13403
RECORDATION NO. ..... Filed 1425

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DEC 31 1981 -10 30 AM

INTERSTATE COMMERCE COMMISSION

DEC 31 1981 -10 30 AM

INTERSTATE COMMERCE COMMISSION


MORGAN, LEWIS & BOCKIUS
COUNSELORS AT LAW
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NEW YORK
LOS ANGELES
MIAMI
HARRISBURG
LONDON

E. CLIVE ANDERSON
DIAL DIRECT (215) 875-5219


13403 A
RECORDATION NO. ..... Filed 1425

December 31, 1981

Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Room 2303
Washington, D.C. 20423

13403 B
RECORDATION NO. ..... Filed 1425

DEC 31 1981 -10 30 AM

INTERSTATE COMMERCE COMMISSION

DEC 31 1981 -10 30 AM

INTERSTATE COMMERCE COMMISSION

Date 12/31/81
Fee $ 120.00
Washington, D.C.

Dear Secretary:

We have enclosed an original and one fully executed and acknowledged counterpart of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

(1) Bill of Sale, dated December 31, 1981

Vendor - The Connecticut Bank and Trust Company, as Agent
One Constitution Plaza
Hartford, Connecticut 06103

Purchaser - Fred J. Wakeman
415 Randall Avenue
DePere, Wisconsin 54115

(2) Security Agreement, dated December 29, 1981

Debtor - Fred J. Wakeman
415 Randall Avenue
DePere, Wisconsin 54115

Creditor - The Connecticut Bank and Trust Company, as Agent
One Constitution Plaza
Hartford, Connecticut 06103

(3) Assignment of Lease, dated December 28, 1981

Assignor - Brae Corporation
Four Embarcadero Center
San Francisco, California 94111

Assignee - Fred J. Wakeman
415 Randall Avenue
DePere, Wisconsin 54115

Mary Beth Byrne

MORGAN, LEWIS & BOCKIUS

(4) Collateral Assignment of Lease, dated December 29, 1981

Assignor - Fred J. Wakeman
415 Randall Street
DePere, Wisconsin 54115

Assignee - The Connecticut Bank and Trust Company, as Agent
One Constitution Plaza
Hartford, Connecticut 06103

The primary document to which documents 1, 2, 3 and 4 are connected is recorded under Recordation No. 10818.

A description of the equipment covered by documents 1, 2, 3 and 4 follows: 3 Boxcars, Type XM (50'6", 70-ton), bearing road numbers LRWN 5709 (formerly NSL 155709), LRWN 5715 (formerly NSL 155715) and LRWN 5731 (formerly NSL 155731).

We request that documents 1, 2, 3 and 4 be cross-referenced to Recordation No. 10818.

Sincerely,

Clive Anderson

Clive Anderson

tjk

Enclosures

RECORDATION NO. 13403 Filed 1425

DEC 31 1981 · 10 30 AM

DUPLICATE

INTERSTATE COMMERCE COMMISSION

# LEASE ASSIGNMENT

This LEASE ASSIGNMENT dated as of the 29 day of December, 1981, between Fred J. Wakeman ("Assignor") and THE CONNECTICUT BANK AND TRUST COMPANY, as agent ("Agent") for Connecticut General Life Insurance Company, [redacted] Co., and John Hancock Mutual Life Insurance Company (collectively, "Creditors").

W I T N E S S E T H:

WHEREAS, on even date herewith, Agent is delivering unto Assignor a Bill of Sale pursuant to which Agent grants, bargains, sells, transfers and sets over unto Assignor certain boxcars (the "Boxcars"); and

WHEREAS, pursuant to a Security Agreement, dated the date hereof (the Security Agreement, as the same may be amended from time to time, hereinafter referred to as the "Security Agreement"), Agent is lending to Assignor certain sums ("Indebtedness") to enable Assignor to purchase the Boxcars and, on even date herewith, Assignor has executed a Full Recourse Promissory Note (the Note, as the same may be amended from time to time, hereinafter referred to as the "Note") to evidence the Indebtedness; and

WHEREAS, immediately prior hereto Brae Corporation has entered into a lease agreement (the "lease agreement", as

the same may be amended from time to time with the approval of Agent hereinafter referred to as the "Lease Agreement") with Little Rock and Western Railway Corporation ("Little Rock") pursuant to which Little Rock has agreed to lease twenty-one boxcars, including the Boxcars, from Brae; and

WHEREAS, pursuant to an Assignment of Lease (the "Brae Lease Assignment") between Brae and Assignor entered into immediately prior hereto,Brae has assigned to Assignor all of its rights, and Assignor has assumed all of Brae's obligations, under the Lease Agreement, but solely as such rights and obligations relate to the Boxcars; and

WHEREAS, in order to secure the payment of the Indebtedness, Assignor has agreed to assign all of its rights under the Lease Agreement to Agent.

NOW, THEREFORE, for the purpose of securing Assignor's obligations under the Security Agreement and the Note, and in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

SECTION 1. As collateral security for the payment, performance and observance by Assignor of its obligations under the Security Agreement and the Note, Assignor hereby now and irrevocably grants, bargains, sells, releases, assigns, transfers, sets over, conveys, mortgages, hypothecates, pledges and confirms, with power of sale, to Agent, and hereby grants a first security interest in favor of Agent in, (a) all

estate, right, title and interest now held or hereafter acquired by Assignor in and to any right to receive payments under the Lease Agreement now or hereafter existing, including, without limitation, all amounts of rent, mileage charges, hourly car hire payments, insurance proceeds, security deposits, proceeds from claims or actions in respect of warranties, payments received for damage, destruction or loss of the Boxcars pursuant to the Interchange Rules (as defined in the Lease) or from the Lessee or otherwise, and condemnation, requisition and other payments of any kind (collectively, the "Payments"), for or with respect to the Boxcars, and (b) all estate, right, title and interest now held or hereafter acquired by Assignor in, to and under the Lease Agreement, including, without limitation, all rights of Assignor to exercise any election or option, to make any decision or determination, to give any notice, consent, waiver or approval, or to take any other action under or in respect of the Lease Agreement, or to terminate the Lease Agreement and/or to accept any surrender or redelivery of the Boxcars, or to declare an Event of Default under the Lease Agreement and/or to exercise all the rights, powers and remedies on the part of the Assignor, whether arising under the Lease Agreement, by statute, at law, in equity or otherwise, upon the occurrence of any Event of Default under the Lease

Agreement.

This Agreement is not intended to restrict or otherwise affect Assignor's rights under the Lease Agreement prior to the occurrence of an Event of Default (as defined in the Note or the Security Agreement), and Agent agrees that Assignor may continue to exercise all of such rights prior to the occurrence of such an Event of Default.

Notwithstanding the foregoing, (i) Assignor shall in all events, and whether or not any such Event of Default shall have occurred, pay or cause Brae on its behalf to pay to Agent (A) the amounts required to be paid to Agent pursuant to Section 7(a) of the Management Agreement (Brae Executive Management Group 1981 Boxcar Program) of even date between Brae and Assignor, as and when required to be so paid thereunder, and (B) all amounts received by Assignor or Brae on account of any loss, destruction or damage beyond repair, or any requisition, whether temporary or permanent, of all or any of the Boxcars, promptly from their receipt; and (ii) nothing in the foregoing paragraph shall be deemed to restrict or otherwise affect Agent's rights or power to exercise any or all of the rights referred to in this Section 1 to the complete exclusion of Assignor upon the occurrence of an Event of Default under the Note or the Security Agreement.

Concurrently with the execution hereof, Assignor is delivering to Agent the executed counterpart of each of the

Lease Agreement and the Brae Lease Assignment which is marked "Original".

SECTION 2. Assignor hereby expressly warrants and covenants and agrees as follows:

(a) the Lease Agreement and the Brae Lease Assignment have each been duly executed by Assignor, constitute the legal, valid and binding obligations of Assignor enforceable in accordance with their terms, are in full force and effect and have not been amended or supplemented in any way since the date of their execution, and no party thereto is in default thereunder;

(b) Assignor will not sell, assign, mortgage, pledge or otherwise encumber, so long as the security assignment hereunder shall remain in effect, any of the estate, right, title or interest that is made subject to this Assignment and the lien and security interest hereof to anyone other than Agent and he will not, without the consent of Agent, (i) enter into any agreement amending, supplementing, or modifying the terms of the Lease Agreement, or (ii) permit anyone in its behalf (including Brae Corporation) to do any of the foregoing;

(c) Assignor will at all times remain liable to Agent under the Security Agreement and the Note to the extent provided therein for the performance of all of his duties and obligations thereunder to the same extent as if this Assignment had not been executed;

(d) the exercise by Agent of any of the rights assigned hereunder will not release Assignor from any of his duties or obligations to Agent under the Security Agreement and the Note to the extent provided therein;

(e) neither Agent nor Creditors will have any obligation or liability to Assignor or Lessee under the Lease Agreement or the Brae Lease Assignment by reason of, or arising out of, this Assignment, or be obligated to perform any of the obligations or duties of Assignor under the Lease Agreement or the Brae Lease Assignment, to make any payment or to make any inquiry as to the sufficiency of any payment received by any of them, to present or file any claim, or to take any other action to collect or enforce any claim for any payment assigned hereunder;

(f) at any time and from time to time, upon written request of Agent, Assignor will promptly and duly execute and deliver any and all such further instruments and documents (including financing statements) and take such further action as Agent may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted, and Assignor will record or file

this Assignment or notice thereof or a financing statement with respect hereto, or any one or more thereof, pursuant to the laws of such jurisdictions as may be reasonably requested from time to time by Agent;

(g) if Assignor shall receive any payment intended to be paid over to Agent pursuant to this Assignment, Assignor shall, promptly upon receipt thereof, transfer such payment to Agent;

(h) with the exception of this Assignment, Assignor has not assigned, mortgaged, charged or otherwise encumbered or dealt with any of his rights, benefits or interests in, under or to the Lease Agreement or any insurance provided thereunder, and at the time of effecting this Assignment all such rights, benefits and interests are beneficially owned by Assignor free from any liens, security interests or encumbrances except for the interests of Agent;

(i) at the date hereof, no Event of Default under the Lease Agreement has occurred and no circumstances have arisen which but for the giving of notice and/or the passage of a period of time would constitute an Event of Default;

(j) Assignor will not agree to any variation of the insurance required to be maintained with respect to the

Boxcars or waive any breach of the insurers' obligations thereunder or consent to any act or omission of the insurers which would otherwise constitute a breach; and

(k) Assignor will not allow or effect any set off or enter into any arrangement with the insurers under any policies relating to the Boxcars which might result in Agent recognizing less than the full amount of any payment due from the insurers thereunder.

SECTION 3. This Assignment is executed by Assignor and Agent concurrently with the execution and delivery of the Lease Agreement and the Brae Lease Assignment and is made for the benefit of Agent to secure the performance and discharge of each and every obligation, covenant and agreement of Assignor contained in the Security Agreement and the Note, subject to the terms thereof. Upon the payment in full of all obligations secured hereby, this Assignment shall terminate and become and be void and of no effect, and Agent shall execute and deliver to Assignor, upon Assignor's request and at Assignor's expense, a written release of this Assignment, in properly recordable form if necessary or desirable in the reasonable opinion of counsel for Assignor.

SECTION 4. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof shall be in writing (including telex) in the

English language, and any such notice shall become effective when received. Notices shall be directed to the parties at their respective addresses set forth in the Security Agreement, or at such other address as such party shall have furnished by notice to the parties hereto in the manner provided in the Security Agreement. No consent required under this Assignment shall be deemed given unless in writing and delivered prior to the taking of the action to which such consent relates.

SECTION 5. Effective upon the occurrence of an Event of Default under the Note or the Security Agreement and for so long as such Event of Default is continuing, Assignor hereby appoints Agent as the true and lawful attorney of Assignor, irrevocably, with full power and in the name of Assignor or otherwise to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due or to become due under or arising out of the Lease Agreement, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Agent may deem to be necessary or advisable in the premises.

SECTION 6. (a) The terms of this Assignment shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by a written instrument

signed by Assignor and Agent.

(b) The terms of this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

(c) This Assignment has been delivered in the State of Connecticut and shall be governed by and construed in accordance with the laws of the State of Connecticut.

(d) This Assignment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

(e) Any provision of this Assignment which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) To the extent, if any, that this Assignment constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in Agent's right, title and interest in and to this Assignment may be created through the transfer or possession of any counterpart other than the original counterpart which shall be the counterpart so marked.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first above written.

Assignor

_____ (SEAL)

Name: _____

Assignee

THE CONNECTICUT BANK AND TRUST COMPANY,
as agent

By: _____

DONALD E. SMITH

STATE OF Wisconsin :
ss.
COUNTY OF Brown :

On this 29th day of December, 1981, before me, personally appeared Fred J. Wakeman, to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

(Seal)

B. P. [illegible]
Notary Public
My Commission Expires February 5, 1984

My commission expires:
2/5/84

STATE OF CONNECTICUT :

ss.

COUNTY OF HARTFORD :

On this 30th day of December, 1981 before me personally appeared DONALD E. SMITH, to me personally known, who being by me duly sworn, says that he is the ASSISTANT VICE PRESIDENT of The Connecticut Bank and Trust Company, as agent, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

Barbara S. Kacsuh
Notary Public

My commission expires:

My Commission Expires Mar. 31, 1982

DUPLICATE

CONSENT TO LEASE ASSIGNMENT

In order to induce The Connecticut Bank and Trust Company, as Agent (the "Agent") for Connecticut General Life Insurance Company, ~~Congen Five & Co.~~, and John Hancock Mutual Life Insurance Company, to finance the sale of certain boxcars referred to in Exhibit A hereto (the "Boxcars") from the Agent to Fred J. Wakeman, (the "Assignor"), which Boxcars, along with certain other Boxcars, are the subject of a lease agreement dated the date hereof originally entered into by Brae Corporation ("Brae") as lessor and Little Rock and Western Railway Corporation as lessee (the "Lessee"), and assigned, but solely as it relates to the Boxcars, by Brae to Assignor (such lease agreement, as and to the extent so assigned to Assignor, and as the same may be amended from time to time, being hereinafter referred to as the "Lease Agreement"), the Lessee hereby agrees with the Agent and the Assignor as follows:

1. The Lessee hereby acknowledges that the Lease Agreement has been assigned by Brae to Assignor, but solely as it relates to the Boxcars, that it has received notice thereof as contemplated by Section 13 of the Lease Agreement, and that, pursuant to the foregoing, there now exists a separate lease of the Boxcars by Assignor, as lessor, to the Lessee, as lessee, subject to all of the terms and conditions

of the original lease agreement between Brae and the Lessee, except that, for purposes of defining the rights and obligations of the parties to such separate lease, all references in such original form of lease agreement to "Brae" shall hereafter be taken to refer to Assignor and (except as specifically provided in Section 6.A thereof) all references therein to the "Cars" or a "Car" shall be taken to refer to the Boxcars or an individual Boxcar, as the case may be. The Lessee further acknowledges, however, that (i) it has agreed with Brae that Brae will, as its agent, perform the record keeping functions and other duties referred to in Section 4 of the Lease Agreement and (ii) it has agreed to send all notices, reports and other communications to Assignor required or contemplated under the Lease Agreement to Brae, on behalf of Assignor, at Brae's address set forth in Section 3 below.

2. The Lessee further acknowledges that, pursuant to that certain Lease Assignment (the "Lease Assignment") dated the date hereof between the Agent and the Assignor, the Assignor is mortgaging, pledging and assigning to the Agent, and is granting a security interest to the Agent in, the Lease Agreement and all Payments (as defined in the Lease Assignment, such term being used with the same meaning herein) and other rights thereunder, all as more fully set forth in the Lease Assignment. The Lessee further acknowledges having received a copy of the assignment from Brae to Assignor

and of the Lease Assignment.

3. The Lessee hereby consents to the foregoing assignments and grants of security interests, and agrees that (i) until it receives written notice from the Agent otherwise, it will remit and deliver any and all of the Payments which may come into its possession or control directly to Brae Corporation ("Brae") at Four Embarcadero Center, San Francisco, California 94111, and further that (ii) without the prior written consent of the Agent, it will not terminate the designation of Brae as its agent with respect to the record keeping and other functions referred to in Section 4 of the Lease Agreement. The Lessee agrees for the benefit of the Agent that its obligation to remit and deliver the Payments in the manner set forth above shall be absolute and unconditional and shall not be affected by any defenses, set-offs or counterclaims, as against the Agent.

4. The Lessee acknowledges that the Agent is the party referred to in the Lease Agreement as the "Agent" or the "secured party" or the "financing party", and agrees that all of the representations and warranties made in the Lease Agreement in favor of Assignor are incorporated herein and made for the benefit of the Agent, and that the Agent is entitled to exercise and enforce all of the rights, powers and privileges accorded to the party referred to as the "Agent" or the "secured party" or the "financing party" under the terms of the Lease Agreement and to the benefit of

the various undertakings to the party referred to as the "Agent" or the "secured party" or the "financing party" set forth in the Lease Agreement. Without limiting the generality of the foregoing, the Lessee agrees to add Agent and each of the Creditors to the policies of insurance carried by it as provided in the Lease Agreement, as their interests may appear, and to send all notices and other materials required to be sent to the Agent to it at One Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department.

5. The Lessee acknowledges that the Assignor has appointed the Agent as its attorney-in-fact with full power during the continuance of any Event of Default under the Security Agreement or the Note to exercise all of the rights, powers and privileges accorded to the Assignor under the Lease Agreement to the exclusion of the Assignor, and hereby agrees that, in such event and provided it shall have received written notice from the Agent of such Event of Default, and until the Agent shall notify the Lessee that such Event of Default and all other Events of Default under the Security Agreement or the Note have been cured, it will deem and treat the Agent as the lessor under the Lease Agreement for all purposes set forth in the Lease Agreement, to the exclusion of the Assignor.

6. The Lessee agrees that neither the Agent nor

any assignee of or other successor to its interests under the Lease Assignment, the Security Agreement and the Note shall have any responsibility for the due and timely performance of any of the obligations of the Assignor or Brae under the Lease Agreement, or for any other obligations of the Assignor or Brae to the Lessee, and that it shall continue to look to the Assignor or Brae and not the Agent or any assignee of or other successor to its interests under the Lease Assignment, the Security Agreement and the Note for the performance of any of such obligations.

7. The Lessee further agrees that it will execute and deliver such instruments and take such other actions as may reasonably be requested by the Agent from time to time to confirm to the Agent or to better assure the Agent of its security interests in and the other rights with respect to the Lease Agreement, as contemplated by the Lease Assignment.

8. The Agent hereby agrees that the Lessee shall have and enjoy quiet possession of the Boxcars and the unrestricted use thereof in accordance with the terms of the Lease Agreement so long and only so long as no Event of Default under the Security Agreement or the Note shall have occurred and be continuing and the Lessee shall not be in default of any of its obligations hereunder, including, without limitation, its obligations under Section 3 above.

9. The Lessee agrees that it will not, without the consent of Agent, enter into any agreement amending, supplementing, or modifying the terms of the Lease Agreement.

10. This Consent to Lease Assignment is entered into for the benefit of the Agent and its successors and assigns, including any assignee of or other successor to its interests under the Lease Assignment, the Security Agreement and the Note.

11. This Consent to Lease Assignment shall be governed by and construed in accordance with the laws of the State of Connecticut.

IN WITNESS WHEREOF, the Lessee has executed this Consent to Lease Assignment as of December 29, 1981.

LITTLE ROCK AND WESTERN
RAILWAY CORPORATION

By: _____

Acknowledged and
agreed to:

THE CONNECTICUT BANK AND
TRUST COMPANY, as agent

By: _____

STATE OF Wisconsin :
ss.
COUNTY OF Brown :

On this 19th day of December, 1981 before me personally appeared Leo N. Crowley, to me personally known, who being by me duly sworn, says that he is the President of Little Rock and Western Railway Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

Notary Public

My commission expires:
2/5/84

STATE OF CONNECTICUT :
ss.
COUNTY OF HARTFORD :

On this 30th day of December, 1981 before me personally appeared Donald E. Smith, to me personally known, who being by me duly sworn, says that he is the Assistant Vice President of The Connecticut Bank and Trust Company, as agent, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

Barbara S. Kacich
Notary Public

BARBARA S. KACICH
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1982

My commission expires:

March 31, 1982