such lender providing for the loan or such lien or security interest (any and all such

agreements collectively being the "Finance Documents"); provided, however, that all such liens and security interests are subject to any lease (including the Leases) entered into during the term of this Agreement (including any rights of the lessee under any such lease) covering any Car, to BRAE's right to collect Gross Revenues derived from the ownership, use and/or operation of the Cars accruing under any lease entered into during the term of this Agreement covering any Car and to BRAE's right to apply such Gross Revenues to Owner's Operating Expenses and sums due BRAE hereunder to the extent such Operating Expenses and sums due BRAE hereunder accrue during the term of this Agreement.

11. Dealings with Lessees; Withdrawal of Cars from the Leases; Manager's Remedies Against Defaulting Owner.

(a) It is intended that leases of cars managed under the Management Program (including the Leases) will cover several or all of the cars so managed under the Management Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Management Program) shall, until the expiration or termination of such lease, acknowledge BRAE as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under such lease (which rentals BRAE shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and BRAE shall select a person or entity, which may be BRAE, as agent of such foreclosing mortgagee or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) BRAE, on behalf of Owner, shall exercise all rights of the lessor of the Cars under any Lease or any other lease to which the Cars may then be subject without being required to seek or receive the consent of or instructions from Owner.

(c) If BRAE determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any Car which is subject to any Lease or any other lease to which the Cars may then be subject and which is not managed under the Management Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then BRAE may

require the transfer to BRAE of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the Cars of such person from such leases and substitute thereunder cars identical to the Cars so withdrawn.

(d) If BRAE terminates this Agreement pursuant to Section 2(d), or if Owner terminates this Agreement pursuant to Section 2(c), until such time as BRAE requires the transfer to BRAE of all of Owner's right, title and interest under the Leases or any other leases to which the Cars may then be subject pursuant to Section 2(c) or Section 2(d), as the case may be, unless the then lessee(s) of the Cars shall be willing to pay rental to Owner, Owner shall, until the expiration of such Leases or leases, acknowledge BRAE as Owner's agent for the purpose of receiving rentals under such lease(s), which rentals BRAE shall remit, after deducting the amount of any obligations of Owner pursuant to Section 7(c) accruing on or prior to such termination, forthwith upon receipt. In the event of such termination, BRAE shall in addition be entitled to pursue any remedy at law or in equity for Owner's failure to fulfill obligations under Section 7(c), including the right to recover money damages.

12. Withdrawal in Case of Special Improvements.

In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Management Program. In the event that Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after the effective date of any law, regulation or requirement prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation or maintanance of covered hopper railcars, such as the Cars, which have not been so altered, modified, improved or added to, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

13. Reports.

(a) As soon as practicable, but not later than 45 days after the end of each calendar quarter other than the fourth calendar quarter, BRAE will distribute to Owner an

unaudited report showing, in reasonable detail, the Owner's Gross Revenues, Owner's Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes, mileage allowances and the computation of Owner's pro rata share of any items.

(b) Within 60 days after the close of each calendar year, BRAE will distribute to Owner a report showing for the fourth calendar quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Not later than 60 days after the close of Owner's taxable year (which will be deemed to be the calendar year unless Owner shall otherwise notify BRAE in writing) BRAE will deliver to Owner a statement setting forth all information (including computation, on the same or similar bases as those set forth in the analytic model contained in the Memorandum relating to BRAE Covered Hopper Car Management Program 1980 to which a form of this Agreement is attached as an exhibit, as modified by the elections set forth in Schedule A to this Agreement, of depreciation deductions and amortization of the advisory services fee payable to Merrill Lynch Leasing Inc. and the lease negotiation fee payable to BRAE as described in such memorandum, but excluding information relating to the financing of the Cars) necessary in connection with the preparation of Owner's Federal income tax returns.

(d) Within 90 days after the close of each calendar year BRAE will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to BRAE and its affiliates, as to their review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the operations of the the Management Program, the mathematical correctness of the computations made by BRAE in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by BRAE to the obligations and duties of BRAE under this Agreement. Such accountants shall also prepare the Federal information return on Form 1065 with respect to the operations of the Management Program if, pursuant to Section 4(b), BRAE files such information return.

14. Books and Records; Bank Account; Communications with Third Parties.

(a) BRAE shall maintain books and records reflecting solely transactions arising from the operations of the cars managed under the Management Program, including, without

limitation, the receipt of items constituting Gross Revenues, the incurrence, accrual and payment of items constituting Operating Expenses, the distribution of Net Earnings, receipt of payments for operating deficits from owners of such cars, and the payment of fees to BRAE pursuant to Section 6. Such books and records shall (i) reflect only the transactions arising from operations of the cars managed under the Management Program, (ii) be kept physically apart from any other books and records maintained by BRAE for whatever purpose, and (iii) be available to Owner upon Owner's request for examination during the normal business hours of BRAE. At the termination of the term of this Agreement BRAE shall furnish (i) one copy of each annual report previously delivered to Owner pursuant to Section 13(b) and (ii) one copy of such other books and records which (x) relate to the Cars and (y) BRAE maintains at the time of such termination in the normal course of its record keeping under this Section 14(a) to Owner within 30 days after Owner gives notice to BRAE requesting such materials, which notice shall be given within 30 days after such termination. Upon the written request of Owner and payment by Owner of the reasonable expenses therefor, BRAE shall provide Owner with the list of the names and addresses of each other owner of cars managed under the Management Program unless such other owner has refused in writing to BRAE's providing such owner's name and address to Owner (and if any Owner has not so refused in writing, it will be deemed to have consented to such provision of his, her or its name and address).

(b) Neither the receipt nor the disbursement (other than payments made by or on behalf of Owner or other owners of cars managed under the Management Program to BRAE, as compensation or reimbursement of BRAE's expenses hereunder, pursuant to the terms of this Agreement or the agreements with such other owners) of any amounts generated by the operation of the Cars and the other cars managed under the Management Program shall appear in the accounting records or financial statements of BRAE or any of its affiliates, and any assets of Owner and the other owners of cars in the Management Program shall not be treated by BRAE as assets of BRAE or any of its affiliates or appear in the accounting records or financial statements of BRAE or any of its affiliates. Mileage charges generated by the Cars and other cars managed under the Management Program shall be kept in a bank account which is in the name of, or for the benefit of, Owner and the other owners of cars managed under the Management Program.

(c) BRAE shall cause to be maintained in the name of Owner and the owners of the other cars managed under the Management Program a bank and/or investment account (the

"Management Program Account") into or through which BRAE shall deposit or invest the funds received by it and generated by the operation of the Cars and the other cars managed under the Management Program (and not any other cars managed by BRAE otherwise than under the Management Program) pending disbursement of such funds in accordance with this Agreement and the agreements for the management of the other cars managed under the Management Program. BRAE shall maintain the Management Program Account only at a bank and/or other institution(s) which either (i) do not have regular banking or investment relations with BRAE or any of its subsidiaries or (ii) agree in writing that such account is not subject to a right of set-off or any other claim or lien arising from any relationship between such bank and/or other institution(s) and (x) BRAE or any of its affiliates or (y) any owners of cars managed by BRAE otherwise than under the Management Program. BRAE shall have the authority to invest funds in the Management Program Account in direct obligations of the United States or of an instrumentality thereof which are backed by the full faith and credit of the United States; certificates of deposit of United States banks or trust companies with a combined capital and surplus of at least $400,000,000; and commercial paper rated A-1 by Standard & Poor's Corporation or Prime-1 by Moody's Investor's Service, Inc. Pursuant to such authority and so long as BRAE may lawfully do so, BRAE shall invest funds in the Management Program Account, pending distribution pursuant to Section 7 and to the extent that cash is not required in the performance of BRAE's duties hereunder and under agreements with owners of cars managed under the Management Program, in a manner that BRAE, in its sole discretion judges will maximize the return on such funds.

(d) In dealing with third parties in connection with the Cars and the other cars managed under the Management Program, BRAE shall designate itself as agent for Owner or owners of such other cars, as the case may be, in papers directed to such third persons, including, without limitation, letters, invoices and drafts drawn on the Management Program Account.

15. Use of Cars.

BRAE shall use its best efforts to cause any lessee of the Cars under a lease (including the Leases) to prevent the Cars from being used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Code, or any successor provision thereof, and the regulations thereunder. BRAE shall cause each lease for the Cars entered into with, or arrangement for the use of the Cars made by, a railroad which expects to use the Cars on its own line or a person

which is not a railroad to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars.

16. Notices.

Any notice required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to BRAE: BRAE Corporation
3 Embarcadero Center, Suite 1760
San Francisco, California 94111
Attn: Vice President-Marketing,
Investor Programs

If to Owner: To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

17. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of California.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the

parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against BRAE without the prior written consent of BRAE. BRAE hereby consents, subject to the provisions of Section 10 of this Agreement, to Owner's assignment to any lender party to Finance Documents referred to in Section 10 of Owner's rights, interests, powers and benefits under this Agreement as collateral security for the loan and the obligations of Owner under such Finance Documents.

(f) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including, without limitation, acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

(g) Other Cars Owned or Managed by Affiliates of BRAE. It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit affiliates of BRAE from providing the same or similar services to any person or organization not a party to this Agreement. In particular, affiliates of BRAE shall be entitled to own and operate for their accounts identical cars not managed under the Management Program and/or to manage such cars under a similar management agreement with another owner, subject to the following conditions:

(i) in managing, maintaining, leasing, releasing, repairing, offering for sale or selling the Cars pursuant to this Agreement, BRAE shall perform all its duties, services and obligations hereunder in accordance with the same standards, care, diligence and good faith observed by BRAE and its affiliates in performing comparable services, functions and duties with respect to all other railcars owned, leased or managed by them; and

(ii) in the event that BRAE or any of its affiliates owns, leases or manages (for its own account of for the account of others) railroad cars similar to or competitive with the Cars, subject to the business needs of prospective lessees or purchasers and all applicable regulations of the AAR, ICC and DOT, BRAE shall, and BRAE shall cause affiliates of BRAE to, remarket first those railroad cars (including the Cars) which have been off lease and available for the longest period of time.

(h) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) Severability. If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

BRAE CORPORATION

By _____
(Authorized Signature)

OWNER:

John J. Cannella
Name Rose Ann Cannella
(Please Print)

By _____
(Signature)

This Agreement must be signed before a notary public by all parties hereto.

Owner must complete Schedule A hereto.

Title of signer if Owner is other than a natural person:

_____

Signature of Joint Owner _____

Address 2912 Independence Ave.
Grand Island, Nebr. 68801

_____

Dated: Dec 18, 1980.

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests BRAE to make the special distributions provided for in Section 7(a) of this Agreement.

By _____
(Signature)

For Owner who is an individual:

State of Nebraska

County of Hall SS:

On this 18 day of December 1980, before me personally appeared John and Rose Ann Camilla (name of signer of foregoing instrument) to me known to be the person described in and who executed the foregoing instrument and he or she acknowledged that he or she executed the same as his or her free act and deed.

[SEAL]

HELGA A. PULTE
GENERAL
NOTARY
COMMISSION
EXPIRES
FEB. 13, 1982
STATE OF NEBRASKA

Helga A. Pulte
Notary Public

My Commission Expires

Feb 13, 1982

For Owner that is an entity:

State of _____

County of _____ SS:

On this _____ day of _____, 1980, before me personally appeared _____ (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he or she is the _____ (title of office) of _____ (name of entity), a _____ (type of entity); that the seal, if any, affixed to the foregoing instrument is the seal of said entity, that said instrument was signed, sealed (if applicable) and duly authorized on behalf of said entity, and he or she acknowledged that the execution of the foregoing instrument was the free act and deed of said entity.

[SEAL]

_____
Notary Public

My Commission Expires

State of ~~California~~ New York
City ~~and~~ County of ~~San Francisco~~ New York SS:

On this 23 day of December, 1980, before me personally appeared Jerry A. Riessen (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the Vice President (title of office) of BRAE Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the act and deed of said corporation.

[SEAL]

Connie L Kluever
Notary Public

My Commission Expires

CONNIE L. KLUEVER
Notary Public, State of New York
No. 60-2151600
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1981

SCHEDULE A TO THE MANAGEMENT AGREEMENT

Set forth below are the assumptions relating to tax issues that BRAE intends to use in preparing reports to Owner under Section 13(c) of the Management Agreement. Unless Owner instructs BRAE otherwise by indicating an exception to an assumption and recording an alternative assumption, BRAE will prepare such reports based on the assumptions set forth below. These assumptions are based on the assumptions used in preparing the section of the Memorandum headed "Analytic Model of Car Ownership and Operation." They are not intended to be and should not be regarded in any way as a recommendation as to which of many possible alternative choices is most suitable for any particular Owner, and no assurance can be given that the assumptions will not be challenged by the IRS upon examination.

Each Owner is urged to consult with his, her or its own tax advisors with respect to the tax consequences of Car ownership and participation in the Management Program.

Assumptions:	Exception to Assumption
1. Owner is married.	_____
2. Owner will file a joint income tax return.	_____
3. The cost of each Car for Federal income tax purposes will be the sum of (a) The Purchase Price of such Car calculated in accordance with Section 6 of the Purchase Contract less commencement fee referred to in Section 6(a)(ii) thereof; (b) Portion of commencement fee referred to in Section 6(a)(ii) of the Purchase Contract paid to BRAE that is attributed to the acquisition of cars; and	

(c) Portion of commencement fee referred to in Section 6(a)(ii) of the Purchase Contract paid to BRAE that is paid to Merrill Lynch as a placement agent's fee _____

4. Owner (if a married individual) will claim first-year "bonus depreciation" with respect to the Cars in the amount of $4,000. Other Owners will claim no "bonus depreciation." _____

5. Owner will initially utilize the 200% declining balance method in determining the depreciation allowance for each Car and will change to the sum-of-the-years'-digits method when the latter method results in greater depreciation deduction than the former. _____

6. The salvage value of each Car is 10% of cost which is reduced by 10% of cost pursuant to Section 167(f) of the Code. _____

7. The portion of the commencement fee paid to BRAE which is paid to Merrill Lynch Leasing Inc. as a fee for its advisory services in structuring the Management Program is amortized over 15 years. _____

8. Owner will elect to use the Asset Depreciation Range "Class Life" (ADR) System for the determination of the depreciation allowance for the Cars and will elect to use the half-year convention, pursuant to which the depreciation allowance for the Cars for 1980 will be determined by treating

the Cars as placed in service on July 1, 1980, the first day of the second half of the owner's taxable year.*/ _____

9. Each Car has a depreciable life of 12 years. _____

10. The portion of the commencement fee paid to BRAE which is attributed to its lease negotiation services is amortized over the weighted average term of the Initial Leases. _____

*/ BRAE will advise Owner if the proposed amendment to the Treasury Regulations is adopted, which proposed amendment is discussed under "Depreciation and Other Deductions - Methods of Computing Depreciation" under "Tax Aspects of Car Ownership" in the Memorandum and may affect Owner's decision as to assumption 8.

SCHEDULE B TO THE MANAGEMENT AGREEMENT

Borrowings, referred to in the Management Agreement, the proceeds of which have been applied to the purchase of Cars (to be completed by Owners who have requested special distributions of Net Earnings, provided for in Section 7(a), and/or who may request that the Manager assist in refinancing, as provided in Section 3(o)):

Lender (Name and Address): _____

_____

Original Principal Amount of Loan: _____

Amount of Each Periodic Payment of Debt Service: _____

Periods With Respect to Which Debt Service is Payable (e.g., monthly, quarterly): _____

Due Dates of Debt Service Payments (e.g., first day of each month, last day of each quarter): _____

Person, Account No. and/or Other Address to Which Payments of Debt Service Should be Sent: _____

Maturity of Loan: _____

Balloon Payment, If Any, Due Upon Maturity of the Loan: _____

EXHIBIT A TO THE MANAGEMENT AGREEMENT

Cars subject to the Management Agreement:

Manufacturer	Number of Cars	Description of Cars	Reporting Marks and Serial Numbers
FMC	2	____ cubic foot capacity, 100-ton capacity, steel covered hopper cars	BRAX 2602A BRAX 260220