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WASHINGTON, D. C. 20036

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1 6144-A

RECORDATION NO. \_\_\_\_\_ FILING DATE

1 6144

January 5, 1989

JAN 5 1989 11:44 AM

RECORDATION NO. \_\_\_\_\_ FILING DATE

INTERSTATE COMMERCE COMMISSION

JAN 5 1989 11:44 AM

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Room 2215  
Washington, D.C. 20423

No. 9-005A038

Date JAN 5 1989

Fee \$ 26.00

ICC Washington, D. C.

JAN 5 11 53 AM '89  
100

Dear Ms. McGee:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. §11303 are the original and three (3) copies of the documents hereinafter described. They relate to the railroad equipment identified below.

1. Sale and Lease Agreement dated as of December 29, 1988, between General Electric Railcar Services Corporation, lessor, and Brae Transportation Group Corporation, lessee.
2. Assignment of Rents and Security Agreement dated as of December 29, 1988 between Brae Transportation Group Corporation, assignor, and General Electric Railcar Services Corporation, assignee.

The equipment subject to these documents consists of 427 covered hopper railcars bearing the marks BRAX 8556 - 8594, 8596 - 8638, 8640 - 8664, 8666 - 8755, 8778 - 8781, 8783, 8786 - 8788, 8790 - 8793, 8800 - 8982, 8984 - 8998, 9041, 9100 - 9111, 9200 - 9206, inclusive.

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

Lessor-Assignee: General Electric Railcar Services Corp.  
33 West Monroe Street  
Chicago, Illinois 60603

Less<sup>ee</sup> Assignor: Brae Transportation Group Corporation  
160 Spear Street  
San Francisco, CA 94105

A fee of \$26.00 is enclosed. Please return the

*County part - Shirley A. Corsetti*

Ms. Noreta McGee  
January 5, 1989  
Page 2

original and any extra copies not needed by the Commission for recordation to the person presenting this letter.

A short summary of each document to appear in the index follows:

1. Sale and Lease Agreement dated as of December 29, 1988, between General Electric Railcar Services Corporation and Brae Transportation Group Corporation, covering 427 covered hopper railcars as identified in the document.

2. Assignment of Rents and Security Agreement dated as of December 29, 1988 between Brae Transportation Group Corporation and General Electric Railcar Services Corporation, covering 394 covered hopper railcars as identified in the primary document.

Very truly yours,



Robert J. Corber  
Attorney for  
Brae Transportation  
Group Corporation

Enclosures as stated

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Jan. 5, 1989

Robert J. Cober  
1330 Connecticut Ave. N.W.  
Washington, D.C. 20036

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on Jan. 5, 89 at 11:10AM, and assigned recordation number(s) 16144 Lead & 16144-A, & 16145

Sincerely yours,

*Neta L. McLee*

Secretary

Enclosure(s)

1 6144  
REGISTRATION NO. \_\_\_\_\_ FINE 1988

JAN 5 1989 - 11 49 AM

INTERSTATE COMMERCE COMMISSION

**SALE AND LEASE AGREEMENT**

**Between**

**BRAE TRANSPORTATION GROUP CORPORATION**

**And**

**GENERAL ELECTRIC RAILCAR SERVICES CORPORATION**

**December 29, 1988**

SALE AND LEASE AGREEMENT

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SALE AND LEASE AGREEMENT

JAN 5 1989 11 10 AM

INTERSTATE COMMERCE COMMISSION

This is a Sale and Lease Agreement ("Agreement") dated as of December 29, 1988, between BRAE TRANSPORTATION GROUP CORPORATION, a California corporation (the "Lessee") and GENERAL ELECTRIC RAILCAR SERVICES CORPORATION, a Delaware corporation (the "Lessor").

BACKGROUND

A. Lessee has entered into an Agreement of Purchase and Sale and Irrevocable Escrow Instructions dated November 17, 1988 ("BJO Sale Agreement") with B.J.O. Corporation, a subsidiary of Chemical Bank ("BJO") and Butler, Fitzgerald & Potter, New York, New York ("Escrow Holder) wherein BJO agreed to sell to Lessee, and Lessee agreed to purchase from BJO, 427 covered hopper railcars more fully described in Exhibit A hereto (individually, a "Car" and collectively, the "Cars"). BJO has deposited with the Escrow Holder a Bill of Sale for the Cars, executed in blank ("BJO Bill of Sale").

B. Lessee wishes to acquire the Cars from BJO and simultaneously sell them to Lessor and lease them back. Lessor wishes to acquire the Cars and lease them to Lessee on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. PURCHASE AND SALE OF THE CARS.

At the Closing (as hereinafter defined) Lessor shall purchase from Lessee, and Lessee shall sell to Lessor, the Cars for a purchase price equal to \$28,000 per Car or \$11,956,000 ("Purchase Price"). The total purchase price is subject to adjustment as set forth below. In the event one or more of the Cars are destroyed prior to the Closing and prior to the Closing Lessee is aware of such Car's or Cars' destruction, Lessee shall notify Lessor of such destruction, such Car or Cars shall be removed from Exhibit A hereto, and the Purchase Price shall be reduced by an amount equal to \$28,000 multiplied by the number of railcars so destroyed. In the event one or more of the Cars are destroyed prior to the Closing and Lessee learns of such destruction after the Closing, Lessee shall notify Lessor of such destruction, pay Lessor \$28,000 for each such destroyed Car, and Lessor and Lessee shall cooperate to remove each such Car from Exhibit A hereto and to the Bill of Sale. Lessor shall not be entitled to insurance or any other compensation related to any Car destroyed before the Closing. Each party represents to the other that it has not engaged a broker or finder in connection with this transaction.

2. CLOSING.

The closing of the transaction described herein ("Closing") shall be held at the offices of Escrow Holder on December 30, 1988 ("Closing Date"). At the Closing (i) Lessor shall deliver the Purchase Price (less \$3,691.71 representing interim rent from December 30, 1988 to January 1, 1989) to Lessee in immediately available funds by wire transfer of the amount thereof to Escrow Holder, together with instructions that such funds are to be held (subject to the Closing conditions set forth in Section 21) by Escrow Holder for the account of Lessee, care of Butler, Fitzgerald and Potter at Citibank, N.A., 141 East 23rd Street, New York, New York 10010-, Branch #31, Gramercy Park, Attention Roberta Samay, regarding escrow account number 03742472, ABA number 021-0000-89, and (ii) Lessee shall cause Escrow Holder to execute the BJO Bill of Sale in favor of Lessor and deliver to Lessor the same. By accepting the Bill of Sale, Lessor shall evidence its acceptance of the delivery of the Cars under Section 1 hereof as of the Closing and by delivering a counterpart of this Agreement to Lessor, Lessee shall evidence its acceptance of the Cars hereunder.

3. LEASE OF EQUIPMENT.

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

4. LEASE TERM.

The term of lease under this Agreement of each Car shall commence on the Closing Date (the "Commencement Date") and terminate on December 31, 2003.

5. RENT, NET LEASE.

Lessee shall pay to Lessor US \$268 per month per Car as rent for the Cars during the lease term. Such rent shall be payable monthly in advance. The first installment of rent shall be payable on January 1, 1989. Subsequent installments of rent shall be payable thereafter on the first day of each successive calendar month during the lease term.

All rent and other amounts due from Lessee to Lessor shall be paid to Lessor at such place as Lessor shall specify in writing. In the event any rent or other amounts due hereunder shall not be made promptly when due, Lessee shall pay Lessor, as additional rent hereunder, interest on such overdue amount from the due date thereof to the date of payment thereof at a rate equal to the lesser of (i) fifteen percent (15%) per annum or (ii) the maximum rate permitted by law.

This Agreement provides for a net lease and the rent and other amounts due hereunder from Lessee to Lessor shall be absolute and unconditional under any and all circumstances and

shall not be subject to any defense, claim, reduction, setoff, counterclaim, abatement or adjustment for any reason whatsoever. Lessee shall promptly pay all costs, expenses and obligations of every kind and nature incurred in connection with the use or operation of the Cars which may arise or be payable during the lease term of such Cars hereunder, whether or not such cost, expense or obligation is specifically referred to herein.

This Agreement and Lessee's obligations hereunder shall not, except as otherwise expressly provided herein, terminate, and without limiting the generality of the foregoing shall continue regardless of the condition of any Car; it is the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement.

6. DISCLAIMER OF LESSOR'S WARRANTIES.

Lessee agrees and acknowledges that Lessee leases all of the Cars in their "as is-where is" condition and that LESSOR DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER OF TITLE, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, DESIGN OR CONDITION, OR OTHERWISE REGARDING THE CARS. So long as no event of default and no event which might mature into an event of default (as defined in Section 16) exists, Lessor shall, at Lessee's sole expense, take all action reasonably requested by Lessee to cooperate with Lessee to enforce any rights Lessee may have with third parties respecting the Cars. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly or by any of the Cars or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any of the Cars or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any of the Cars. The Lessee's delivery of this Agreement shall be conclusive evidence as between the Lessee and the Lessor that all of the Cars described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

7. LESSEE'S WARRANTIES.

Lessee represents and warrants that:

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

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

C. The execution and delivery of this Agreement and the Assignment of Rents (as defined in Section 21.D) by Lessee, and the performance by Lessee of its obligations hereunder and thereunder, do not and will not conflict with any provision of law (including without limitation the provisions of any law dealing with monopolies, antitrust or trade practices) or of the charter or bylaws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party.

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

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

F. There are no pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Lessee.

G. Upon the purchase by the Lessor of the Cars, no mortgage, deed of trust, indenture, lease, claim, encumbrance or other lien or security interest of any nature whatsoever except the Sublease and those arising out of the actions of Lessor will attach or thereafter will attach to the Cars or in any manner affects or will affect adversely Lessor's right, title and interest herein.

H. On the Closing Date the Cars will be in good operating repair, will not have any latent defect, and will be suitable for use in unrestricted interchange service in jurisdictions covered by the interchange rules of the Association of American Railroads. On January 1, 1989 Cargill, Inc. will have accepted the Cars under the Sublease (as hereinafter defined).

I. The Sublease has been executed by the parties thereto and is binding on each party in accordance with its terms.

J. All of the Cars were built and placed in service during the 1981 calendar year.

8. OWNERSHIP, USE OF AND LIENS ON CARS.

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

B. Lessee agrees that the Cars will be used solely in the conduct of its business, with due care to prevent injury thereto or to any person or property and in conformity with all applicable laws, ordinances, rules, regulations and other requirements of any insurer, governmental body or nongovernmental body having jurisdiction over the Cars (including, without limitation, any requirements regarding licensing or registration, or evidencing title to the Cars, all of which shall be done in such manner as shall have previously been approved in writing by Lessor). Lessor, or any duly authorized representative thereof, may during reasonable business hours from time to time inspect the Cars and Lessee's records with respect thereto wherever the same may be located. Lessee agrees none of the Cars shall be shipped beyond the boundaries of the United States, Canada or incidental use in Mexico except with prior written consent of Lessor. However, Lessee shall bear the entire risk of damage, loss, theft or destruction, partial or complete, of any Car as a result of the use of such Cars in Mexico.

C. Lessee agrees to comply in all respects with all laws of the jurisdictions in which the Cars may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Cars wherever they may be located. In the event that such laws or rules require the alteration of the Cars, or in case any equipment or appliance on any such Car shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Car in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and all such alterations, changes, additions and replacements shall become part of the cars and be the Property of Lessor; and Lessee agrees at its own expense to use, maintain and operate such unit in full compliance with such laws, regulations, requirements and rules so long as the Cars are subject to this Agreement; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not adversely affect the property or rights of the Lessor hereunder.

D. Except as provided in Section 16, Lessee shall not permit any lien, charge, encumbrance, security interest, or other similar interest to arise or remain on any Car or Lessee's interest in such Car other than (i) liens placed by Lessor or liens of persons claiming against Lessor but not Lessee, which arise out of obligations which Lessee is not required by this Agreement to pay or discharge, (ii) liens of current taxes not delinquent, and (iii) inchoate materialmen's or mechanics' liens arising in the ordinary course of business and not delinquent, or which are being contested by Lessee in good faith in a reasonable manner, which does not adversely affect the property or rights of the Lessor hereunder provided that if such liens exceeds \$5,000 in the aggregate, Lessee has delivered reasonably satisfactory security to Lessor.

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

"TITLE TO THIS CAR IS VESTED IN THE TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT RECORDED UNDER SECTION 20(C) INTERSTATE COMMERCE ACT"

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

F. Lessor shall not permit any lien, charge, encumbrance, security interest, or other similar interest to arise or remain on the Cars which will affect or impair Lessee's right to use the Cars as contemplated by this Agreement.

9. MAINTENANCE OF EQUIPMENT; NO ABATEMENT; SUBSTITUTION; REPORTS.

A. Lessee shall at all times keep the Cars in good repair, reasonable wear and tear excepted. Without limiting the generality of the foregoing, Lessee will (i) paint the Cars as needed, (ii) repair all hatch covers as needed, and (iii) repair all defective and failed welded joints as needed. Lessor shall have the right to inspect any or all of the Cars from time to time, and if Lessee fails to perform repairs and maintenance required hereunder promptly after notice, Lessor shall have the right to perform, or cause to be performed, such repairs and maintenance at Lessee's expense. Lessee shall supply all parts, service, and other items required in the operation and maintenance of the Cars. Lessee shall not, without the written consent of Lessor, make any additions to the Cars which substantially reduces their value. All parts, replacements, substitutions and additions to or for any Car shall immediately become part of said Car and the property of Lessor.

B. Lessee assumes all risk of, and Lessee's obligations under this Agreement shall continue unmodified and unabated despite, any loss, theft, destruction, damage, condemnation, requisition or taking by eminent domain or other interruption or termination of use of any Car regardless of the cause thereof, except as provided in Section 10.

C. Lessee may, with the prior written consent of Lessor, which may be withheld in Lessor's sole discretion, substitute a car for a Car under this Agreement.

D. Lessee shall provide Lessor with reports on or before the first day of each calendar quarter and at such other times as may be reasonably requested by Lessor stating the amounts and type of repairs performed on the Cars, including without limitation running repairs performed by railroads and the mileage traveled and mileage earnings for each Car since the period covered in the last report to Lessor.

10. EVENT OF LOSS.

A. Upon the happening of any loss, theft, destruction, damage, condemnation, requisition, taking by eminent domain or other event causing interruption or termination of use of any Car regardless of the cause thereof (herein collectively called an "Event of Loss"), Lessee shall promptly make all repairs and replacements necessary to restore or repair such Car so that the Car thereafter subject to lease hereunder is substantially equivalent to, and of a value not less than, the

Car subject to lease hereunder prior to such Event of Loss; provided, however, if the cost of such repair would exceed the Stipulated Loss Value or if the Car is permanently unfit for service, that Lessee may instead on the next rent payment date following such Event of Loss, furnish Lessor with an affidavit of an officer of Lessee setting forth the fact of such Event of Loss and pay to Lessor the Stipulated Loss Value (as defined in annexed Exhibit B, determined as of such next subsequent rent payment date) of such Car. Upon payment of (i) such Stipulated Loss Value, (ii) any rent accrued and unpaid on such Car to and including the date of payment of such sum, and (iii) any other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, other than a warranty that there are no liens on such Car created by Lessor whatever title to such Car it may have. Upon such transfer the lease of such Car hereunder shall end. In the event the AAR Settlement Value received by Lessee in connection with an Event of Loss or otherwise exceeds the Stipulated Loss Value which Lessee has paid in connection with such Event of Loss or other event, Lessee shall pay as additional consideration to Lessor an amount equal to 50% of such excess.

B. When Lessee has fulfilled the requirements of Paragraph A regarding an Event of Loss, Lessor shall (if no event of default has occurred and is continuing), reimburse Lessee for its costs thus incurred to the extent of any proceeds received by Lessor (i) from the sale of the Car involved in such Event of Loss and (ii) either under any policies of insurance provided for in Section 11 or as satisfaction of any claim (other than one to which an insurer is or may be subrogated) by Lessor against any person or persons liable in respect of such Event of Loss, after subtracting in each instance all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor and not otherwise reimbursed by Lessee in respect thereto.

#### 11. INSURANCE.

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

B. The policies of insurance required under this Section 11 shall be valid and enforceable policies issued by insurers of recognized responsibility comparable to Lessee's

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

## 12. TAXES.

Lessee agrees to pay and discharge (and does hereby agree to indemnify and hold Lessor harmless from and against) all sales, use, personal property, leasing, leasing use, import duties, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon) imposed against Lessor, Lessee or the Cars by any government or other taxing authority upon or with respect to the purchase, rehabilitation, ownership, delivery, lease, possession, use, operation, return, sale or other disposition of the Cars hereunder (excluding, however, taxes on, or measured by, the net or gross income of Lessor imposed by the United States, the jurisdiction in which the principal office of Lessor is located and any jurisdiction in which Lessor does business) unless, and to the extent only that, any such tax, levy, impost, duty, charge or withholding is being contested by Lessee in good faith and by appropriate proceedings which do not adversely affect the property or rights of the Lessor hereunder; provided, however, that if the amount being contested is in excess of \$5,000, Lessee has delivered reasonably satisfactory security with Lessor. In addition, Lessee shall pay on demand the amount of any taxes required to be paid by Lessor in respect of the receipt of amounts referred in this Section 12. Lessee agrees to file, at Lessee's expense, on behalf of Lessor, or where Lessee is not permitted to file on behalf of Lessor, then Lessee shall prepare, at Lessee's expense, and deliver to Lessor all required tax returns and reports concerning the Cars and relations to a tax, levy, impost, duty or charge which Lessee is required to pay in this Section with all appropriate governmental agencies and to furnish Lessor upon request a copy of each such return or report, including evidence of payment, within 30 days after the due date of such filing.

## 13. INDEMNIFICATION AND EXPENSES.

A. Lessee agrees to and does hereby indemnify and hold Lessor and its beneficiaries, agents, employees, officers

and directors, harmless from and against any and all expense, liability or loss whatsoever, including (without limitation) reasonable legal fees and expenses, relating to or in any way arising out of this Agreement, or the purchase, ownership, delivery, lease, possession, rental, use, operation, return, sale or disposition of the Cars hereunder (including, without limitation the ownership, delivery, lease, possession, rental, use and operation both before and after the Closing and including, without limitation, expense, liability or loss relating to or in any way arising out of injury to persons or property, patent or invention rights or strict liability in tort arising both before and after Closing). Lessor shall give Lessee and Lessee shall give Lessor notice of any event or condition which requires indemnification by Lessee hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof, and, to the extent that Lessee makes or provides to the reasonable satisfaction of Lessor for payment under the indemnity provisions hereof and no event of default or event which might mature into an event of default has occurred, Lessee shall be subrogated to Lessor's rights with respect to such event or condition and shall have the right to determine the settlement of claims thereon, it being agreed that except to the foregoing extent, Lessor shall have the right to determine such settlement. Lessee shall pay all amounts due hereunder promptly on notice thereof from Lessor.

B. Lessor and Lessee agree to treat Lessor as the owner of the Cars for all purposes, including taxes, for the entire term of the lease. If, as a result of an act or omission of the Lessee or any party or entity acting for Lessee, including any sublessee (whether or not permitted by this Agreement) Lessor does not receive such tax benefits, then Lessee shall pay Lessor on each rent payment date during the remaining lease term of such unit, as additional rent hereunder, an amount which, after deduction of all Federal, state and local taxes required to be paid by Lessor in respect of the receipt thereof, shall be sufficient to yield to Lessor the same after-tax cash flow as of each rent payment date as would have been realized by Lessor in respect of this Agreement if Lessor had received such benefit and no such loss, disallowance, or recapture of depreciation deductions or the right to claim the same had occurred, which amount shall, if subsequent circumstances require, be thereafter adjusted (or further appropriate adjustments shall be made in respect thereof) when and to the extent necessary so that Lessor's after-tax cash flow as of each rent payment date shall be as aforesaid. In addition, Lessee shall also pay Lessor on demand, as additional rent hereunder, an amount which, after deduction of all Federal, state and local taxes required to be paid by Lessor in respect of the receipt thereof, shall be equal to the amount of any interest (net of any actual decrease in Federal, state or local income tax caused by any allowable deduction of such interest from taxable income) or penalties, including any additions to tax because of underpayment of estimated tax, which may be assessed against Lessor in connection

with such loss, disallowance, or recapture of depreciation deductions or the right to claim the same.

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

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

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

F. Any adjustment to rent required under Section 13.B shall be made based on a statement from an officer of the tax department of Lessor that he has examined the determination of

the amount due and that, in his opinion, such amount due has been properly calculated pursuant to Section 13.B. If Lessee disagrees with such determination, then Lessor and Lessee shall mutually designate an independent person to make such determination and Lessor and Lessee shall share equally the costs of such independent person.

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

#### 13A. FINANCIAL REPORTS.

A. Within 30 days after the end of each calendar quarter, Lessee shall deliver or cause to be delivered to Lessor full financial statements, including statements of income, balance sheets, and statements of changes in financial position prepared and certified by the chief financial officer of the relevant entity as having been prepared so that they present fairly the financial position of such entity and in accordance with generally accepted accounting principles consistently applied ("Financial Statements") of Lessee and of Brae Corporation.

B. Within 90 days after the end of each calendar year, Lessee will deliver or cause to be delivered to Lessor Financial Statements, that are also certified by an independent certified public accountant as having been prepared so that they present fairly the financial position of such entity and in accordance with generally accepted accounting principles consistently applied of BRAE Corporation

#### 14. RETURN OF CARS.

Upon final termination of the lease term hereunder of any Car regardless of whether due to expiration of the lease, default or otherwise (other than a termination under Section 10.A), Lessee shall forthwith deliver possession of the Cars to Lessor in the same condition as when received, ordinary wear and tear excepted, and such Cars shall meet the standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction over such Cars and the applicable standards then in effect for such Cars under the interchange rules of the Association of American Railroads, without regard to any exemption, suspension or deferral of compliance permitted under such standards or rules and shall be suitable for immediate placement for loading. For the purposes of delivering possession of any Car or Cars to Lessor as above required, Lessee shall at its own cost, expense and risk:

(i) Forthwith place such Cars upon such storage tracks or deliver such Cars to such other place or interchange point as Lessor reasonably may designate; and

(ii) Remark the Cars at Lessee's expense with running marks designated by Lessor; and

the removal, assembling, delivery, and transporting of the Cars as hereinabove provided shall be at the expense and risk of Lessee and are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to remove, assemble, deliver, and transport the Cars.

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

15. EVENTS OF DEFAULT.

A. The following shall be events of default hereunder:

i. Default, and continuance thereof for five days after Notice from Lessor to Lessee, in the payment of any rent or other amount due from Lessee to Lessor hereunder;

ii. Assignment of this Agreement and sublease of the Cars by Lessee except as permitted herein;

iii. Default under the Sublease (hereinafter defined) by either Lessee or sublessee which is not cured within applicable cure periods.

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

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

vi. Lessee becomes insolvent or admits in writing its inability to pay its debts as they mature, or applies for, consents to or acquiesces in the appointment of a trustee or a receiver for Lessee or any property of Lessee; or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Lessee or for a substantial part of its property, and is not discharged within 30 days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or against Lessee, and, if instituted against Lessee is consented to or acquiesced in by Lessee or remains for 30 days undismissed.

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

B. Upon the happening of an event of default, Lessor shall be entitled to any or all of the following remedies, at its option:

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

ii. Repossess any or all Cars without prejudice to any remedy or claim hereinafter referred to whereupon Lessee will return the Cars as provided in Section 14 hereof;

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

iv. Upon notice to Lessee receive prompt payment from Lessee of an amount equal to the aggregate Stipulated Loss Value on the date such notice is given of all Cars which have not been sold by Lessor pursuant to clause (iii) above plus, to the extent not otherwise recovered from Lessee pursuant to said clause (iii) above, (1) any rent and other amounts owing hereunder to and including the date such amount is received by Lessor, (2) all costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing and restoring such Cars, and (3) all other amounts owing by Lessee hereunder whether as additional rent, indemnification or otherwise, and (4) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder; provided that upon receipt of payment in full of such amount, Lessor shall transfer to Lessee, without any representation or warranty of any kind, (other than a warranty that there are no liens on such Cars created by Lessor) express or implied, whatever title to such Cars it may have;

v. By notice to Lessee, declare this Agreement terminated without prejudice to Lessor's rights in respect of obligations then accrued and remaining unsatisfied whereupon Lessee will return the cars as provided in Section 14 hereof; or

vi. Avail itself of any other remedy or remedies provided for under the Assignment of Rents and Security Agreement in the form attached as Exhibit C or by any statute or otherwise available at law, in equity, or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall not be exclusive, but shall be cumulative. The references to additional rent in clauses iii and iv of this Paragraph B shall each include, without limitation, interest at the applicable rate specified in the third paragraph of Section 3, to the date of receipt by Lessor of the amount payable under said clause, on installments of rent owing hereunder from the respective due dates of such installments, and interest on all other costs, expenses and losses for which Lessor is entitled to payment under said clause from the respective dates incurred by Lessor.

16. SUBLEASE OR ASSIGNMENT BY LESSEE.

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession of the Cars in accordance with the terms of this Agreement and to the use thereof upon the lines of railroads over which Lessee or any permitted sublessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract, and also to permit the use of the Cars upon other railroads in the usual interchange of traffic, if customary

at the time, but only upon and subject to all the terms and conditions of this Agreement. Lessee agrees none of the Cars shall be shipped beyond the boundaries of the United States, Canada or incidental use in Mexico except with the prior written consent of Lessor. Lessee may receive and retain compensation for such use from other railroads to using any of the Cars. No assignment, sublease or interchange entered into by Lessee hereunder shall relieve Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

B. Lessee may sublease the Cars only to Cargill, Incorporated under the Lease Agreement attached as Exhibit D ("Sublease"). Lessee shall not amend, change, add to or delete any provision of such Sublease without the prior written consent of Lessor, nor shall Lessee waive any of its rights or consent to any actions restricted under the Sublease or consent to any change in commodity permitted in the Cars. Lessee in order to secure the prompt performance of its obligations hereunder does hereby assign and transfer to and grant a security interest in favor of the Lessor in the Sublease and any sublease substituted therefore and all proceeds thereof and earnings with respect to the Cars from whatever source, including, without limitation, all rentals, insurance, insurance proceeds, Car hire payments, indemnity payments, termination payments, and all other money due or to become thereunder and all rights of the Lessee to execute any election or option or to give any notice, consent, waiver or approval under or in respect of the Sublease, as well as all rights, powers or remedies on the part of the Lessee whether arising under the Sublease or by statute, at law, in equity or otherwise, arising out of any Event of Default (as defined in the Sublease). Lessee shall take such action and make such filings and recordings as Lessor may reasonably request to perfect such assignment and security interests. No sublease of any Car shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder.

17. ASSIGNMENT BY LESSOR.

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

18. LESSOR'S RIGHT TO PERFORM.

If Lessee fails to make any payments required by this Agreement, or to perform any of its other agreements contained herein, Lessor may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Lessor's expenses, including (without

limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Lessee to Lessor upon demand as additional rent hereunder.

19. RECORDING; FURTHER ASSURANCES; TRUE LEASE.

Lessee will, at its expense, promptly (i) execute and file such Uniform Commercial Code financing statements as Lessor may reasonably request from time to time and (ii) cause this Agreement and any assignment hereto to be filed and recorded with the Interstate Commerce Commission in accordance with the Interstate Commerce Act. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's interest in the Cars, or for the purpose of carrying out the intention of this Agreement or the assignment thereof by Lessor; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor. Lessor and Lessee acknowledge that any such filing or recordation under the UCC of any jurisdiction is for notice purposes only and that the transaction described in this Agreement is a true lease.

20. RIGHT OF FIRST REFUSAL.

Lessee shall have the right (the "Right of First Refusal") to purchase some or all of the Cars then under lease at any time Lessor has received from a party not affiliated with Lessor an offer to purchase such Cars, which offer Lessor desires to accept on the terms and conditions set forth in such offer. Promptly upon receiving such an offer, Lessor shall give Lessee written notice of such offer ("Notice"), such notice to specify the number of Cars covered by the offer, and the consideration and terms to be paid for such Cars pursuant to the offer. If Lessee desires to exercise the Right of First Refusal, it shall give to Lessor written notice of its election to purchase no later than 10 business days after the receipt of the Notice by Lessee. Within 45 days thereafter, Lessee shall purchase the same number of the Cars and on the terms set forth in the Notice. Upon payment by Lessee to Lessor of the purchase price for the Cars, and upon payment by Lessee of all rent and other amounts owing to Lessor under this Agreement, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such Cars Lessor may have free and clear of any lien or encumbrance created by or through Lessor.

21. CONDITIONS TO LESSOR'S OBLIGATIONS.

Lessor shall not be obligated to purchase the Cars at Closing and lease the Cars hereunder unless at the Closing Date:

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

B. No litigation or governmental proceedings shall be threatened or pending (i) against Lessee or any material subsidiary or affiliate of Lessee which in Lessor's reasonable opinion will to a material extent adversely affect the financial condition or continued operation of Lessee, its subsidiaries and its affiliates on a consolidated basis or (ii) respecting the Cars;

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

D. The Sublease and the Trust Agreement with American National Bank and Trust Company of Chicago shall have been executed and delivered to the parties thereto and be in full force and effect. Lessee shall have executed and delivered to Lessor an Assignment of Rents and Security Agreement (the "Assignment of Rents") substantially in the form of Exhibit C.

E. Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor, the following:

i. Resolutions of the Board of Directors of Lessee, certified by its Secretary or an Assistant Secretary, authorizing the lease of such Cars hereunder, and the execution, delivery and performance by Lessee of this Agreement and the Assignment of Rents;

ii. Certificates of insurance required by Section 11 hereof.

iii. An estoppel letter in the form of Exhibit E executed by Cargill, Incorporated.

F. Lessee shall be prepared to furnish to Lessor, in form and substance satisfactory to Lessor:

i. The BJO Bill of Sale;

ii. An ICC search prepared by Steptoe and Johnson; and

iii. Such other releases, financing statements, waivers and other documents as Lessor may reasonably request to insure the Cars will not be

subject to any lien, charge, encumbrance, security interest or other similar interest.

22. CONDITIONS TO LESSEE'S OBLIGATIONS.

Lessee shall not be obligated to sell the Cars at Closing or lease the Cars hereunder unless at the Closing Date:

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

B. Lessor shall be prepared to deliver the Purchase Price, as provided in Section 2.

23. MISCELLANEOUS.

A. Any notice hereunder shall be in writing and, if mailed, shall be deemed to be given when sent by registered or certified mail, postage prepaid, and addressed: (i) if to Lessee, at its address shown below, (ii) if to Lessor, to 33 West Monroe Street, Chicago, Illinois 60603, Attn: General Counsel, or to either party at such other address as it may, by written notice received by the other, designate as its address for purposes of notice hereunder.

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

C. Lessee shall pay all expenses related to the transaction contemplated hereby, including without limitation:

(i) the disbursements and fees of Heller, Ehrman, White & McAuliffe;

(ii) the disbursements and fees of Seyfarth, Shaw, Fairweather & Geraldson;

(iii) all fees and expenses relating to searches of the records of the Interstate Commerce Commission;

(iv) all filing fees, costs and expenses; and

(v) fees and expenses of American National Bank and Trust Company of Chicago.

D. On or before the last day of each year, Lessee shall provide a certificate of its highest legal officer or its president certifying as to (a) the total number of Cars then subject to this Agreement and stating the total number of Cars to have suffered an Event of Loss during the foregoing year and the deposition of such cars; (b) the insurance then in place with respect to the Cars including carriers, limits, deductibles and termination dates; and (c) that Lessee is then in full compliance with this Agreement, and there is then outstanding no Event of Default or event which might mature into an Event of Default.

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

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

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

BRAE TRANSPORTATION GROUP CORPORATION

By

Title

  
ASSISTANT VICE PRESIDENT

Address: 160 Spear Street  
Suite 1600  
San Francisco, CA 94105



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

On this 29 day of December, 1988, before me personally appeared LEANN LLOYD, to me personally known, who being by me duly sworn, says that he is the ASSISTANT VICE PRESIDENT of BRAE TRANSPORTATION GROUP CORPORATION and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Suzanne Guido  
NOTARY PUBLIC in and for the State of  
California residing at San Francisco

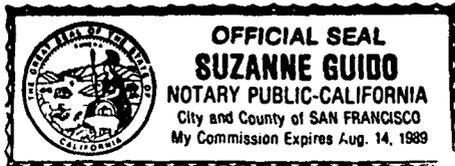




EXHIBIT A

Description of Railcars

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EXHIBIT B

STIPULATED LOSS VALUE FOR CARS

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

STIPULATED LOSS VALUE SCHEDULE - 427 BRAE Transaction

<u>MONTH</u>	<u>STIP LOSS</u>
1 1989	102.024%
2	102.059
3	102.087
4	102.101
5	102.105
6	102.098
7	102.080
8	102.058
9	102.025
10	101.981
11	101.932
12	101.873
1 1990	101.802
2	101.727
3	101.644
4	101.551
5	101.450
6	101.342
7	101.226
8	101.104
9	100.975
10	100.838
11	100.695
12	100.545
1 1991	100.387
2	100.224
3	100.054
4	99.878
5	99.695
6	99.507
7	99.314
8	99.114
9	98.909
10	98.699
11	98.482
12	98.260
1 1992	98.032
2	97.799
3	97.560
4	97.316
5	97.068
6	96.816
7	96.559
8	96.296
9	96.030
10	95.758
11	95.481
12	95.200

<u>MONTH</u>	<u>STIP LOSS</u>
1 1993	94.914%
2	94.623
3	94.326
4	94.025
5	93.720
6	93.410
7	93.096
8	92.775
9	92.450
10	92.121
11	91.786
12	91.446
1 1994	91.101
2	90.751
3	90.395
4	90.035
5	89.670
6	89.300
7	88.926
8	88.545
9	88.160
10	87.770
11	87.374
12	86.973
1 1995	86.568
2	86.156
3	85.739
4	85.319
5	84.896
6	84.470
7	84.040
8	83.605
9	83.166
10	82.725
11	82.277
12	81.826
1 1996	81.372
2	80.911
3	80.446
4	79.980
5	79.513
6	79.045
7	78.575
8	78.098
9	77.621
10	77.141
11	76.656
12	76.169

<u>MONTH</u>	<u>STIP LOSS</u>
1 1997	75.680%
2	75.184
3	74.685
4	74.186
5	73.685
6	73.182
7	72.678
8	72.167
9	71.655
10	71.140
11	70.619
12	70.096
1 1998	69.571
2	69.040
3	68.504
4	67.968
5	67.430
6	66.890
7	66.348
8	65.800
9	65.249
10	64.696
11	64.136
12	63.574
1 1999	63.010
2	62.439
3	61.863
4	61.287
5	60.709
6	60.128
7	59.545
8	58.955
9	58.363
10	57.768
11	57.166
12	56.561
1 2000	55.954
2	55.340
3	54.720
4	54.100
5	53.477
6	52.852
7	52.224
8	51.589
9	50.951
10	50.310
11	49.662
12	49.010

<u>MONTH</u>	<u>STIP LOSS</u>
1 2001	48.356%
2	47.694
3	47.027
4	46.359
5	45.688
6	45.014
7	44.337
8	43.652
9	42.964
10	42.273
11	41.574
12	40.871
1 2002	40.166
2	39.452
3	38.732
4	38.012
5	37.288
6	36.560
7	35.829
8	35.090
9	34.348
10	33.601
11	32.847
12	32.095
1 2003	31.365
2	30.628
3	29.887
4	29.140
5	28.387
6	27.629
7	26.865
8	26.095
9	25.319
10	24.538
11	23.750
12	22.957

## EXHIBIT C

### ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

This Assignment of Rents and Security Agreement is entered into as of December 29, 1988 between BRAE TRANSPORTATION GROUP CORPORATION, a California corporation (the "Assignor") and GENERAL ELECTRIC RAILCAR SERVICES CORPORATION, a Delaware corporation (the "Assignee").

#### RECITALS

The Assignee and the Assignor have entered into a Sale and Lease Agreement ("the Agreement") of even date herewith whereby the Assignee has agreed to lease to the Assignor 427 Covered Hopper Railcars (the "Cars"), to which Agreement reference is hereby made for a more complete description of the Cars.

The Assignor and Cargill, Incorporated, a Minnesota corporation (the "Sublessee"), with its principal place of business at 15615 McGinty Road, West Minnetonka, Minnesota 55345, have entered into a Lease Agreement (the "Sublease") dated December 22, 1988, whereby the Assignor, as Sublessor has subleased the Cars to Sublessee.

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

It is mutually agreed as follows:

1. Assignment of Rents and Grant of Security Interest.  
The Assignor, in order to secure the prompt performance of its obligations to the Assignee under the Agreement, does hereby assign and transfer to and grant a security interest in favor of the Assignee in the Sublease and any sublease substituted therefor (also, a "Sublease"), and all proceeds thereof and earnings with respect to the Cars from whatever source, including, without limitation, all rentals, insurance and insurance proceeds, Car hire payments, indemnity payments, termination payments, and all other monies due or to become due thereunder, and all rights of the Assignor to execute any election or option or to give any notice, consent, waiver or approval under or in respect of the Sublease, as well as all rights, powers or remedies on the part of the Assignor whether arising under the Sublease or by statute, at law, in equity or otherwise, arising out of any Event of Default (as defined in the Sublease).

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

3. Assignee May Act For Assignor. The Assignor does hereby constitute the Assignee the true and lawful attorney of the Assignor, irrevocably, with full power, upon the occurrence of any Event of Default under the Agreement or a default hereunder, (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due and to become due from the Sublessee under or arising out of the Sublease, or any document contemplated thereby, to endorse any checks or other instruments or orders in connection therewith and to file claims or take any actions or to institute any proceedings which the Assignee may deem to be necessary or advisable in the premises. Assignor authorizes and empowers the Assignee to collect and receive directly from the Sublessee all monies now due or to become due under the Sublease. If any assigned monies are received by the Assignor, the same will be received by the Assignor as trustee for the Assignee and will be immediately delivered in kind to the Assignee without commingling. In addition, the Assignee shall have all of the rights and remedies afforded a secured party under the Uniform Commercial Code. Assignee shall in no way be deemed to be under any duty to act for or on behalf of Assignor under the powers herein provided.

4. Representations, Warranties and Covenants of the Assignor. The Assignor hereby warrants and represents that it has not assigned, pledged, or otherwise encumbered, and hereby covenants that it will not assign, pledge, or otherwise encumber so long as this Assignment of Rents and Security Agreement shall remain in effect, any of its right, title or interest hereby assigned to anyone other than the Assignee, and that it has full right and authority to enter into and perform this Assignment of Rents and Security Agreement in accordance with its terms. The Assignor will not, without the prior written consent of the Assignee, agree to, consent to or permit any assignment with respect to the Sublease as it relates to the Cars, or any

amendment, modification, or waiver which would impair the security of the Assignee in the Sublease. Assignor covenants to reimburse the Assignee upon demand for any expense, including legal fees reasonably incurred by the Assignee in the exercise of the powers conferred upon Assignee hereunder, together with interest thereon at the rate of 15% per annum, or the highest lawful rate, whichever is the lesser, from the date upon which such expenses are incurred.

5. Payments under Sublease. All amounts and payments to be made by Cargill under the Sublease shall be made to trustee under the Trust Agreement between Assignor, Assignee and National Bank and Trust Company of Chicago of even date herewith (the "Trust") so long as no event of default has occurred under the Agreement or hereunder.

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

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

"THIS LEASE AGREEMENT IS SUBJECT TO AN ASSIGNMENT OF RENTS AND SECURITY AGREEMENT MADE BY BRAE TRANSPORTATION GROUP CORPORATION TO GENERAL ELECTRIC RAILCAR SERVICES CORPORATION"

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

6A. Default; Remedies. If an event of default has occurred under the Agreement or if Assignor has defaulted under the terms of this Assignment of Rents and Security Agreement, Assignee shall have the following remedies in addition to any other remedies it may have under the Agreement, the Uniform Commercial Code, in state law or in equity;

a. to direct payment to Assignee by all parties owing money to Assignor with respect to the Sublease or the Cars, including, without limitation, Cargill, any railroad owing car hire payments and American National Bank and Trust Company of Chicago as trustee under the terms of the Trust:

b. to give notice to sublessee that Assignee is replacing Assignor as lessor under the Sublease and to continue to hold Assignor responsible for obligation as lessor under the Sublease.

No remedies provided herein or under the Agreement shall be exclusive of any other remedy available.

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

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

BRAE TRANSPORTATION GROUP CORPORATION,  
Lessee

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

Address: 160 Spear Street  
San Francisco, California 94105

GENERAL ELECTRIC RAILCAR SERVICES  
CORPORATION

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

Address: 33 West Monroe Street  
Chicago, Illinois 60603

STATE OF CALIFORNIA            )  
  )    ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of December, 1988, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of BRAE TRANSPORTATION GROUP CORPORATION and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
California residing at \_\_\_\_\_

