

AMENDMENT NO. 2

DATE: August 1, 1988

RECORDATION NO. 10630 Y FILED 1988

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PARTIES: BRAE Transportation, Inc., 160 Spear Street, Suite 1600, San Francisco, California 94105 ("BTI"), and Indiana Hi-Rail Corporation, R.R. #1, Box 242, Connersville, Indiana 47331 ("Lessee").

RECITALS

- A. Pursuant to the Lease Agreement dated as of March 1, 1984, as amended by an Amendment dated June 30, 1986, (the "Lease Agreement"), BTI is currently leasing twenty-four (24) boxcars to Lessee.
- B. BTI and Lessee now desire to extend the term of the Lease Agreement and to amend certain sections of the Lease Agreement.
- C. In consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENTS

1. Defined Terms. The terms used in this Amendment No. 2 which are defined in the Lease Agreement shall have the same meanings herein as specified therein, except when specifically redefined.
2. Equipment Schedule. The Lease Agreement shall cover those railcars listed and identified in Equipment Schedule No. 2 attached hereto.
3. Amendment to Section 2 of the Lease Agreement. The paragraph contained in Section 2 shall be deleted in its entirety and the following new paragraph shall be substituted therefore:

"Term. 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 when such Car has been delivered, as provided in Section 3A hereof, and shall continue until July 31, 1990."

4. Amendment to Section 5 of the Lease Agreement. The following new paragraph shall be added to the end of Section 5:

"E. If Lessee removes defective hydraulic end of car cushioning units, Lessee will obtain replacements from BTI and defective units will be returned to locations designated by BTI, provided however, that Lessee shall not be obligated to obtain replacements from BTI and is free to make replacements itself if it replaces any such defective units with Model E-10 SGR/C units manufactured by Keystone Railway Equipment Company. As to such units replaced by Lessee, BTI shall have the option to replace the units(s) in Lessee's inventory in lieu of reimbursing Lessee's material charge. All transportation costs associated with the replacement of such hydraulic units by BTI and their return to BTI by Lessee shall be borne by BTI."

5. Amendment to Section 6.A.(i) of the Lease Agreement. Effective August 1, 1988, the second sentence of Section 6.A.(i) of the Lease Agreement shall be deleted in its entirety and the following two sentences shall be substituted therefore:

"Lessee shall remit to BTI 100% of the Payments received from other railroad companies for their use and handling of the Cars. Lessee shall be entitled to 10% of the Payments remitted to BTI hereunder ("Revenue Sharing"), and BTI shall pay such Revenue Sharing to Lessee on a monthly basis within thirty (30) days of BTI's receipt of Payments from Lessee."

6. Amendment to Section 6.C. of the Lease Agreement. Effective August 1, 1988, the paragraph contained in Section 6.C. shall be deleted in its entirety and the following new paragraph shall be substituted therefore:

"BTI may, upon ten (10) days written notice to Lessee, withdraw from this Agreement any or all of the Cars during any service month if the Utilization (as hereinafter defined) during a calendar quarter was less than 75%. Such determination shall be made by BTI based on the Monthly Report of Car Earnings and Expenses supplied to BTI by Lessee. If, during such ten (10) day notice period, Lessee elects to pay to BTI the difference between the amount of revenue (time and mileage) which the Cars would have earned if their Utilization was equal to 75% during such calendar quarter and the amount of revenue (time and mileage) which the Cars did actually earn during such calendar quarter (the "Make-up Amount"), BTI shall be precluded from withdrawing any Cars from this Agreement pursuant to this Section 6.C.. For purposes of determining Utilization, "Car Hour" shall mean one hour during which one Car is on lease hereunder, commencing August 1, 1988. The term "Utilization" shall mean, with respect to any period, a fraction, the numerator of which is (x) the total Payments (time and mileage) earned by the Cars during such period, less the Revenue Sharing to which Lessee is entitled for such period, and the denominator of which is (y) the aggregate number of Car Hours during such period multiplied by the then applicable per diem rate with respect to the Cars, plus the aggregate number of Car Days (Car Hours divided by 24) during such period multiplied by the then applicable mileage rate with respect to the Cars, multiplied by 80 miles of travel per day ^{per Car}. The applicable per diem and mileage rates shall be determined pursuant to the UMLER Hourly and Mileage Car Hire Rate Table."

DB [Signature]
reclaims on
loading Sec 3
allowed by 171.

7. Amendment to Section 6 of the Lease Agreement. The following new paragraph shall be added to the end of Section 6:

"H. Lessee shall invoice BTI for all expenses incurred by Lessee which are subject to reimbursement by BTI pursuant to this Agreement. Therefore, Lessee shall not deduct such amounts, including but not limited to repair and maintenance expenses and property taxes, from the Payments earned by the Cars. Further, Lessee shall not deduct Revenue Sharing, as provided in Section 6.A.(i) hereof, from the Payments earned by the Cars."

Payment of said expense invoices shall be made to lessee within (45) forty-five days ~~from lessee's invoice date~~ after BTI's receipt of an invoice from Lessee.

[Signature]

[Signature]

[Signature]

8. **Limitation.** Except as amended herein, the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No 2 as of the date first written above.

BRAE TRANSPORTATION, INC
By *Donald Blittfeld*
Printed Name Donald Blittfeld
Title President - RAIL DIV
Date August 8 1988

INDIANA HI-RAIL CORPORATION
By *David Book*
Printed Name David Book
Title V.P. Equipment
Date 8-1-88

EQUIPMENT SCHEDULE NO. 2

BRAE Transportation, Inc. ("BTI") hereby leases the following railcars to Indiana Hi-Rail Corporation ("Lessee") pursuant to that certain Lease Agreement dated as of March 1, 1984, as amended (the "Lease Agreement").

<u>Number of Cars</u>	<u>Description</u>	<u>A.A.R. Designation</u>	<u>Car Number(s)</u>
24	50'6", Double Sliding Door, 70-ton Boxcars	XM	IHRC 11000-11024*

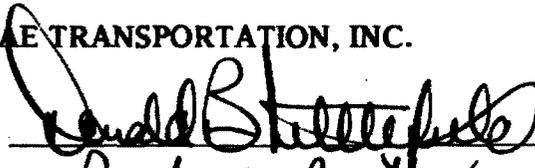
* Excluding IHRC 11006 which was destroyed 7/23/87

BTI and Lessee hereby agree that this Equipment Schedule No. 2 shall supersede Equipment Schedule No. 1 and such Equipment Schedule No. 1 shall become null and void as of the date hereof.

BRAE and Lessee hereby incorporate by reference all of the terms, conditions and provisions of the Lease Agreement in this Equipment Schedule No. 2.

IN WITNESS WHEREOF, the parties have executed this Equipment Schedule No. 2 as of the 8th day of August, 1988.

BRAE TRANSPORTATION, INC.

By 
Title President - Rail Div
Date August 8, 1988

INDIANA HI-RAIL CORPORATION

By 
Title V.P. Equipment
Date 8-7-88

STATE OF Indiana)
) ss.
COUNTY OF Fayette)

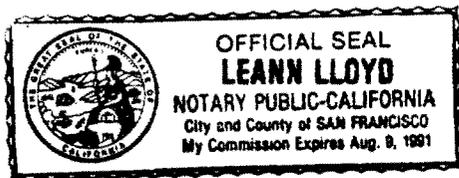
On this 1st day of August, 1988, before me personally appeared David Booker, to me personally known, who being by me duly sworn, did depose and say that such person is V.P. Equipment of Indiana Hi-Rail Corporation, and that the foregoing Amendment No. 2, and Equipment Schedule No. 2 were signed on behalf 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.

Kimberly Ann Brown
Notary Public

[seal]

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

On this 8th day of August, 1988, before me personally appeared Donald B. Littlefield, to me personally known, who being by me duly sworn says that such person is President-Rail of BRAE Transportation, Inc., and that the foregoing Amendment No. 2, and Equipment Schedule No. 2 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]

Leann Lloyd
Notary Public