Counter Parts - Claude E. Harris

11879-I

[redacted]

STEPTOE & JOHNSON
1250 CONNECTICUT AVENUE
WASHINGTON, D. C. 20036

CHERYL A. SKIGIN
(202) 862-2053

RECORDATION NO. ..... Filed 1425

JUN 18 1980 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

No. 0-170A046
Date JUN 18 1980
Fee $ 50.00
ICC Washington, D. C.

June 18, 1980

Ms. Agatha Mergenovich
Interstate Commerce Commission
Room 2215 - Office of the Secretary
Washington, DC 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. § 11303 are several copies of the following document which relates to the railroad equipment described and marked in accordance with Schedule A to this letter:

Lease Agreement dated as of June 2, 1980 between Brae Corporation and Texas, Oklahoma & Eastern Railroad Company.

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

Lessor: Brae Corporation
Suite 1760--3 Embarcadero Center
San Francisco, CA 94111

Lessee: Texas, Oklahoma & Eastern Railroad Company
810 Whittington Avenue
Hot Springs, AR 71901

RECEIVED
JUN 18 1 02 PM '80
I.C.C.
FEE OPERATION BR.

It is requested that this document be filed and recorded under the names of the parties set forth above. In view of the fact that it relates to the Equipment Trust Agreement dated as of May 1, 1980 between Brae Corporation and The Connecticut Bank and Trust Company, previously recorded and assigned recordation No. 11879, it is additionally requested that this Lease Agreement be assigned the next available letter designation (which is believed to be "I") under that primary number. A check in the amount of $ 50.00 is enclosed to cover the filing fee.

Please return to the person presenting this letter your acknowledgement, fee receipt, the enclosed copies of this letter and any copies of the document not required for recordation, all stamped to indicate appropriate filing information.

Very truly yours,

Cheryl A. Skigin

mbm

Enclosures

SCHEDULE A

(To Transmittal Letter Dated June 18, 1980)

Number of Cars	Description	Mechanical Designation	Car Numbers	Physical Dimensions
200	General Purpose Boxcar 100-ton with E.O.C.	XP	TOE 3200 - TOE 3399, inclusive	50' 6" Length 9' 6" Inside Width 11' 1" Heigth

June 18, 1980

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

Cheryl A. Skigin
Steptoe & Johnson
1250 Connecticut Avenue
Washington, D. C. 20039

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/18/80 at 1:15 pm, and assigned re-recordation number(s) 11879-I

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

11879-I
RECORDATION NO. ..... Filed 1425
JUN 18 1980 - 1 15 PM
INTERSTATE COMMERCE COMMISSION

BRAE CORPORATION

LEASE AGREEMENT

LEASE AGREEMENT, made as of this 2nd day of June, 1980, between BRAE CORPORATION, a Delaware corporation, Three Embarcadero Center, Suite #1760, San Francisco, California 94111, as Lessor ("Lessor"), and TEXAS, OKLAHOMA & EASTERN RR CO., an Oklahoma corporation, 810 Whittington Avenue, Hot Springs, Arkansas 71901, as Lessee ("Lessee").

1. Scope of Agreement.

A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

C. Lessor and Lessee agree that as first users of the Cars, Lessee shall be entitled as between Lessor and Lessee to claim the investment tax credit for Federal Income Tax purposes. Lessor represents and warrants that the Cars are "New Section 38 property," within the meaning of the Internal Revenue Code; that Lessor has, or will, take all steps as requested by Lessee including the making of any election which may be required by the Internal Revenue Code or regulation thereunder that may be required to evidence assignment of the Investment Tax Credit to Lessee; and that Lessor has not taken, and will not take, any actions which will make the Cars ineligible for the Investment Tax Credit, other than the exercise of any right or remedy which Lessor may take in the event of a default by Lessee hereunder.

2. Term.

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The lease pursuant to this Agreement with respect to each Car shall commence on the date hereof and unless sooner terminated as provided herein shall continue with respect to all of the Cars described in each Schedule until 15 years after the date on which the last Car on such Schedule has been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "Extended Lease Term") with respect to all of the Cars described on each Schedule, provided, however, that Lessor or Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any Schedule by written notice delivered to the other not less then twelve months prior to the end of the Initial Lease Term or such Extended Lease Term.

3. Supply Provisions.

A. Lessor will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to Lessor that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and Lessor's determination that the Car conforms to the specifications ordered by Lessor and to all applicable governmental regulatory specifications, and if this Agreement has not then been terminated, Lessor will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by Lessor. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by Lessor as is consistent with mutual convenience and economy. Due to the nature of the railroad operations in the United States, Lessor can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, the Lease hereunder with respect thereto shall commence upon acceptance by Lessor from the manufacturer and Lessee agrees to pay to Lessor the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car (the "Initial Loading"), Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. If during any one calendar month the average utilization of all Cars falls below 78.3%, then Lessor may, by written notice to Lessee of such an event require Lessee to load the Cars leased from Lessor hereunder, prior to loading substantially similar cars leased from other parties, or purchased by Lessee or assigned by railroads or interchanged with railroads, in each case subsequent to July 12, 1979; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. Any priority loading required under this paragraph shall be commenced as soon as practicable after receipt of Lessor's notice by Lessee (but not to exceed two days) and shall continue until such time as the average utilization of all Cars shall equal or exceed 78.3% for one calendar month.

C. Additional Cars may be leased from Lessor by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by Lessor and Lessee. Notwithstanding the execution of any Schedules, including Scheduling for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's delivery schedules, financing satisfactory to Lessor and the mutual acknowledgement of the parties that the addition of such Cars is not likely to reduce Utilization of all Cars on lease to Lessee to less than 78.3% in any calendar quarter. In the event Lessor fails to obtain satisfactory financing on any Cars, Lessee shall have the option to assume Lessor's delivery position and its contracts with the manufacturers for any or all of the Cars for which Lessor is unable to arrange financing; provided, however, Lessee may not utilize such delivery position or contract to enter into a non-equity lease for such Cars. If, due to any of the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the term shall be deemed to have commenced on the date the final Car of the most recent group of Cars was delivered to Lessee.

D. Lessor and Lessee understand and agree that this Agreement has been executed and delivered concurrently with a Lease Agreement dated as of June 2, 1980 between RAILEASE INC, as Lessor, and Lessee (the "Railease Lease Agreement") and that the Cars leased pursuant to this Agreement shall have equal priority as to loading and/or usage as the railcars leased by Lessee pursuant to the Railease Lease Agreement.

4. Railroad Markings and Record Keeping.

A. Lessor and Lessee agree that on or before delivery of any Cars to Lessee, such Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such names and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, Lessor shall, during the term of this Agreement, prepare for Lessee's signature and filing of all documents relating to the registration, maintenance and record keeping functions involving the Cars and such other items of freight

equipment used in interchange service as Lessee may operate and control as of July 12, 1979 ("Other Equipment"). Such documents shall include but shall not be limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Lessor shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars and Other Equipment by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Lessor shall select.

D. All record keeping performed by Lessor hereunder and a record of all payments, charges and correspondence related to the Cars and Other Equipment shall be separately recorded and maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time during Lessor's regular business hours. Lessee shall supply Lessor with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as Lessor may reasonably request.

5. Maintenance, Taxes and Insurance.

A. Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term, and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to Lessor, for and during the lease term of each Car, all of its right, title and interest in any warranty in respect of the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by Lessor at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to Lessor.

B. Except as provided above, Lessor shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Lessor, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad

tracks as may be reasonably requested by Lessor. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee, at Lessor's expense, may make running repairs at the AAR billing rate to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Lessor's prior written consent. If Lessee makes an alteration, improvement or addition to any car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with Lessor.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules - Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance or maintaining a self-insurance program satisfactory to Lessor. In the event Lessee elects to carry insurance, Lessee shall furnish to Lessor concurrently with the execution hereof, certificates of insurance evidencing bodily injury and property damage insurance signed by an independent insurance broker with 30 days written notice of cancellation to Lessor. All insurance shall be taken out in the name of Lessee and Lessor (or its assignee) as their interests may appear.

D. Lessor agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues which are retained by Lessee. Lessor shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. Lessor and Lessee shall each pay the sales or use taxes imposed on the car hire revenues earned by them respectively under the terms of this Agreement. Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns. Notwithstanding the above, Lessee, at its sole expense, agrees to pay and bear all property and/or ad valorem taxes due or payable with respect to the Cars during the term of the Lease.

6. <u>Lease Rental</u>.

A. (i) Lessee agrees to pay Lessor annual rent for the use of the Cars pursuant to this Agreement computed as follows:

(a) In the event that Utilization, as defined in Article 6A(ii), for all Cars on an aggregate basis for the applicable calendar year is greater than 78.3%, an amount equal to:

(1) All straight (non-incentive) car hire payments earned by the Cars during the calendar year multiplied by a fraction the numerator of which is 78.3% and the denominator of which is the Utilization for the Cars for such calendar year, as defined in Article 6A(ii) (hereinafter called the "Base Rental"); plus

(2) All mileage payments earned by all Cars.

(b) In the event that Utilization, as defined in Article 6A(ii), for all Cars on an aggregate basis for the applicable calendar year is equal to or less than 78.3%, an amount equal to:

(1) All straight (non-incentive) car hire payments earned by the Cars during the calendar year; plus

(2) All mileage payments earned by the Cars; plus

(3) All demurrage earned by the Cars from persons other than Weyerhaeuser Company and its affiliates, but only to the extent necessary to cause the aggregate rental paid by Lessee under this Agreement for such calendar year to equal the Base Rental.

(c) All revenue earned by each of the Cars prior to its Initial Loading shall be paid to Lessor; provided, however, if Initial Loading has not occurred within 45 days after delivery of a Car by the manufacturer, Lessor and Lessee shall share revenues from such Cars as if Initial Loading had occurred on the 46th day after delivery from the manufacturer in accordance with Article 6A(i)(a) and (b) above.

(ii) "Utilization" of Cars for any period shall mean a fraction the numerator of which is (X) the aggregate number of Car Hours in such period that car hire payments are earned by Cars and the denominator of which is (Y) the aggregate number of Car Hours during such period. "Car Hour" shall mean one hour during which one Car is on lease hereunder, commencing upon the Initial Loading of such Car.

(iii) The rent payable by Lessee to Lessor under this Section 6A shall be derived from the revenues earned by the Cars in the following order: (1) incentive Car hire payments, (2) straight car hire payments, (3) mileage charges, (4) demurrage, and (5) other. In no event shall Lessee be required to pay rent to Lessor under this Agreement in an amount in excess of the total revenues earned by the Cars.

B. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules - Freight and the appropriate amount due as a result thereof is received by Lessor, the damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that car hire Payments ceased.

C. The calculations required above shall be made within five months after the end of each calendar year. However, to enable Lessor to meet its financial commitments, Lessor may, prior to such calculations, retain the Payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due Lessor, Lessor shall, within three months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly basis the amount due it pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

D. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 78.3% Lessor may, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine; provided, however, that prior to such termination Lessee may have the option of paying Lessor an amount equal to the difference between the amount Lessor actually received during said calendar quarter and the amount Lessor would have received had a utilization rate for the Cars of 78.3% been achieved.

E. If Ex Parte 334, as issued by the ICC on April 22, 1979, is modified such that the hourly per diem is less than that published in April 22, 1979, then the following formula shall be in effect to revise the revenue sharing and recall utilization rates (78.3%) in each place as shown in the above Lease. However, such increase shall not exceed 100% of the revenues available.

$$\frac{\text{Hourly per diem as of April 22, 1979}}{\text{Revised per diem if less than numerator}} \times 78.3\%$$

F. Subsequent to the Initial Loading, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. Lessor will exercise this option only if it believes that Utilization of the Cars will be less than 78.3% for the following 90 days.

7. Possession and Use.

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that Cars be returned to such party.

B. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

C. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule hereto. Lessee will promptly, at its expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default.

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days after written notice.

(iii) Any act of insolvency or bankruptcy by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of filing or appointment.

(v) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the laws of the Interstate Commerce Act or the laws of any state, if such actions, in the opinion of Lessor, are likely to decrease Utilization below 78.3%.

B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement (which termination shall not release lessee from any obligation to pay any and all rent or other sums that may then be due or accrued to such date to Lessor or from the obligation to perform any duty or discharge any other liability occurring prior thereto) and may:

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to bear Lessee's costs and expenses, including reasonable attorneys' fees) in securing such enforcement, or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars whereupon all right and interest of Lessee in the Cars shall terminate, and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee.

9. Termination.

Upon termination of this Agreement as to any Car, Lessee will surrender possession of such Car to Lessor by delivering the same to Lessor. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the

placing thereon of such markings as may be designated by Lessor, either, at the option of Lessor, (1) by Lessee upon return of such Car to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Car is not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Lessor. If such Car is on the railroad line of Lessee upon such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five (5) working days remove Lessee's railroad markings from such Car and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to sixty (60) days free storage on its railroad tracks for Lessor or the subsequent Lessee of any terminated Car. If any Car is terminated pursuant to Sections 6D, 6E or 8 hereof prior to the end of its lease term, Lessee shall be liable to Lessor for all costs and expenses incurred by Lessor to repaint such Car and place thereon the markings and name or other insignia of Lessor's subsequent lessee.

10. Indemnities.

Lessor will defend, indemnify and hold Lessee harmless from and against (1) any and all claims based upon loss or damage to the Cars, usual wear and tear excepted, unless occuring while Lessee has physical possession of the Cars and (2) any other type of claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (other than loss of physical damage to the Cars as provided in (1) above) unless occurring through the fault of Lessee, including, without limitation, claims with respect to the construction, purchase, delivery of the Cars to Lessee's railroad line, ownership, leasing, return, use, maintenance, repair, replacement, operation or condition thereof (whether defects, if any, are latent or are discoverable by Lessor or Lessee).

11. Representations, Warranties and Covenants.

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualifed and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has not, during the years 1964-1968, built, leased or purchased or nonequity leased new or rebuilt freight cars.

12. Inspection.

Lessor shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Lessor of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to Lessor upon request, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

13. Miscellaneous.

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Lessor assign this Agreement or any of its rights hereunder or sublease the Cars to any

party, and any purported assignment or sublease in violation hereof shall be void; provided, however, that Lessee shall not be prohibited from placing Cars in assigned service at another majority-owned common carrier railroad subsidiary of Weyerhaeuser Company. Lessee hereby agrees that any such assignment may be with respect to all or part of the Cars to be leased hereunder and may relate to all or part of the Cars on any Schedule hereto. Any assignment of this Agreement by Lessor to an owner or secured party shall not subject that owner or secured party to any of Lessor's obligations hereunder. Those obligations shall remain enforceable by Lessee solely against Lessor.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 hereof and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or three days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BRAE CORPORATION	TEXAS, OKLAHOMA & EASTERN RR CO.
By Lawrence W. Bivins	By John G. Kauffman
Title Vice President	Title DIRECTOR
Date June 11, 1980	Date JUNE 16, 1980

EQUIPMENT SCHEDULE NO. ONE

BRAE CORPORATION ("Lessor") hereby leases the following railcars to TEXAS, OKLAHOMA & EASTERN RR CO. ("Lessee"), pursuant to that certain Lease Agreement dated as of June 2, 1980 (the "Lease").

Number of Cars	Description	A.A.R. Designation	Car Numbers	Physical Dimensions
200	General Purpose Boxcar 100-ton with E.O.C.	XP	TOE 3200 through TOE 3399, inclusive.	50' 6" Length 9' 6" Inside Width 11' 1" Height

Lessor and Lessee hereby incorporate by reference all of the terms, conditions and provisions of the Lease in this Schedule.

IN WITNESS WHEREOF, the parties have each caused their respective duly authorized officers to have executed this Schedule as of the date first written above.

BRAE CORPORATION

By Lawrence W. Busick

Title Vice President

Date June 16, 1980

TEXAS, OKLAHOMA & EASTERN RR CO.

By John G. Kauffman

Title DIRECTOR

Date JUNE 16, 1980

STATE OF _____)
COUNTY OF _____)

On this _____ day of _____, 19___, before me personally appeared _____, to me personally known, who being by me duly sworn says that such person is _____ of _____, and that the foregoing Lease Agreement, Rider(s) No. _____ and Equipment Schedule(s) No. _____ were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

_____ [seal]
Notary Public

STATE OF CALIFORNIA)
CITY AND COUNTY OF SAN FRANCISCO)

On this 11th day of June, 1980, before me personally appeared Lawrence W. Briscoe, to me personally known, who being by me duly sworn says that such person is Vice President of BRAE CORPORATION, and that the foregoing Lease Agreement, Rider(s) No. _____ and Equipment Schedule(s) No. _____ were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Susan M. Codeglia [seal]
Notary Public

OFFICIAL SEAL
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NOTARY PUBLIC
PRINCIPAL
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