

P. E. MYERS & ASSOCIATES  
*Practice Before The Interstate Commerce Commission*  
SUITE 348, PENNSYLVANIA BUILDING  
425 THIRTEENTH STREET, N. W.,  
WASHINGTON, D. C. 20004

(202) 737-2188

*Registered Practitioners*  
PAULINE E. MYERS  
MARK D. RUSSELL

RECORDATION NO. 13223 425

August 27, 1981

AUG 27 1981 -2 05 PM

1-239A055

INTERSTATE COMMERCE COMMISSION

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

No. [Stamp]  
Date AUG 27 1981  
Fee \$50.00  
Washington, D. C.

RECEIVED  
AUG 27 1 59 PM '81  
FEE OPERATING BR.

Dear Secretary:

I have enclosed an original and one copy/counterpart of the document described below, to be recorded pursuant to Section 11303 of Title 49 U.S. Code.

This document is a Lease Agreement, a primary document, dated October 21, 1980. The names and addresses of the parties to the document are as follows:

LESSOR: Genesee & Wyoming Railroad Company  
3846 Retsof Road  
Retsof, NY 14539

LESSEE: Brae Railcar Management, Inc.  
3 Embarcadero Center  
San Francisco, CA 94111

A description of the equipment covered by the document follows:

- AAR Mechanical Designation - LO; No. MILW; 50 Cars.
- AAR Mechanical Designation - LO; No. GNWR; 100 Cars.
- AAR Mechanical Designation - LO; No. GNWR; up to 75 Cars.

A fee of \$50.00 is enclosed. Please return the original. Your cooperation in this matter is greatly appreciated.

Yours very truly,

*Pauline E. Myers*  
Pauline E. Myers

slt  
Enclosures

*Counterpart - M. Catherine Hornbeck*

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

OFFICE OF THE SECRETARY

Pauline E. Myers & Associates  
Suite 348, Pennsylvania Bldg.  
425 Thirteenth St. N. W.  
Washington, D. C. 20004

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/27/81 at 2:05PM, and assigned recordation number(s). 13232

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 13232 Filed 1428

AUG 27 1981 - 2 05 PM

INTERSTATE COMMERCE COMMISSION

BRAE RAILCAR MANAGEMENT, INC.

LEASE AGREEMENT

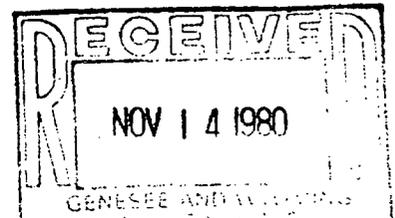
THIS AGREEMENT, dated as of October 21, 1980 by and between GENESEE & WYOMING RAILROAD COMPANY, having its principal office at 3846 Retsof Road, Retsof, New York 14539 (hereinafter called "Lessor"), and BRAE RAILCAR MANAGEMENT, INC., a California corporation (hereinafter called "Lessee"),

RECITAL

Lessee has entered into or will enter into a sublease agreement for the railroad cars listed on riders attached hereto with CHICAGO, MILWAUKEE, ST. PAUL, AND PACIFIC RAILROAD (hereinafter called "Sublessee"), a copy of which sublease agreement is attached hereto as Exhibit A (hereinafter called the "Sublease"). The rights and obligations of Lessor and Lessee, one to the other, under this Agreement correspond to, and are substantially similar to, the rights and obligations of Lessee and Sublessee one to the other, under the Sublease. Lessor and Lessee intend that all rental payments, and any other amounts, paid by Sublessee to Lessee under the terms of the Sublease shall be passed through, without reduction, to Lessor by Lessee, and, where specifically indicated in this Agreement, that Lessee shall be obligated to pay rental, or any other amount, due Lessor, only to the extent that Lessee has been paid rental or other amounts by Sublessee, under any corresponding provisions of the Sublease which are substantially similar to the provisions of this Agreement (hereinafter called "Corresponding Provisions").

WITNESSETH:

1. Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use upon the terms and conditions herein set forth, the cars covered by the riders attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties (the "Cars"). Each such rider shall set forth the number of Cars, the rental rate, term of use, car numbers, and other pertinent information that may be desired by both parties. All Cars leased pursuant to such riders, and accepted by Lessee, are subject to the terms of this Agreement.



2. Lessor agrees to deliver each of the Cars to Lessee at the point or points set forth in the rider on which each Car is listed. Lessor's obligation as to such delivery shall be subject to all delays resulting from causes beyond its control. ~~Lessee agrees that none of the Cars shall be used beyond the boundaries of the continental United States except with the prior written consent of Lessor.~~ Lessee agrees that if any of the Cars are used outside of the continental United States, Lessee shall reimburse Lessor for any customs, duties, taxes, investment tax credit recapture (in any amount and by any party including but not limited to Lessor or the owner of the Car), or other expenses resulting from such use, (including such amount as may be necessary to compensate any such party for the inclusion of any tax related indemnity payment provided for in this paragraph in the indemnified party's taxable income).

3. To the extent that Lessee has received of rental payments from Sublessee under Corresponding Provisions, Lessee agrees to pay the rental charges specified for each Car in the rider on which such Car is listed, from the date of delivery thereof and until such Car is returned to Lessor. Such rental charges shall be paid to Lessor at its principal office, 3846 Retsof Road, Retsof, New York 14539 in advance on the first day of each month, prorating, however, any period which is less than a full month.

4. Each of the Cars shall be subject to inspection by Sublessee on behalf of Lessee upon delivery to Lessee. Failure to report any defect in the Car at the time of delivery of the Car or the loading of the Car by Sublessee or at its direction, or any latent defect in the Car within a reasonable time after delivery of the Car, shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition thereof for the purpose of transporting the commodities then and thereafter loaded therein or thereon.

5. Lessee shall keep all records pertaining to the movement of the Cars carrying marks other than marks of Lessor to the extent that such records have been kept by Sublessee under Corresponding Provisions.

6. Lessee shall promptly notify Lessor upon receipt by Lessee of knowledge of any damage to any of the Cars. Lessor agrees to pay for the maintenance and repair of the Cars, except as hereinafter provided. Lessee shall not repair, or authorize the repair of, any of the Cars without Lessor's prior written consent, except that running repairs (as specified in the Association of American Railroads Rules for Interchange) may be performed without prior written consent. The amount Lessor will pay for such running repairs shall not be in excess

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\*Lessee shall use its best efforts to provide that the Cars will not be used predominantly outside the United States within the meaning of Section 48 (a) (2) (A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder.

of the basis, in effect at the time the repair is made, provided by the Association of American Railroads. If any Car becomes unfit for service and shall be held in a car shop for repairs, the monthly rental with respect to such Car shall abate from and after the date of arrival at shop (or five days after the Lessee has notified the Lessor that said Car is in need of repair if the Lessor has not provided disposition for said Car during this five day period) until such Car is released from the shop or until another Car (of the same type and capacity) shall have been placed in the service of Lessee by Lessor in substitution for such Car, and the rental in respect to such substituted car shall commence upon delivery of such substituted Car to Lessee. Lessor and Lessee shall immediately execute an additional rider for attachment hereto identifying such substituted Cars. It is understood that no rental credits will be issued for Cars in a shop for repairs which are Lessee's responsibility. Lessee shall be responsible for all charges and costs incurred in shipping the Cars into a shop for repairs or required modifications and back to Lessee to the extent that Lessee has received reimbursements for all such charges and costs from Sublessee under Corresponding Provisions.

7. In the event any Car is totally damaged or destroyed, the rental with respect to such Car shall terminate upon receipt by Lessor of notification thereof, and in the event any Car is reported to be bad ordered and Lessor elects to permanently remove such Car from Lessee's service rather than have such Car taken to a car shop for repairs, the rental with respect to such Car shall terminate upon receipt by Lessor of notification that such Car was bad ordered. Lessor shall have the right, but shall not be obligated, to substitute for any such Car another Car of the same type and capacity and the rental in respect to such substituted Car shall commence upon delivery of such substituted Car to Lessee. Lessor and Lessee shall immediately execute an additional rider for attachment hereto identifying any such substituted Car.

8. In the event that any of the Cars, or the fittings, appliances or appurtenances thereto, shall be damaged, ordinary wear and tear excepted, or destroyed either as a result of the acts of any of the Lessee's employees, agents, sublessees (including but not limited to Sublessee), or customers or from any commodity or other material loaded therein or thereon, Lessee hereby indemnifies Lessor (i) from any such loss or damage, to the extent that Lessee has received indemnification from any such loss or damage, from Sublessee under Corresponding Provisions, but not for such responsibility which is that of other parties as defined under the Association of American Railroads Rules for Interchange, and (ii) from any attorneys' fees incurred in connection therewith.

9. Lessor shall not be liable for any loss of or damage to commodities, or any part thereof, loaded or shipped in or on the Cars, and Lessee hereby indemnifies Lessor against, and saves it harmless from any such loss or damage, to the extent that Lessee is indemnified and held harmless from such loss or damage by Sublessee under Corresponding Provisions.

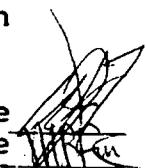
10. Lessee, to the extent that it has received Corresponding payment from Sublessee under Corresponding Provisions, shall either replace or reimburse Lessor for the cost of replacing any appliance or removable part, if destroyed, damaged, lost, removed or stolen, unless the railroad transporting the cars has assumed full responsibility for such loss or damage, or unless such loss or damage results from the negligence or omission of Lessor, its agents or employees.

11. The application, maintenance and removal of interior protective lining in any of the Cars is to be performed by and at the expense of Lessee, to the extent that it has received reimbursement for such expense from Sublessee under Corresponding Provisions, unless otherwise specifically provided for in the applicable rider. Prior to any such application, maintenance or removal, Lessee shall consult with and obtain the written consent of Lessor. It is understood that the interior lining of each Car is to be maintained in the same condition as it was upon delivery hereunder ordinary wear and tear excepted.

12. Lessee hereby indemnifies and holds Lessor harmless from and against any loss, liability, claim, damage or expense (including, unless Lessee assumes the defense, the reasonable cost of investigating and defending against any claim for damages) arising out of or in connection with the use of the Cars during the term of this Agreement to the extent that Lessee has received indemnification and been held harmless by Sublessee under Corresponding Provisions, excepting, however, any loss, liability, claim, damage or expense which accrues with respect to any of the Cars; (i) while such Car is in a repair shop undergoing repairs; (ii) which is attributable to the negligence or omission of Lessor, its agents or employees; or (iii) for which another railroad or railroads have assumed full responsibility, including investigating and defending against any claim for damages. Notwithstanding the foregoing Lessee hereby indemnifies and holds Lessor harmless from and against any loss, liability, claim, damage or expense (including unless Lessee assumes the defense, the reasonable cost of investigating and defending against any claim for damages) which accrues with respect to any of the Cars while such Car is in a repair shop, owned or controlled by Sublessee, undergoing repair.

13. The Cars shall bear the markings described in the applicable rider and no other lettering or marking of any kind shall be placed upon any of the Cars, except with the prior written consent of Lessor.

to use best efforts to ensure that

14. Lessee agrees <sup>and</sup> the Cars shall not be loaded in excess of the load limit stenciled thereon. ~~Lessee agrees~~ that the Cars will not be used to carry commodities which would cause excessive maintenance and repair to the Cars, including but no limited to cement, bauxite, lamp black and non-prilled urea. 

15. Lessee, to the extent it has received reimbursement from Sublessee under Corresponding Provisions, shall be liable for any demurrage, track storage or detention charge imposed in connection with any of the Cars as well as loss of or damage to any Car while on any private siding or track or on any private industrial railroad or in the custody of any carrier not subject to the Association of American Railroads Rules for Interchange.

16. Lessee shall make no transfer or assignment of its interest under this Agreement in and to the Cars without Lessor's prior written consent. In the event of transfer or assignment by operation of law of any interest of Lessee under this Agreement in and to the Cars, any consideration received by Lessee for such transfer or assignment which is in excess of the rent provided hereunder shall be deemed additional rent hereunder and shall be payable directly to Lessor. Lessee shall continue to be liable to Lessor under all conditions and terms of this Agreement to the extent that Sublessee is liable to Lessee under Corresponding Provisions. Lessee shall be obligated to pay rental, due Lessor under this Agreement, only to the extent that Lessee has received payment of rental from Sublessee under Corresponding Provisions. No right, title or interest in any of the Cars shall vest in Lessee by reason of this Agreement or by reason of the delivery to or use by Lessee by reason of this Agreement or by reason of the delivery to or use by Lessee of the Cars, except the right to use the Cars in accordance with the terms of this Agreement and the rules specified in the Association of American Railroads Rules for Interchange.

17. The occurrence of any of the following shall constitute an Event of Default: (i) the failure by Lessee to make any payment of fixed or additional rent or other amount required to be paid by Lessee under this Agreement within ten days after the date such payment is due; (ii) any breach by Lessee of any agreement or covenant contained in this Agreement, which is not cured within 30 days after notice thereof from Lessor to Lessee.

Upon the occurrence of any Event of Default, Lessor may, at its option: (i) proceed by appropriate court action or actions either at law or in equity to enforce specific performance by Lessee of this Agreement and/or to recover damages for breach hereof; or (ii) terminate this Agreement, and recover damages for breach thereof, whereupon all rights of Lessee to the use of the Cars shall absolutely cease and terminate as though this Agreement had never been made and all fixed rent not theretofore due and payable with respect to the Cars shall forthwith become due and payable to the extent that Lessee has received payment of rent from Sublessee under Corresponding Provisions.

It is expressly understood that if the Sublessee is ordered by its Reorganization Court to terminate the Sublease in connection with the Discontinuance of substantially all service or the liquidation of substantially all of the Sublessee's assets, this lease shall terminate, the Lessee shall surrender possession of all the cars to the Lessor, and the Lessor shall have no claim against the Lessee other than for rental charges and other obligations which were paid by Sublessee to Lessee up to the date of such surrender of possession.

18. Upon the termination of each rider, Lessee agrees, subject to the provisions of paragraph 8 of the above, to return the Cars to Lessor at the final unloading point or at an interchange point designated by Lessor on the tracks of the Sublessee, in the same or as good condition as received, ordinary wear and tear excepted free from all charges and liens which may result from any act or default of Lessee, its agents, sublessees (including but not limited to Sublessee), or customers and free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any Car is not returned to Lessor free from all such charges and liens and free from such accumulations or deposits, Lessee shall reimburse Lessor for any expense incurred in removing such charges and liens or in cleaning such Car to the extent that Lessee has received reimbursement for such expenses from Sublessee under Corresponding Provisions.

19. Lessor agrees to assume responsibility for and to pay all property taxes levied upon the Cars, and to file all property tax reports relating thereto. Lessee agrees to assume responsibilities for and to pay applicable state sales, use or similar taxes resulting from the lease or use of the Cars (other than sales tax payable on the purchase of said Cars by Lessor), to the extent that Lessee has received reimbursement for such taxes from Sublessee under Corresponding Provisions.

20. Lessor's rights hereunder may be assigned, mortgaged or otherwise transferred, either in whole or in part, and Lessor may assign, mortgage or other transfer title to any Car with or without notice to Lessee, but subject to Lessee's rights hereunder. This Agreement and all of Lessee's rights under this Agreement, and all rights of any person who claims rights under this Agreement through Lessee are subject and subordinate to the terms, covenants and conditions of all chattel mortgages, conditional sales agreements, assignments, equipment trust agreements, finance leases or other security documents covering the Cars or any of them heretofore or hereafter created and entered into by Lessor and to all of the rights of any such chattel mortgagee, assignee, trustee, owner or other holder of interest in the Cars. In the event of any such assignment, mortgage or transfer, Lessee agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's

interest in and to the Cars and this Agreement, and to confirm the subordination provisions contained in this paragraph. Lessee acknowledges and agrees that by execution of this Agreement it does not obtain, and by payment and performance hereunder it will not obtain title to any Car or any interest therein, except solely as lessee hereunder. Lessee shall keep the Cars free from all encumbrances, liens and security interests of all kinds (other than those granted by Lessor), which could adversely affect Lessor's title thereto.

21. This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives, and shall remain in full force and effect from the date hereof until termination.

In the event that any Car is not redelivered to Lessor on or before the date of expiration of the original lease term set forth in the rider on which such Car is listed, at Lessor's sole option, the term hereof as to such Car may be deemed to be extended on a month to month basis (hereafter "Holdover Period"), and all of the obligations of Lessee under this Agreement with respect to such Cars shall remain in full force and effect until all such Cars are redelivered to Lessor. Lessor may at any time during the Holdover Period terminate this Agreement and take possession of the Cars upon demand after 30 days written notice to Lessee.

22. Both parties agree to execute the documents contemplated by this transaction and such other documents as may reasonably be required in furtherance of this Agreement including but not limited to such documents as Lessor may deem necessary or desirable for purposes of recording or filing to protect the interest of Lessor in the Cars. In the event Lessee subleases any of the Cars to any Party, Lessee will provide to Lessor, upon Lessor's request, an original executed copy of such sublease agreement in form suitable for recording with the Interstate Commerce Commission.

23. This Agreement shall be governed by and construed according to the laws of the State of Illinois.

24. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the following addresses: if to Lessor: 3846 Retsof Road, Retsof, New York 14539. If to Lessee: 3 Embarcadero Center, San Francisco, California 94111, or to such other address as the parties hereto may provide in writing.

25. This Lease, together with the attached Riders and Exhibit A, constitutes the entire agreement between Lessor and Lessee and shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

26. Lessor hereby consents to the Sublease attached hereto as Exhibit A. Lessee agrees that upon the occurrence of any Event of Default Lessor shall direct Sublessee to make all payments of all sums due or to become due under the Sublease with respect to the Cars, including without limitation, payment of rental, and payments for the Cars lost, destroyed or damaged beyond repair, directly to Lessor. Any such payments received by Lessee after the occurrence of an Event of Default shall be received as an agent for the Lessor; shall be held in trust by Lessee for Lessor; shall be delivered to Lessor in the same medium as received by the Lessee; shall under no circumstance at any time be commingled with any funds of Lessee, and shall be forwarded to Lessor on the day of their receipt by Lessee.

Upon the occurrence of an event which with notice, lapse of time, or both, would be an "event of default" under the Sublease, Lessee shall irrevocably constitute and appoint Lessor its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to enforce at Lessors sole expense, any right of Lessee under the Sublease with respect to the Cars and, at Lessor's sole expense, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable under the Sublease with respect to the Cars with full power to settle, adjust or compromise any claim thereunder as fully as the Lessee could itself do, and to endorse in the name of the Lessee on all negotiable instruments given in payment or in part payment thereof, and, at Lessor's sole expense, in its discretion, to file any claim or take any other action or proceeding, either in its own name or in the name of the Lessee, or otherwise, which Lessor may deem necessary or appropriate to collect any and all sums which may be or become due or payable under the Sublease. As to the determination as to whether there has been an occurrence of an event which with notice, lapse of time or both, would be an "event of default" under the Sublease, Lessor and Lessee shall confer and attempt to reach agreement, but if no agreement can be reached, Lessor shall make such determination in its sole and absolute discretion.

In the event Lessor, on behalf of Lessee under this paragraph 26, terminates the Sublease as to some or all of the Cars, then this Lease Agreement shall be deemed terminated as to any such Cars. Lessee may not terminate the Sublease with respect to the Cars listed on Rider No. 1, ~~attached hereto~~, without the prior express written consent of Lessor.

Nothing herein contained shall be deemed to give Lessor any rights, powers or remedies as against Lessee, with respect to an "event of default" under the Sublease, and it is the express understanding of the parties hereto that Lessor's sole recourse, upon the occurrence of an event which with notice, lapse of time, or both, would be an "event of default" under the Sublease, shall be against Sublessee, as provided herein.

No delay by Lessor in exercising, or failure to exercise, or partial or single exercise by Lessor of any right or power hereunder shall preclude any other or further exercise thereof or of any other right or power.

The rights granted to Lessor in this paragraph 26 are granted upon the express understanding and agreement that Lessor assumes no responsibility for the performance of the Lessee's obligations under the Sublease; shall in no event be liable to Sublessee for the failure on the part of the Lessee to comply with or perform any of Lessee's obligations under the Sublease; shall in no way be held to have assumed or become liable for compliance with or performance of any covenant binding upon Lessee; shall not be obligated to collect any of the rentals or other sums of money due under the Sublease; and the failure on the part of Lessor to collect the same shall not in any way effect any indebtedness or liabilities of Lessee to Lessor. Lessee shall continue to be bound by all obligations and covenants of the Sublease.

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

LESSOR:

GENESEE & WYOMING RAILROAD COMPANY

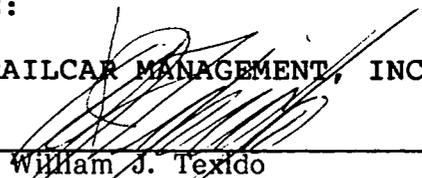
By 

Title Chairman

Date 11/18/80

LESSEE:

BRAE RAILCAR MANAGEMENT, INC.

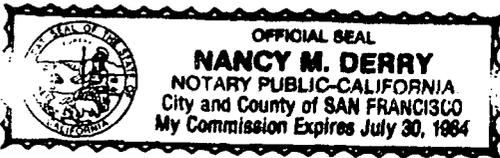
By   
William J. Texido

Title V. President

Date 12-5-80

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN FRANCISCO

On the 5<sup>th</sup> day of December, 1980,  
before me personally appeared William J. Sepede, to  
me known, who, being by me duly sworn, did depost and say that  
he is the Vice President of BRAE RAILCAR MANAGEMENT,  
INC., the corporation which executed the above instrument;  
that he signed his name to the above instrument by authority  
of the Board of Directors of said corporation; and that he  
acknowledged that the execution of the above instrument was  
the free act and deed of such corporation.



Nancy M. Derry  
Notary Public

[seal]

My Commission Expires: July 30, 1984

STATE OF CONNECTICUT )  
 )  
COUNTY OF FAIRFIELD )

On this 8<sup>th</sup> day of DECEMBER, 1980,  
before me personally appeared MORTIMER B. FULLER, III,  
to me personally known, who, being by me duly sworn, did depost  
and say that he is the CHAIRMAN of  
GENESEE AND WYOMING RAILROAD COMPANY, the corporation  
which executed the above instrument, that he signed his name  
to the above instrument by authority of the Board of Directors  
of said corporation; and that he acknowledged that the execution  
of the above instrument was the free act and deed of such corporation.

Gretchen M. Koopman  
Notary Public

GRETCHEN M. KOOPMAN  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1985

[seal]

My Commission Expires: 3/31/85

RIDER NO. 1

1. Term of Agreement

The term of this Agreement as to each Car shall begin on the date such Car reaches the delivery point specified in Item 4 below and terminate 48 months from the end of the calendar month in which this date occurs.

2. Optional Shorter Term

Lessor may, in its sole discretion, elect to lease the Cars for a shorter term, which term shall terminate 36 months from the end of the calendar month in which the last Car was delivered (the "Last Delivery Date"). Lessor shall exercise its right to elect such shorter term by giving six months written notice to Lessee, which notice may, in no event, be given later than 30 months from the end of the calendar month in which the Last Delivery Date occurs. Such election shall be deemed to be a consent to the termination of the Sublease with respect to the Cars in this Rider No. 1.

3. Additional Rent

For each mile in excess of  $\frac{38,000 \times \text{days in service}}{365}$  that each car covered by this Rider travels in a calendar year, there will be an additional charge of \$0.020.

4. Delivery Point

Lessor shall deliver the Cars to Lessee at the following location or locations:

F.O.B. either Chicago, Illinois or  
Louisville, Kentucky



**RIDER NO. I**

**EQUIPMENT SCHEDULE**

GENESEE & WYOMING RAILROAD COMPANY, or its assignee ("Lessor") hereby leases the following Cars to BRAE RAILCAR MANAGEMENT, INC. ("Lessee") on the terms and conditions contained in the Lease Agreement to which this Schedule is attached.

AAR Mech. Design	Description	Numbers	Length	Inside Width	Height	Width	Number of Cars	Monthly Fixed Rent	Lease Period
LO	4750 cubic foot covered hoppers	MILW	(Specification Documents are attached)				50	\$505.00	48 mon

GENESEE & WYOMING RAILROAD COMPANY

By *MMB*

Title Chairman

Date 11/18/80

BRAE RAILCAR MANAGEMENT, INC.

By *[Signature]*

William J. Texido

Title President

Date December 5, 1980

RIDER NO. 2

1. Term of Agreement

The term of this Agreement as to each car shall begin on the date such car reaches the delivery point specified in Item 4 below and terminate June 1, 1981.

2. Optional Longer Term

Lessee may, in its sole discretion, elect to lease the Cars for an additional term commencing June 2, 1981 and terminating December 31, 1983. Lessee's right to elect such additional term for such Cars shall be exercised by giving Lessor 30 days written notice, which notice may in no event be given later than May 1, 1981.

3. Additional Rent

For each mile in excess of  $\frac{38,000 \times \text{days in service}}{365}$  that each car covered by this Rider travels in a calendar year, there will be an additional charge of \$0.020.

4. Delivery Point

Lessor shall deliver the cars to Lessee at the following location or locations:

An interchange point of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company which shall be mutually agreed upon by Lessor and Lessee.

RILER NO. 2

EQUIPMENT SCHEDULE

GENESEE & WYOMING RAILROAD COMPANY, or its assignee ("Lessor") hereby leases the following Cars to BRAE RAILCAR MANAGEMENT, INC. ("Lessee") on the terms and conditions contained in the Lease Agreement to which this Schedule is attached.

AAR Mech. Design	Description	Numbers	Dimensions Inside	Length	Width	Height	Number of Cars	Monthly Fixed Rent	Lease Period
LO	4550 cubic foot covered hoppers	GNWR					100	\$495.00	10/80-6/81

(Specification Documents are attached)

GENESEE & WYOMING RAILROAD COMPANY

By *William J. Texido*  
 Title CHAIRMAN  
 Date 11/18/80

BRAE RAILCAR MANAGEMENT, INC.

By *[Signature]*  
 Title President  
 Date December 5, 1980

RIDER NO. 3

1. Term of Agreement

The term of this Agreement as to each car shall begin on the date such car reaches the delivery point specified in Item 4 below and terminate June 1, 1981.

2. Optional Longer Term

Lessee may, in its sole discretion, elect to lease the Cars for an additional term commencing June 2, 1981 and terminating December 31, 1983. Lessee's right to elect such additional term for such Cars shall be exercised by giving Lessor 30 days written notice, which notice may in no event be given later than May 1, 1981.

3. Additional Rent

For each mile in excess of 38,000 x days in service that each

365

car covered by this Rider travels in a calendar year, there will be an additional charge of \$0.020.

4. Delivery Point

Lessor shall deliver the cars to Lessee at the following location or locations:

An interchange point of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company which shall be mutually agreed upon by Lessor and Lessee.

RILER NO. 3

EQUIPMENT SCHEDULE

GENESEE & WYOMING RAILROAD COMPANY, or its assignee ("Lessor") hereby lease, the following cars to BRAE RAILCAR MANAGEMENT, INC. ("Lessee") on the terms and conditions contained in the Lease Agreement to which this Schedule is attached.

Car Design	Description	Numbers	Dimensions Inside			Number of Cars	Monthly Fixed Rent	Lease Period
			Length	Width	Height			

1	4550 cubic foot covered hoppers	GNWR				Up to 75 (Exact number to be determined after 11/10/80)	\$495.00	1/81-5/81
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(Specification Documents are attached to Rider No. 2)

GENESEE & WYOMING RAILROAD COMPANY

*William J. Texido*

Title CHAIRMAN

Date 11/18/80

BRAE RAILCAR MANAGEMENT, INC.

By *[Signature]*

Title President

Date December 5, 1980

BRAE RAILCAR MANAGEMENT, INC.

LEASE AGREEMENT

THIS AGREEMENT, dated October 21, 1980 by and between BRAE RAILCAR MANAGEMENT INC. a California corporation (hereinafter called "Lessor"), and Richard B. Ogilvie, Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, with its principal place of business at 516 West Jackson Boulevard, Chicago, Illinois 60606 (hereinafter called "Lessee"),

WITNESSETH:

1. Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use upon the terms and conditions herein set forth, the cars covered by the riders attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties, and any and all other cars delivered to and accepted by Lessee. Each such rider shall set forth the number of cars, the rental rate, term of use, car numbers, and other pertinent information that may be desired by both parties. All cars leased pursuant to such riders, or otherwise delivered to and accepted by Lessee, are subject to the terms of this Agreement.

2. Lessor agrees to deliver the cars to Lessee at a point or points designated by Lessee. Lessor's obligation as to such delivery shall be subject to all delays resulting from causes beyond its control. Lessee agrees to use the cars exclusively in its own service, except as hereinafter provided, and none of the cars shall be shipped beyond the boundaries of the United States or Canada except with the prior written consent of Lessor. Lessee agrees that if any of the cars are used outside of the continental United States, Lessee shall reimburse Lessor for any customs, duties, taxes, investment tax credit reductions or other expenses resulting from such use.

3. Lessee agrees to pay the rental charges specified in Rider No. 1 with respect to each of the cars from the date of delivery thereof and until such car is returned to Lessor. Such rental charges shall be paid to Lessor at its principal office, 3 Embarcadero Center, San Francisco, California 94111 in advance on the first day of each month, prorating, however, any period which is less than a full month.

4. Each of the cars shall be subject to Lessee's inspection upon delivery to Lessee. Failure to report any defect in the car within a reasonable time after delivery of the car or the loading of each such car by Lessee or at its direction shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition thereof for the purpose of transporting the commodities then and thereafter loaded therein or thereon.

5. Lessee shall keep all records pertaining to the movement of the cars, both on its lines and on the lines of other railroads, during such periods.

6. Lessee shall promptly notify Lessor upon receipt by Lessee of knowledge of any damage to any of the cars. Lessor agrees to pay for the maintenance and repair of the cars, except as hereinafter provided. Lessee shall not repair, or authorize the repair of, any of the cars without Lessor's prior written consent, except that running repairs (as specified in the Association of American Railroads Rules for Interchange) may be performed without prior written consent. The amount Lessor will pay for such running repairs shall not be in excess of the basis, in effect at the time the repair is made, provided by the Association of American Railroads. If any car becomes unfit for service and shall be held in a car shop for repairs, the monthly rental with respect to such car shall abate from and after the date of arrival at shop (or five days after the Lessee has notified the Lessor that said car is in need of repair if the Lessor has not provided disposition for said car during this five day period) until such car is released from the shop or until another car (of the same type and capacity) shall have been placed in the service of Lessee by Lessor in substitution for such car. It is understood that no rental credits will be issued for cars in a shop for repairs which are Lessee's responsibility. Lessee shall be responsible for all charges and costs incurred in shipping the cars into a shop for repairs or required modifications and back to Lessee.

7. In the event any car is totally damaged or destroyed, the rental with respect to such car shall terminate upon receipt by Lessor of notification thereof, and in the event any car is reported to be bad ordered and Lessor elects to permanently remove such car from Lessee's service rather than have such car taken to a car shop for repairs, the rental with respect to such car shall terminate upon receipt by Lessor of notification that such car was bad ordered. Lessor shall have the right, but shall not be obligated, to substitute for any such car another car of the same type and capacity and the rental in respect to such substituted car shall commence upon delivery of such substituted car to Lessee.

8. In the event that any of the cars, or the fittings, appliances or appurtenances thereto, shall be damaged, ordinary wear and tear excepted, or destroyed either as a result of the acts of any of the Lessee's employees, agents or customers or from any commodity or other material loaded therein or thereon, Lessee agrees to assume financial responsibility for such damage or destruction, but not for such responsibility which is that of other parties as defined under the Association of American Railroads Rules for Interchange.

9. Lessor shall not be liable for any loss of or damage to commodities, or any part thereof, loaded or shipped in or on the cars, and Lessee agrees to assume financial responsibility for, to indemnify Lessor against, and to save it harmless from any such loss or damage.

10. Lessee, at its own expense, shall either replace or reimburse Lessor for the cost of replacing any appliance or removable part, if destroyed, damaged, lost, removed or stolen, unless the railroad transporting the cars has assumed full responsibility for such loss or damage, or unless such loss or damage results from the negligence or omission of Lessor, its agents or employees.

11. The application, maintenance and removal of interior protective lining in any of the cars is to be performed by and at the expense of Lessee unless otherwise specifically provided for in the applicable rider.

12. Lessee agrees to indemnify and hold Lessor harmless from and against any loss, liability, claim, damage or expense (including, unless Lessee assumes the defense, the reasonable cost of investigating and defending against any claim for damages) arising out of or in connection with the use of the cars during the term of this Agreement, excepting, however, any loss, liability, claim, damage or expense which accrues with respect to any of the cars: (i) while such car is in a repair shop undergoing repairs; (ii) which is attributable to the negligence or omission of Lessor, its agents or employees; or (iii) for which another railroad or railroads have assumed full responsibility, including investigating and defending against any claim for damages.

13. The cars shall bear the Lessee's markings described in the applicable rider and no other lettering or marking of any kind shall be placed upon any of the cars by Lessee except with the prior written consent of Lessor.

14. Lessee agrees not to load any of the cars in excess of the load limit stenciled thereon.

15. Lessee shall be liable for any demurrage, track storage or detention charge imposed in connection with any of the cars as well as loss of or damage to any car while on any private siding or track or on any private or industrial railroad or in the custody of any carrier not subject to the Association of American Railroads Rules for Interchange.

16. Lessee shall make no transfer or assignment of its interest under this Agreement in and to the cars without Lessor's prior written consent which consent shall not be unreasonably withheld; provided, however, that notwithstanding any such sublease, Lessee shall continue to remain liable to Lessor under all conditions and terms of this Agreement. No right, title or interest in any of the cars shall vest in Lessee by reason of this Agreement or by reason of the delivery to or use by Lessee of the cars, except the right to use the cars in accordance with the terms of this Agreement and the rules specified in the Association of American Railroads Rules for Interchange.

17. The occurrence of any of the following shall constitute an Event of Default: (i) the failure by Lessee to make any payment of fixed or additional rent or other amount required to be paid by Lessee under this Agreement within ten days after the date such payment is due; (ii) any breach by Lessee of any agreement or covenant contained in this Agreement, which is not cured within 30 days after notice thereof from Lessor to Lessee.

Upon the occurrence of any Event of Default, Lessor may, at its option: (i) proceed by appropriate court action or actions either at law or in equity to enforce specific performance by Lessee of this Agreement and/or to recover damages for breach hereof; or (ii) terminate this Agreement, whereupon all rights of Lessee to the use of the cars shall absolutely cease and terminate as though this Agreement had never been made, and all fixed rent not theretofore due and payable with respect to the cars shall forthwith become due and payable.

Any proceeds to Lessor from reletting the cars shall be applied first to the expenses incurred in reletting the Cars (including, but not limited to, all costs of repossession and delivery of the Cars to the new lessee) and then in payment of the amount due Lessor under this Agreement.

It is expressly understood that if the Lessee is ordered by its Reorganization Court to terminate the lease in connection with the discontinuance of substantially all service or the liquidation of substantially all of the Lessee's assets, this lease shall terminate, the Lessee shall surrender possession of all the cars to the Lessor, and the Lessor shall have no claim against the Lessee other than for rental charges and other obligations which accrued hereunder up to the date of such surrender of possession.

18. Upon the termination of each rider, Lessee agrees, subject to the provisions of paragraph 8 above, to return the cars to Lessor at the final unloading point or at such other place or places as are mutually agreed to on the railroad line of the Lessee, in the same or as good condition as received, ordinary wear and tear excepted, free from all charges and liens which may result from any act or default of Lessee, and free from all accumulations or deposits from commodities transported in or on the cars while in the service of Lessee. If any car is not returned to Lessor free from such accumulations or deposits, Lessee shall reimburse Lessor for any expense incurred in cleaning such car.

19. Lessor agrees to assume responsibility for and to pay all property taxes levied upon the cars and to file all property tax reports relating thereto. Lessee agrees to assume responsibilities for and to pay any applicable state sales, use or similar taxes resulting from the lease or use of the cars (other than sales tax payable on the purchase of said cars by Lessor).

20. Lessor's rights hereunder may be assigned, mortgaged or otherwise transferred, either in whole or in part, and Lessor may assign, mortgage or otherwise transfer title to any car with or without notice to Lessee\*. This Agreement and all of Lessee's rights under this Agreement, and all rights of any person who claims rights under this Agreement through Lessee are subject and subordinate to the terms, covenants and conditions of all chattel mortgages, conditional sales agreements, assignments, equipment trust agreements, finance leases or other security documents covering the cars or any of them heretofore or hereafter created and entered into by Lessor and to all of the rights of any such chattel mortgagee, assignee, trustee, owner or other holder of interest in the cars. In the event of any such assignment, mortgage or transfer, Lessee agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's interest in and to the cars and this Agreement, and to confirm the subordination provisions contained in this paragraph. Lessee acknowledges and agrees that by execution of this Agreement it does not obtain, and by payment and performance hereunder it will not obtain, title to any car or any interest therein, except solely as lessee hereunder. Lessee shall keep the cars free from all encumbrances, liens and security interests of all kinds (other than those granted by Lessor), which could adversely affect Lessor's title thereto.

21. This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives, and shall remain in full force and effect from the date hereof until termination.

In the event that any car is not redelivered to Lessor on or before the date of expiration of the original lease term set forth in the rider hereto, at Lessor's sole option, the term hereof as to such car may be deemed to be extended on a month to month basis (hereafter "Holdover Period"), and all of the obligations of Lessee under this Agreement with respect to such cars shall remain in full force and effect until all such cars are redelivered to Lessor. Lessor may at any time during the Holdover Period terminate this Agreement and take possession of the cars upon demand after 30 days written notice to Lessee.

22. Both parties agree to execute the documents contemplated by this transaction and such other documents as may reasonably be required in furtherance of this Agreement.

23. This Agreement shall be governed by and construed according to the laws of the State of Illinois.

24. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the following addresses; if to Lessor: 3 Embarcadero Center, San Francisco, California 94111. If to Lessee: Richard B. Ogilvie, not individually but as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, 874 Union Station, 516 West Jackson Boulevard, Chicago, Illinois 60606 or to such other address as the parties hereto may provide in writing.

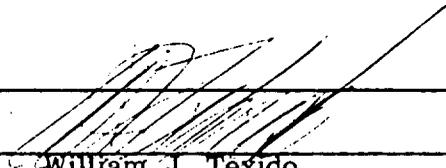
\* but subject to Lessee's rights hereunder.

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

LESSOR:

BRAE RAILCAR MANAGEMENT, INC.

By

  
William J. Texido

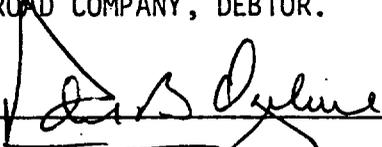
Title V. President

Date December 5, 1980

LESSEE:

RICHARD B. OGILVIE, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR.

By



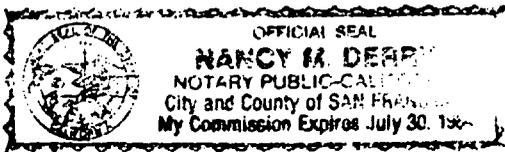
Title Trustee

Date October 21, 1980

State of California  
City and County of San Francisco

On this 5<sup>th</sup> day of November, 1983, before me personally appeared William J. Sipani, to me personally known, who, being by me duly sworn says that he is Vice President of BRAE Railcar Management, Inc., and that the foregoing Lease Agreement and Equipment Schedule(s) were signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of such instruments were the free acts of such corporation.

Nancy M. Deery  
Notary Public



My commission expires July 30, 1984

(Notarial Seal)

State of . . . Illinois . . . . .  
County of . . . Cook . . . . .

On this 9<sup>th</sup> day of October, 1980, before me personally appeared Richard B. Ogilvie, to me personally known, who, being by me duly sworn says that he is Trustee of the property of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor, and that the foregoing Lease Agreement was signed by him, and he acknowledged that the execution of such instrument was his free act and deed and that this instrument was signed not individually but solely as Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.

Joanne H. Easton  
Notary Public

My commission expires July 24, 1982

(Notarial Seal)

RIDER NO. 1

This Rider No. 1 shall be attached to and forms a part of the Lease Agreement (the "Lease") dated October 21, 1980, by and between BRAE RAILCAR MANAGEMENT, INC., ("Lessor") and Richard B. Ogilvie, not individually but solely as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad ("Lessee").

The terms and conditions of this Rider No. 1 shall supercede and supplant any contrary or inconsistent terms or conditions of the Lease, with respect to the cars listed on the Rider No. 1 Equipment Schedule (the "Cars").

1. Term of Agreement

The term of this Agreement as to each Car shall begin on the date such Car reaches the delivery point specified in Item 3 below and terminate 48 months from the end of the calendar month in which this date occurs unless earlier terminated as per Paragraph 17 of the Lease Agreement.

2. Additional Rent

For each mile in excess of  $\frac{38,000 \times \text{days in service}}{365}$  that each Car covered by this Rider travels in a calendar year, there will be an additional charge of \$0.02.

3. Delivery Point

Lessor shall deliver the Cars to Lessee at the following location or locations:

An interchange point to be mutually agreed upon on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in Louisville, Kentucky or Chicago, Illinois.

4. Lessee shall use its best efforts to provide that the Cars will not be used predominantly outside of the United States within the meaning of Section 48 (a) (2) (A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder.

Notwithstanding the preceding paragraph, Lessee agrees that if any of the Cars are used outside of the continental United States, Lessee shall reimburse Lessor for any customs, duties, taxes, investment tax credit reductions or other expenses resulting from such use.

5. Prior to any application of, maintenance of, or removal of interior protective lining in any of the Cars, Lessee shall consult with and obtain the written consent of Lessor. It is understood that the interior lining of each Car is to be maintained in the same condition as it was upon delivery to Lessee, ordinary wear and tear excepted.
6. Lessee agrees to use best efforts to insure that Cars shall not be loaded in excess of the load limit stenciled thereon, and that the Cars will not be used to carry commodities which would cause excessive maintenance, contamination or repair to the Cars, including, but not limited to, cement, bauxite, lamp black and non-prilled urea.
7. All other terms or conditions of the Lease shall remain unchanged.

LESSOR:

BRAE RAILCAR MANAGEMENT, INC.

By

  
William J. Texido

Title V. President

Date December 5, 1980

LESSEE:

RICHARD B. OGILVIE, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR

By

  
Trustee

Title

Date December 4, 1980

RIDER NO. 1

EQUIPMENT SCHEDULE

BRAE Railcar Management, Inc., or its assignee ("Lessor") hereby leases the following Cars to Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor ("Lessee") on the terms and conditions contained in the Lease Agreement to which this Schedule is attached.

AAR Mech. Design	Description	Numbers	Length	Dimensions			Number of Cars	Monthly Fixed Rent	Lease Period
				Inside Width	Height	Width			
LO	4700, 4750 and 4550 cubic foot covered hoppers	GNWR MILW							
			(Specification Documents attached)						
							100	\$495.00	10/80-5/81
							125	\$500.00	6/81-9/84
							50	\$505.00	11/80-10/84

RICHARD B. OGILVIE, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR.

BY *Richard B. Ogilvie*  
 Title Trustee

Date December 4, 1980

BRAE RAILCAR MANAGEMENT, INC.

BY ~~Richard B. Ogilvie~~  
 Title Trustee

Date December 5, 1980