BRAE CORPORATION

RECORDATION NO. 13728-F Filed 1425

2-229A049

AUG 17 1982 9 00 AM

No. AUG 17 1982

INTERSTATE COMMERCE COMMISSION

Date .....

Fee $ 50.00

ICC Washington, D. C.

August 4, 1982

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
12th & Constitution, Room 2215
Washington, D.C. 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303 are one original and four copies of the following document:

Management Agreement dated as of December 26, 19 80 between BRAE Corporation and Burke E. Burford.

This document relates to 2 covered hopper railcars marked as follows:

BRAX 260340
BRAX 260339

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

AGENT: BRAE Corporation
Four Embarcadero Center, Suite 3100
San Francisco, CA 94111

OWNER: Burke E. Burford
141 E. Mill Ave.
Porterville, CA 93257

It is requested that this document be filed and recorded under the names of the parties as set forth above:

I also enclose a check for $50.00 for the required recordation fee.

Please return: (1) your letter acknowledging the filing, (2) a receipt for the $50.00 filing fee paid by check drawn on this firm, (3) the enclosed copy of this letter and (4) the original and three copies of the document, (retaining one copy for your files) all stamped with your official recordation information.

Very truly yours,

Leann Lloyd

Leann Lloyd
Paralegal

AUG 16 5 02 PM '82

Encls.

Interstate Commerce Commission
Washington, D.C. 20423

8/17/82

OFFICE OF THE SECRETARY

Leann Lloyd
Paralegal
Brae Corporation
Four Embarcadero Center
San Francisco, Calif. 94111

Dear Ms. Lloyd:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/17/82 at 9:00am , and assigned recordation number(s). 13728, 13729, 13730, 13731, 13732, 13733, 13734 13735, 13736, 13737

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

[This Agreement is Subject to Arbitration]

Owner: Burke E. Burfoed

13728
RECORDATION NO. Filed 1425

AUG 17 1982 9 00 AM

INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT

THIS AGREEMENT made by and between BRAE Corporation, a Delaware corporation (hereinafter called "BRAE"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has, pursuant to a Covered Hopper Railcar Purchase Contract (the "Purchase Contract") with BRAE agreed to purchase the number of covered hopper railcars set forth in Exhibit A attached hereto and incorporated herein by reference (such covered hopper railcars, which shall be identified as provided in Section 1, being hereinafter referred to as the "Cars");

WHEREAS, Owner may elect to finance a portion of the purchase price for the Cars from the proceeds of the borrowing identified or to be identified in Schedule B attached hereto and incorporated herein by reference (hereinafter referred to as the "Loan") from the institution (hereinafter referred to as the "Lender") identified or to be identified in said Schedule B and repayable in the periodic payments of principal and interest identified in, and payable at the times and in the amounts referred to in, said Schedule B (hereinafter referred to as "Debt Service");

WHEREAS, BRAE engages in the business of managing railcars for railcar owners, and Owner desires to retain BRAE as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

WHEREAS, initially the Cars will be subject to a lease agreement or agreements (the "Leases") with a shipper, railroad or other; and

WHEREAS, BRAE intends to manage covered hopper railcars similar in most respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially

SCHEDULE B TO THE MANAGEMENT AGREEMENT

Borrowings, referred to in the Management Agreement, the proceeds of which have been applied to the purchase of Cars (to be completed by Owners who have requested special distributions of Net Earnings, provided for in Section 7(a), and/or who may request that the Manager assist in refinancing, as provided in Section 3(o)):

Lender (Name and Address): _____

_____

Original Principal Amount of Loan: _____

Amount of Each Periodic Payment of Debt Service: _____

Periods With Respect to Which Debt Service is Payable (e.g., monthly, quarterly): _____

Due Dates of Debt Service Payments (e.g., first day of each month, last day of each quarter): _____

Person, Account No. and/or Other Address to Which Payments of Debt Service Should be Sent: _____

Maturity of Loan: _____

Balloon Payment, If Any, Due Upon Maturity of the Loan: _____

sale or foreclosure is consummated or such Car is lost or destroyed.

(ii) shall terminate if BRAE shall dissolve, or shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the institution of bankruptcy proceedings against it, or shall file a petition or answer or consent seeking reorganization under the Bankruptcy Act of the United States, or shall consent to the filing of any such petition or the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of it or all or a substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if there shall have continued undischarged or unstayed for 90 days an order of a court of competent jurisdiction adjudging BRAE a bankrupt or insolvent or approving as properly filed a petition seeking reorganization of BRAE under the Bankruptcy Act or any similar Federal or State law or appointing a receiver, trustee or assignee in bankruptcy or insolvency of BRAE or all or a substantial part of its property or winding up or liquidating the affairs of BRAE on the application of any creditor in any insolvency or bankruptcy proceedings or other creditor's suit, which termination shall be effective as of the 5th day following the giving of written notice of such termination.

(iii) may be terminated by Owner, in Owner's sole discretion, if:

(x) there shall have occurred and be continuing uncured and unwaived any default under any instrument covering a debt obligation of BRAE arising from any failure to pay an obligation when due or from any act indicating the insolvency or bankruptcy of BRAE; or

(y) there shall have occurred and continued uncured and unwaived for 90 days and be continuing uncured and unwaived any

(c) Portion of commencement fee referred to in Section 6(a)(ii) of the Purchase Contract paid to BRAE that is paid to Merrill Lynch as a placement agent's fee _____

4. Owner (if a married individual) will claim first-year "bonus depreciation" with respect to the Cars in the amount of $4,000. Other Owners will claim no "bonus depreciation." _____

5. Owner will initially utilize the 200% declining balance method in determining the depreciation allowance for each Car and will change to the sum-of-the-years'-digits method when the latter method results in greater depreciation deduction than the former. _____

6. The salvage value of each Car is 10% of cost which is reduced by 10% of cost pursuant to Section 167(f) of the Code. _____

7. The portion of the commencement fee paid to BRAE which is paid to Merrill Lynch Leasing Inc. as a fee for its advisory services in structuring the Management Program is amortized over 15 years. _____

8. Owner will elect to use the Asset Depreciation Range "Class Life" (ADR) System for the determination of the depreciation allowance for the Cars and will elect to use the half-year convention, pursuant to which the depreciation allowance for the Cars for 1980 will be determined by treating

into; but shall not include (y) any day after a lease covering the car has expired or otherwise terminated but prior to delivery of such car to the next lessee thereof and the commencement of accrual of rentals under such lease, if such car is then subject to a successor lease that has been signed and delivered and provides for the delivery of cars subject thereto as soon as may be reasonably practicable, and (z) any day on which there is a "force majeure event". For the purpose of this Section 2(c)(ii), "force majeure event" shall mean any delay caused by any alterations, modifications, improvements or additions to the car of the type referred to in Section 7(d); the failure of Owner to consent to such alterations, modifications, improvements or additions; any acts of God; acts of a public enemy; riot; civil commotion; storms; fire; floods; earthquakes; strikes; lockouts; material shortages; inability to procure labor, materials or supplies after diligent efforts to do so; delays in the delivery of materials or supplies; defaults on the part of any repair facility, repairman, contractor, subcontractor, supplier or materialman; and other events or circumstances of a similar nature beyond BRAE's reasonable control. The "number of car days during such 12-month period" shall mean the sum for each car managed under the Management Program of the number of days during the same 12-month period as is used in computing the numerator on which such car was managed under the Management Program.

Within 60 days after the end of any such 12-month period, BRAE shall notify Owner of Owner's right to terminate this agreement and such termination shall be effective only if written notice thereof shall be given to BRAE within 90 days of notice to Owner.

If Owner terminates this Agreement pursuant to this Section 2(c), BRAE may, in its sole discretion, at or after the date of such termination, require pursuant to Section 11(d) the transfer to BRAE, without recourse, of all of Owner's

State of ~~California~~ New York
~~City and~~ County of ~~San Francisco~~ New York SS:

On this 31 day of December, 1980, before me personally appeared Jerry A Risser (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the Vice President (title of office) of BRAE 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 act and deed of said corporation.

[SEAL]

Connie L Kluever
Notary Public

My Commission Expires

CONNIE L. KLUEVER
Notary Public, State of New York
No. 60-2151600
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1981

change in the monthly management fee payable to BRAE under Section 6(a), BRAE shall give Owner written notice of the effective date of the next increase in such fee and of the approximate amount by which such fee would be increased pursuant to Section 6(a) if such increase were effective as of the date of such notice.

(h) Upon termination of this Agreement, BRAE shall cooperate with Owner either to sell or otherwise dispose of the Cars or to effect an orderly transition of the management or use of the Cars to any new manager or any new lessee thereof, as the case may be (it being understood that any costs of constructive or physical redelivery of Cars to Owner will be borne by Owner).

3. Duties of BRAE.

In consideration of the compensation to be paid to BRAE by Owner pursuant to Section 6(a), subject to any provisions herein requiring BRAE to obtain the consent of Owner, and subject to the agreement of Owner to reimburse BRAE pursuant to Section 7, BRAE shall, and is hereby authorized to, provide and perform the services on behalf of Owner and to take the action described below during the term of this Agreement:

(a) Immediately upon execution of this Ageement, or as soon thereafter as reasonably practicable, inspect the Cars in order to ascertain their conformity to the Manufacturer's specifications and applicable governmental regulations and, if found to be so in conformity, accept and take delivery of the Cars as agent and attorney for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Seek, observing the standards of performance specified in Section 17(g), to keep the Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to railroads, shippers or other financially responsible parties for that purpose on terms and conditions which are customary in the industry (provided, however, that BRAE may not enter into a lease of a Car for a term longer than six years unless BRAE gives written notice to Owner that it intends to enter into such lease and Owner does not object thereto in writing within 25 days of the date of such notice) and using its best efforts to take such steps as may, based on its good faith judgment, be desirable and prudent to insure that all obligations and duties arising under such leases, whether of lessors or lessees, are performed or complied with in an orderly and timely fashion; it being understood that, subject to the

(h) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) Severability. If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

BRAE CORPORATION

By _____
(Authorized Signature)

OWNER:

Name Burke E. Burford
(Please Print)

By Burke E. Burford
(Signature)

This Agreement must be signed before a notary public by all parties hereto.

Owner must complete Schedule A hereto.

Title of signer if Owner is other than a natural person:

_____

Signature of Joint Owner _____

Address 141 E. Mill Ave
Porterville Ca 93257

_____

Dated: Dec 16, 1980.

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests BRAE to make the special distributions provided for in Section 7(a) of this Agreement.

By _____
(Signature)

to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be made without the consent of Owner, which consent shall be deemed to have been granted if, within thirty days of BRAE giving notice to Owner of the alteration, modification, improvement or addition required and of the approximate cost thereof, Owner shall not have given BRAE notice that Owner objects to the making of such alteration, modification, improvement or addition.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with BRAE, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and bodily injury, (ii) loss of or damage to the Cars and (iii) loss of revenues with respect to the Cars; provided, however, that if BRAE effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that, if BRAE determines that the cost of insurance described above is unreasonably high, or cannot be obtained, BRAE need not place or acquire such insurance and shall so notify Owner 60 days before expiration of such insurance.

(h) Pay on behalf, and in the name, of Owner all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in BRAE's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, and, where BRAE deems such action prudent and desirable, seek rulings and determinations of the Internal Revenue Service ("IRS") with respect to Federal tax issues affecting the ownership, use and/or operations of the Cars, all such actions to be in the name of Owner.

(i) Make all efforts reasonable under the circumstances to monitor and record and cause any lessee of the Cars to monitor and record movement of the Cars.

(j) Make all efforts reasonable under the circumstances to maintain and cause any lessee of the Cars to maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives (including BRAE) during reasonable business hours.

which is not a railroad to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars.

16. Notices.

Any notice required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to BRAE: BRAE Corporation
3 Embarcadero Center, Suite 1760
San Francisco, California 94111
Attn: Vice President-Marketing,
Investor Programs

If to Owner: To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

17. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of California.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the

(r) Pursue any claim arising with respect to Cars under manufacturers' warranties covering the Cars which BRAE, based on its good faith judgment, deems desirable, prudent and in the best interests of Owner to pursue.

(s) Provide such advice and perform such services incidental to the foregoing for Owner in connection with the provisions hereof and of the Purchase Contract as may from time to time be reasonably necessary in respect of the purchase, leasing and operation of the Cars.

4. Authority, and Limitations on Authority, of BRAE.

(a) It is recognized that BRAE will manage as part of the Management Program covered hopper railcars, including the Cars, purchased by investors who contract with BRAE for the management thereof pursuant to management agreements substantially identical to this Agreement. It is recognized that BRAE will receive from owners of other cars managed under the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that BRAE's services for and obligations to and rights with respect to Owner and the owners of other cars managed under the Management Program are several. Except as expressly provided in Section 4(b), BRAE will not act or purport to act for or in the name of the Management Program or the owners of cars managed under management agreements substantially identical to this Management Agreement collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars managed under the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming BRAE as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement and such other management agreements are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars managed under the Management Program and/or BRAE. BRAE shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between owners of cars managed under the Management Program or that such owners are acting collectively or as an entity and BRAE shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) Notwithstanding the provisions of Section 4(a), Owner recognizes that the IRS might assert that there exists among Owner and the other owners of cars managed under the Mangement Program and/or BRAE a partnership for Federal income tax purposes and that, pursuant to Section 6698 of the Internal

limitation, the receipt of items constituting Gross Revenues, the incurrence, accrual and payment of items constituting Operating Expenses, the distribution of Net Earnings, receipt of payments for operating deficits from owners of such cars, and the payment of fees to BRAE pursuant to Section 6. Such books and records shall (i) reflect only the transactions arising from operations of the cars managed under the Management Program, (ii) be kept physically apart from any other books and records maintained by BRAE for whatever purpose, and (iii) be available to Owner upon Owner's request for examination during the normal business hours of BRAE. At the termination of the term of this Agreement BRAE shall furnish (i) one copy of each annual report previously delivered to Owner pursuant to Section 13(b) and (ii) one copy of such other books and records which (x) relate to the Cars and (y) BRAE maintains at the time of such termination in the normal course of its record keeping under this Section 14(a) to Owner within 30 days after Owner gives notice to BRAE requesting such materials, which notice shall be given within 30 days after such termination. Upon the written request of Owner and payment by Owner of the reasonable expenses therefor, BRAE shall provide Owner with the list of the names and addresses of each other owner of cars managed under the Management Program unless such other owner has refused in writing to BRAE's providing such owner's name and address to Owner (and if any Owner has not so refused in writing, it will be deemed to have consented to such provision of his, her or its name and address).

(b) Neither the receipt nor the disbursement (other than payments made by or on behalf of Owner or other owners of cars managed under the Management Program to BRAE, as compensation or reimbursement of BRAE's expenses hereunder, pursuant to the terms of this Agreement or the agreements with such other owners) of any amounts generated by the operation of the Cars and the other cars managed under the Management Program shall appear in the accounting records or financial statements of BRAE or any of its affiliates, and any assets of Owner and the other owners of cars in the Management Program shall not be treated by BRAE as assets of BRAE or any of its affiliates or appear in the accounting records or financial statements of BRAE or any of its affiliates. Mileage charges generated by the Cars and other cars managed under the Management Program shall be kept in a bank account which is in the name of, or for the benefit of, Owner and the other owners of cars managed under the Management Program.

(c) BRAE shall cause to be maintained in the name of Owner and the owners of the other cars managed under the Management Program a bank and/or investment account (the

5. Owner's Revenues, Expenses and Net Earnings.

(a) The actual Gross Revenues (as hereinafter defined) and the actual Operating Expenses (as hereinafter defined) derived from and incurred by the Cars shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

(b) (i) As used in this Agreement, and except as provided in Section 7(f), the term "Gross Revenues" for any fiscal period shall mean all revenues for such fiscal period (unreduced by any expenses or costs) derived from the ownership, use and/or operation of cars managed under the Management Program, including, but not limited to, rentals under leases and time and mileage charges payable or creditable to a person which is not a railroad, and all income for such period from interim investment of funds held for the account of owners of cars managed under the Management Program.

(ii) As used in this Agreement, the term "Operating Expenses" for any fiscal period shall mean all expenses and costs for such fiscal period incurred in connection with the ownership, management, use and/or operation of cars managed under the Management Program including, but not limited to:

(A) maintenance;

(B) repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f) of this Agreement or the agreements with other owners of cars managed under the Management Program;

(C) freight charges, empty car movement charges or other transportation expenses incurred in delivering the Cars or any other cars managed under the Management Program to the lessee thereof, except to the extent such charges or expenses are the responsibility of Owner under Section 6(c) of the Purchase Contract or the owners of such other cars under the comparable provision of the purchase contracts therefor between such other owners and BRAE or are the responsiblity of such lessee under the lease of the Cars or such other cars;

require the transfer to BRAE of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the Cars of such person from such leases and substitute thereunder cars identical to the Cars so withdrawn.

(d) If BRAE terminates this Agreement pursuant to Section 2(d), or if Owner terminates this Agreement pursuant to Section 2(c), until such time as BRAE requires the transfer to BRAE of all of Owner's right, title and interest under the Leases or any other leases to which the Cars may then be subject pursuant to Section 2(c) or Section 2(d), as the case may be, unless the then lessee(s) of the Cars shall be willing to pay rental to Owner, Owner shall, until the expiration of such Leases or leases, acknowledge BRAE as Owner's agent for the purpose of receiving rentals under such lease(s), which rentals BRAE shall remit, after deducting the amount of any obligations of Owner pursuant to Section 7(c) accruing on or prior to such termination, forthwith upon receipt. In the event of such termination, BRAE shall in addition be entitled to pursue any remedy at law or in equity for Owner's failure to fulfill obligations under Section 7(c), including the right to recover money damages.

12. Withdrawal in Case of Special Improvements.

In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Management Program. In the event that Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after the effective date of any law, regulation or requirement prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation or maintanance of covered hopper railcars, such as the Cars, which have not been so altered, modified, improved or added to, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

13. Reports.

(a) As soon as practicable, but not later than 45 days after the end of each calendar quarter other than the fourth calendar quarter, BRAE will distribute to Owner an

efforts to allocate to cars managed under the Management Program only such portion of such insurance cost as is attributable to such cars);

(K) charges, assessments or levies imposed upon or against cars managed under the Management Program of whatever kind or nature;

(L) losses from liabilities which are not the responsibility of Owner under Section 7(g) or of owners of other cars managed under the Management Program under Section 7(g) of management agreements with such owners;

(M) fees payable for the recording under the Interstate Commerce Act and under the Uniform Commercial Code of any state of the Leases and any other leases to which the Cars are subject; and

(N) that portion of ad valorem, gross receipts and other property taxes which are determined by BRAE (or, in the event that cars managed under the Management Program are subject to a lease or leases and bear the reporting marks of the lessee or lessees thereunder, such lessee or lessees) to be attributable to the cars managed under the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that BRAE will use its best efforts, and will cause such lessee or lessees to use its or their best efforts, to allocate to the cars managed under the Management Program only such taxes as are attributable to such cars).

(iii) Gross Revenues and Operating Expenses shall be accounted for hereunder on a monthly basis on the cash receipts and disbursements method, rather than on the accrual method, of accounting, except as otherwise expressly provided in this Agreement.

then for the period that such terms provide that the offer shall remain open (or, if such offer would by its terms remain open for ten days or fewer after the giving to BRAE of the notice provided for in Section 9(c)(i), for ten days after the giving to BRAE of the notice provided in Section 9(c)(i)) Owner shall not consummate such sale, and BRAE shall have the right in its discretion either (A) to find for Owner, and Owner shall be obligated to accept, an offer for the purchase of the Car that results in Owner receiving net sale proceeds that are the same as or greater than Owner would receive in making the sale referred to in Section 9(c)(i), or (B) to purchase the Car at a price that results in Owner receiving the same net sale proceeds that Owner would receive in making the sale referred to in Section 9(c)(i). Any such purchase by BRAE shall be consummated at the time and in the manner provided in the offer referred to in Section 9(c)(i), except that BRAE shall not be required to consummate such purchase prior to 20 days after its election pursuant to Section 9(c)(iii)(B) to purchase such Car.

(d) For the purposes of this Section 9, "net sale proceeds" shall mean the gross sale proceeds from the sale of the Car less any commissions payable in connection therewith. For the purposes of this Section 9, BRAE shall be deemed to have found an offer for the purchase of a Car or to have purchased a Car if there is tendered to Owner on or prior to the second full business day prior to the date on which Owner may consummate the third party sale under Section 9(c)(ii) or (c)(iii) an offer for the purchase and sale of the Car signed by the purchaser and subject only to inspection to determine the Car's suitability for interchange according to the rules of the Association of American Railroads, cleaning, painting, restenciling, the delivery of the Car to a point reasonably designated by the purchaser, and other standard conditions and warranties.

10. Subordination.

This Agreement and BRAE's authority and rights hereunder (i) are subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any lender to whom Owner has granted a security interest in the Cars and (ii) are subject and subordinate to the terms of any chattel mortgage, mortgage, security agreement or other financing document given by Owner to such lender providing for the loan or such lien or security interest (any and all such

thereof under the Leases shall be paid, first, from any remaining portion of Owner's Subcription Price (defined in Section 6 of the Purchase Contract) and only after the full amount of the Subscription Price has been applied or returned as provided in Section 6 of the Purchase Contract, this proviso (x) to Section 5(d) and/or Section 7(i) shall such Operating Expenses be included in the computation of Owner's Net Earnings for such fiscal period and (y) Net Earnings distributed to Owner upon the expiration or termination of this Agreement shall include any reserves previously excluded from Net Earnings pursuant to clause (iii) of this Section 5(d), to the extent such reserves are not applicable to expenses arising or payable after the termination or expiration of this Agreement.

6. Compensation.

(a) Management Fee to BRAE.

(i) (A) Owner shall pay BRAE a monthly management fee equal to $70 for each Car managed under this Agreement in such month. Such fee shall commence, as to any Car, as of the date on which rent begins to accrue with respect to such Car under the Lease thereof and shall continue through December 31, 1986.

(B) Commencing January 1, 1987 and continuing through December 31, 1991, Owner shall pay BRAE a monthly management fee for each Car managed under this Agreement in such month equal in amount to the greater of (i) $70 and (ii) the product of $70 multiplied by a fraction (x) the numerator of which is the aggregate fixed rental plus other amounts generated during the period from September 1, 1986, through December 31, 1986, for all cars managed under the Management Program on January 1, 1987, divided by the number of cars managed under the Management Program on such day, and (y) the denominator of which is four times the average monthly fixed rental for all cars managed under the Management Program during the 12-month period beginning the first month

into subsequent to any Lease to which any one or more of the Cars may be subject); (ii) arising as a result of or in any way connected with the negligence, bad faith or willful misconduct of Owner; or (iii) arising as a result of or in any way connected with the use, operation, possession, control, maintenance, repair or storage of any Car if it shall be determined that the claimant against BRAE did not have a valid claim or was otherwise not entitled to relief against BRAE. BRAE shall be entitled to indemnification under Section 8(a)(ii) or 8(a)(iii) only after a determination to that effect (which determination shall include a finding that the cost, liability or expense in question was not a result of BRAE's gross negligence, bad faith or misconduct) by a sole arbitrator, whose jurisdiction shall be exclusive, under the then-effective rules of the American Arbitration Association (to which arbitration Owner and BRAE hereby consent). For the purpose of Section 8(a)(ii), Owner shall be deemed to have acted with gross negligence if Owner withholds consent under Section 4(c) to any alteration, modification, improvement or addition to the Cars of the type referred to in Section 7(d), or if Owner takes any action, or omits to take any action after due notice of the necessity therefor, preventing BRAE from providing for the maintenance or repair of any Car or from pursuing any claim arising with respect to Cars under manufacturers' warranties covering any Car.

(b) If (i) BRAE incurs any cost or expense (including reasonable attorneys' fees) in connection with any claim, action, damage, loss or liability as a result of the use, operation, possession, control, maintenance, repair or storage of any Car, (ii) BRAE shall not have been found to have been grossly negligent or acting with bad faith or misconduct in connection therewith, and (iii) Owner is entitled to insurance or lessee or railroad indemnity payments in respect of such cost or expense, then to the extent of the lesser of BRAE's cost or expense or Owner's said entitlement, BRAE shall be subrogated to Owner's said entitlement.

9. Sales Agency.

(a) During the terms of this Agreement, upon the request of Owner, BRAE shall act as agent in the sale of the Cars.

(b) Except in the case of any sale or other disposition of a Car to BRAE or any of its affiliates (that is, any company, person or firm controlling, controlled by or under common control with, BRAE) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to BRAE a sales commission determined as follows:

allocable to such period, including, but not limited to, rentals and fees for any arrangement for the use of the car. In computing such amount, no effect shall be given to the fact that rental may have abated with respect to any car pursuant to the terms of the lease covering such car if on that day such lease is in full force and effect.

(ii) The monthly management fee payable to BRAE for any Car for any partial month during which such Car is managed under this Agreement shall be the monthly management fee then payable to BRAE for a car for a full month reduced proportionately to reflect the portion of such month for which such car was so managed under this Agreement.

(iii) The monthly management fee payable to BRAE shall be payable monthly in the manner provided in Sections 5(c), 7(b) and 7(c).

(iv) The monthly management fee payable to BRAE for any Car managed under the Management Program shall accrue only so long as such Car is managed under the Management Program. For the purposes of this Section 6, management of a Car under the Management Program shall be deemed to begin on the day on which rent begins to accrue with respect to such Car under the Lease thereof and shall be deemed to continue until the termination or expiration of the management agreement (including this Agreement) with respect to such Car.

(b) Refinancing Fee to BRAE. If, as provided in Section 3(o), BRAE shall have arranged refinancing of a balloon payment on the Loan and Owner shall have elected to accept such refinancing, Owner shall pay to BRAE a refinancing fee equal to 1% of the principal amount refinanced, one-quarter of which fee shall be payable 30 days after the closing of such refinancing, one-quarter on the same day of the third month following the date of the first payment, one-quarter on the same day of the sixth month following the date of the first payment and the final quarter on the same day of the ninth month following the date of the first payment.

7. Distribution to Owner of Net Earnings; Payment of Costs and Expenses.

(a) Special Distributions of Net Earnings. If Owner has financed a portion of the purchase price for the Cars

or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. BRAE shall have the right to require Owner, if Owner consents to such alterations, modifications, improvements or additions as provided in Section 4(c)(ii), to pay the approximate cost thereof to BRAE upon 10 days prior written notice. Upon completion, BRAE shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, BRAE shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to BRAE the amount of such difference.

(e) Payment for Additional Insurance. If BRAE determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance, the cost thereof shall be the sole responsibility of Owner. Within 10 days of receipt of notice and demand from BRAE, Owner shall pay to BRAE the cost of any such insurance placed or purchased by Owner through BRAE.

(f) Payment for Certain Property Damage. The cost of repair of damage to any Car (other than (i) the amount of the deductible(s) under any insurance for property damage to the Car and (ii) the costs of repairs which BRAE determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits (except to the extent of the deductible(s) under the insurance policies under which such benefits are paid, if costs of repair had not, to the extent of such deductible(s), been the sole responsibility of Owner) or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). BRAE shall have the right to require Owner to pay to BRAE upon 10 days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner, or, at BRAE's election, such portion of such cost as BRAE believes will not be covered by any such payments which may be received by BRAE (as co-insured or additional insured, as provided in Section 3(g)) to cover the cost of such damage (it being understood that BRAE may apply to such cost of such repair any payments so received by BRAE to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by BRAE and applied to payment of the cost of such damage, BRAE shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has

or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. BRAE shall have the right to require Owner, if Owner consents to such alterations, modifications, improvements or additions as provided in Section 4(c)(ii), to pay the approximate cost thereof to BRAE upon 10 days prior written notice. Upon completion, BRAE shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, BRAE shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to BRAE the amount of such difference.

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allocable to such period, including, but not limited to, rentals and fees for any arrangement for the use of the car. In computing such amount, no effect shall be given to the fact that rental may have abated with respect to any car pursuant to the terms of the lease covering such car if on that day such lease is in full force and effect.

(ii) The monthly management fee payable to BRAE for any Car for any partial month during which such Car is managed under this Agreement shall be the monthly management fee then payable to BRAE for a car for a full month reduced proportionately to reflect the portion of such month for which such car was so managed under this Agreement.

(iii) The monthly management fee payable to BRAE shall be payable monthly in the manner provided in Sections 5(c), 7(b) and 7(c).

(iv) The monthly management fee payable to BRAE for any Car managed under the Management Program shall accrue only so long as such Car is managed under the Management Program. For the purposes of this Section 6, management of a Car under the Management Program shall be deemed to begin on the day on which rent begins to accrue with respect to such Car under the Lease thereof and shall be deemed to continue until the termination or expiration of the management agreement (including this Agreement) with respect to such Car.

(b) Refinancing Fee to BRAE. If, as provided in Section 3(o), BRAE shall have arranged refinancing of a balloon payment on the Loan and Owner shall have elected to accept such refinancing, Owner shall pay to BRAE a refinancing fee equal to 1% of the principal amount refinanced, one-quarter of which fee shall be payable 30 days after the closing of such refinancing, one-quarter on the same day of the third month following the date of the first payment, one-quarter on the same day of the sixth month following the date of the first payment and the final quarter on the same day of the ninth month following the date of the first payment.

7. Distribution to Owner of Net Earnings; Payment of Costs and Expenses.

(a) Special Distributions of Net Earnings. If Owner has financed a portion of the purchase price for the Cars

into subsequent to any Lease to which any one or more of the Cars may be subject); (ii) arising as a result of or in any way connected with the negligence, bad faith or willful misconduct of Owner; or (iii) arising as a result of or in any way connected with the use, operation, possession, control, maintenance, repair or storage of any Car if it shall be determined that the claimant against BRAE did not have a valid claim or was otherwise not entitled to relief against BRAE. BRAE shall be entitled to indemnification under Section 8(a)(ii) or 8(a)(iii) only after a determination to that effect (which determination shall include a finding that the cost, liability or expense in question was not a result of BRAE's gross negligence, bad faith or misconduct) by a sole arbitrator, whose jurisdiction shall be exclusive, under the then-effective rules of the American Arbitration Association (to which arbitration Owner and BRAE hereby consent). For the purpose of Section 8(a)(ii), Owner shall be deemed to have acted with gross negligence if Owner withholds consent under Section 4(c) to any alteration, modification, improvement or addition to the Cars of the type referred to in Section 7(d), or if Owner takes any action, or omits to take any action after due notice of the necessity therefor, preventing BRAE from providing for the maintenance or repair of any Car or from pursuing any claim arising with respect to Cars under manufacturers' warranties covering any Car.

(b) If (i) BRAE incurs any cost or expense (including reasonable attorneys' fees) in connection with any claim, action, damage, loss or liability as a result of the use, operation, possession, control, maintenance, repair or storage of any Car, (ii) BRAE shall not have been found to have been grossly negligent or acting with bad faith or misconduct in connection therewith, and (iii) Owner is entitled to insurance or lessee or railroad indemnity payments in respect of such cost or expense, then to the extent of the lesser of BRAE's cost or expense or Owner's said entitlement, BRAE shall be subrogated to Owner's said entitlement.

9. Sales Agency.

(a) During the terms of this Agreement, upon the request of Owner, BRAE shall act as agent in the sale of the Cars.

(b) Except in the case of any sale or other disposition of a Car to BRAE or any of its affiliates (that is, any company, person or firm controlling, controlled by or under common control with, BRAE) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to BRAE a sales commission determined as follows:

thereof under the Leases shall be paid, first, from any remaining portion of Owner's Subcription Price (defined in Section 6 of the Purchase Contract) and only after the full amount of the Subscription Price has been applied or returned as provided in Section 6 of the Purchase Contract, this proviso (x) to Section 5(d) and/or Section 7(i) shall such Operating Expenses be included in the computation of Owner's Net Earnings for such fiscal period and (y) Net Earnings distributed to Owner upon the expiration or termination of this Agreement shall include any reserves previously excluded from Net Earnings pursuant to clause (iii) of this Section 5(d), to the extent such reserves are not applicable to expenses arising or payable after the termination or expiration of this Agreement.

6. Compensation.

(a) Management Fee to BRAE.

(i) (A) Owner shall pay BRAE a monthly management fee equal to $70 for each Car managed under this Agreement in such month. Such fee shall commence, as to any Car, as of the date on which rent begins to accrue with respect to such Car under the Lease thereof and shall continue through December 31, 1986.

(B) Commencing January 1, 1987 and continuing through December 31, 1991, Owner shall pay BRAE a monthly management fee for each Car managed under this Agreement in such month equal in amount to the greater of (i) $70 and (ii) the product of $70 multiplied by a fraction (x) the numerator of which is the aggregate fixed rental plus other amounts generated during the period from September 1, 1986, through December 31, 1986, for all cars managed under the Management Program on January 1, 1987, divided by the number of cars managed under the Management Program on such day, and (y) the denominator of which is four times the average monthly fixed rental for all cars managed under the Management Program during the 12-month period beginning the first month

then for the period that such terms provide that the offer shall remain open (or, if such offer would by its terms remain open for ten days or fewer after the giving to BRAE of the notice provided for in Section 9(c)(i), for ten days after the giving to BRAE of the notice provided in Section 9(c)(i)) Owner shall not consummate such sale, and BRAE shall have the right in its discretion either (A) to find for Owner, and Owner shall be obligated to accept, an offer for the purchase of the Car that results in Owner receiving net sale proceeds that are the same as or greater than Owner would receive in making the sale referred to in Section 9(c)(i), or (B) to purchase the Car at a price that results in Owner receiving the same net sale proceeds that Owner would receive in making the sale referred to in Section 9(c)(i). Any such purchase by BRAE shall be consummated at the time and in the manner provided in the offer referred to in Section 9(c)(i), except that BRAE shall not be required to consummate such purchase prior to 20 days after its election pursuant to Section 9(c)(iii)(B) to purchase such Car.

(d) For the purposes of this Section 9, "net sale proceeds" shall mean the gross sale proceeds from the sale of the Car less any commissions payable in connection therewith. For the purposes of this Section 9, BRAE shall be deemed to have found an offer for the purchase of a Car or to have purchased a Car if there is tendered to Owner on or prior to the second full business day prior to the date on which Owner may consummate the third party sale under Section 9(c)(ii) or (c)(iii) an offer for the purchase and sale of the Car signed by the purchaser and subject only to inspection to determine the Car's suitability for interchange according to the rules of the Association of American Railroads, cleaning, painting, restenciling, the delivery of the Car to a point reasonably designated by the purchaser, and other standard conditions and warranties.

10. Subordination.

This Agreement and BRAE's authority and rights hereunder (i) are subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any lender to whom Owner has granted a security interest in the Cars and (ii) are subject and subordinate to the terms of any chattel mortgage, mortgage, security agreement or other financing document given by Owner to such lender providing for the loan or such lien or security interest (any and all such

efforts to allocate to cars managed under the Management Program only such portion of such insurance cost as is attributable to such cars);

(K) charges, assessments or levies imposed upon or against cars managed under the Management Program of whatever kind or nature;

(L) losses from liabilities which are not the responsibility of Owner under Section 7(g) or of owners of other cars managed under the Management Program under Section 7(g) of management agreements with such owners;

(M) fees payable for the recording under the Interstate Commerce Act and under the Uniform Commercial Code of any state of the Leases and any other leases to which the Cars are subject; and

(N) that portion of ad valorem, gross receipts and other property taxes which are determined by BRAE (or, in the event that cars managed under the Management Program are subject to a lease or leases and bear the reporting marks of the lessee or lessees thereunder, such lessee or lessees) to be attributable to the cars managed under the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that BRAE will use its best efforts, and will cause such lessee or lessees to use its or their best efforts, to allocate to the cars managed under the Management Program only such taxes as are attributable to such cars).

(iii) Gross Revenues and Operating Expenses shall be accounted for hereunder on a monthly basis on the cash receipts and disbursements method, rather than on the accrual method, of accounting, except as otherwise expressly provided in this Agreement.

require the transfer to BRAE of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the Cars of such person from such leases and substitute thereunder cars identical to the Cars so withdrawn.

(d) If BRAE terminates this Agreement pursuant to Section 2(d), or if Owner terminates this Agreement pursuant to Section 2(c), until such time as BRAE requires the transfer to BRAE of all of Owner's right, title and interest under the Leases or any other leases to which the Cars may then be subject pursuant to Section 2(c) or Section 2(d), as the case may be, unless the then lessee(s) of the Cars shall be willing to pay rental to Owner, Owner shall, until the expiration of such Leases or leases, acknowledge BRAE as Owner's agent for the purpose of receiving rentals under such lease(s), which rentals BRAE shall remit, after deducting the amount of any obligations of Owner pursuant to Section 7(c) accruing on or prior to such termination, forthwith upon receipt. In the event of such termination, BRAE shall in addition be entitled to pursue any remedy at law or in equity for Owner's failure to fulfill obligations under Section 7(c), including the right to recover money damages.

12. Withdrawal in Case of Special Improvements.

In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Management Program. In the event that Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after the effective date of any law, regulation or requirement prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation or maintanance of covered hopper railcars, such as the Cars, which have not been so altered, modified, improved or added to, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

13. Reports.

(a) As soon as practicable, but not later than 45 days after the end of each calendar quarter other than the fourth calendar quarter, BRAE will distribute to Owner an

5. Owner's Revenues, Expenses and Net Earnings.

(a) The actual Gross Revenues (as hereinafter defined) and the actual Operating Expenses (as hereinafter defined) derived from and incurred by the Cars shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

(b) (i) As used in this Agreement, and except as provided in Section 7(f), the term "Gross Revenues" for any fiscal period shall mean all revenues for such fiscal period (unreduced by any expenses or costs) derived from the ownership, use and/or operation of cars managed under the Management Program, including, but not limited to, rentals under leases and time and mileage charges payable or creditable to a person which is not a railroad, and all income for such period from interim investment of funds held for the account of owners of cars managed under the Management Program.

(ii) As used in this Agreement, the term "Operating Expenses" for any fiscal period shall mean all expenses and costs for such fiscal period incurred in connection with the ownership, management, use and/or operation of cars managed under the Management Program including, but not limited to:

(A) maintenance;

(B) repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f) of this Agreement or the agreements with other owners of cars managed under the Management Program;

(C) freight charges, empty car movement charges or other transportation expenses incurred in delivering the Cars or any other cars managed under the Management Program to the lessee thereof, except to the extent such charges or expenses are the responsibility of Owner under Section 6(c) of the Purchase Contract or the owners of such other cars under the comparable provision of the purchase contracts therefor between such other owners and BRAE or are the responsiblity of such lessee under the lease of the Cars or such other cars;

limitation, the receipt of items constituting Gross Revenues, the incurrence, accrual and payment of items constituting Operating Expenses, the distribution of Net Earnings, receipt of payments for operating deficits from owners of such cars, and the payment of fees to BRAE pursuant to Section 6. Such books and records shall (i) reflect only the transactions arising from operations of the cars managed under the Management Program, (ii) be kept physically apart from any other books and records maintained by BRAE for whatever purpose, and (iii) be available to Owner upon Owner's request for examination during the normal business hours of BRAE. At the termination of the term of this Agreement BRAE shall furnish (i) one copy of each annual report previously delivered to Owner pursuant to Section 13(b) and (ii) one copy of such other books and records which (x) relate to the Cars and (y) BRAE maintains at the time of such termination in the normal course of its record keeping under this Section 14(a) to Owner within 30 days after Owner gives notice to BRAE requesting such materials, which notice shall be given within 30 days after such termination. Upon the written request of Owner and payment by Owner of the reasonable expenses therefor, BRAE shall provide Owner with the list of the names and addresses of each other owner of cars managed under the Management Program unless such other owner has refused in writing to BRAE's providing such owner's name and address to Owner (and if any Owner has not so refused in writing, it will be deemed to have consented to such provision of his, her or its name and address).

(b) Neither the receipt nor the disbursement (other than payments made by or on behalf of Owner or other owners of cars managed under the Management Program to BRAE, as compensation or reimbursement of BRAE's expenses hereunder, pursuant to the terms of this Agreement or the agreements with such other owners) of any amounts generated by the operation of the Cars and the other cars managed under the Management Program shall appear in the accounting records or financial statements of BRAE or any of its affiliates, and any assets of Owner and the other owners of cars in the Management Program shall not be treated by BRAE as assets of BRAE or any of its affiliates or appear in the accounting records or financial statements of BRAE or any of its affiliates. Mileage charges generated by the Cars and other cars managed under the Management Program shall be kept in a bank account which is in the name of, or for the benefit of, Owner and the other owners of cars managed under the Management Program.

(c) BRAE shall cause to be maintained in the name of Owner and the owners of the other cars managed under the Management Program a bank and/or investment account (the

(r) Pursue any claim arising with respect to Cars under manufacturers' warranties covering the Cars which BRAE, based on its good faith judgment, deems desirable, prudent and in the best interests of Owner to pursue.

(s) Provide such advice and perform such services incidental to the foregoing for Owner in connection with the provisions hereof and of the Purchase Contract as may from time to time be reasonably necessary in respect of the purchase, leasing and operation of the Cars.

4. Authority, and Limitations on Authority, of BRAE.

(a) It is recognized that BRAE will manage as part of the Management Program covered hopper railcars, including the Cars, purchased by investors who contract with BRAE for the management thereof pursuant to management agreements substantially identical to this Agreement. It is recognized that BRAE will receive from owners of other cars managed under the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that BRAE's services for and obligations to and rights with respect to Owner and the owners of other cars managed under the Management Program are several. Except as expressly provided in Section 4(b), BRAE will not act or purport to act for or in the name of the Management Program or the owners of cars managed under management agreements substantially identical to this Management Agreement collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars managed under the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming BRAE as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement and such other management agreements are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars managed under the Management Program and/or BRAE. BRAE shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between owners of cars managed under the Management Program or that such owners are acting collectively or as an entity and BRAE shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) Notwithstanding the provisions of Section 4(a), Owner recognizes that the IRS might assert that there exists among Owner and the other owners of cars managed under the Mangement Program and/or BRAE a partnership for Federal income tax purposes and that, pursuant to Section 6698 of the Internal

which is not a railroad to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars.

16. Notices.

Any notice required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to BRAE: BRAE Corporation
3 Embarcadero Center, Suite 1760
San Francisco, California 94111
Attn: Vice President-Marketing,
Investor Programs

If to Owner: To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

17. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of California.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the

to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be made without the consent of Owner, which consent shall be deemed to have been granted if, within thirty days of BRAE giving notice to Owner of the alteration, modification, improvement or addition required and of the approximate cost thereof, Owner shall not have given BRAE notice that Owner objects to the making of such alteration, modification, improvement or addition.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with BRAE, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and bodily injury, (ii) loss of or damage to the Cars and (iii) loss of revenues with respect to the Cars; provided, however, that if BRAE effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that, if BRAE determines that the cost of insurance described above is unreasonably high, or cannot be obtained, BRAE need not place or acquire such insurance and shall so notify Owner 60 days before expiration of such insurance.

(h) Pay on behalf, and in the name, of Owner all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in BRAE's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, and, where BRAE deems such action prudent and desirable, seek rulings and determinations of the Internal Revenue Service ("IRS") with respect to Federal tax issues affecting the ownership, use and/or operations of the Cars, all such actions to be in the name of Owner.

(i) Make all efforts reasonable under the circumstances to monitor and record and cause any lessee of the Cars to monitor and record movement of the Cars.

(j) Make all efforts reasonable under the circumstances to maintain and cause any lessee of the Cars to maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives (including BRAE) during reasonable business hours.

(h) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) Severability. If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

BRAE CORPORATION

By _____
(Authorized Signature)

OWNER:

Name Burke E. Burford
(Please Print)

By Burke E. Burford
(Signature)

This Agreement must be signed before a notary public by all parties hereto.

Owner must complete Schedule A hereto.

Title of signer if Owner is other than a natural person:

_____

Signature of Joint Owner _____

Address 141 E. Mill Ave
Porterville CA 93257

_____

Dated: Dec 16, 1980.

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests BRAE to make the special distributions provided for in Section 7(a) of this Agreement.

By _____
(Signature)

change in the monthly management fee payable to BRAE under Section 6(a), BRAE shall give Owner written notice of the effective date of the next increase in such fee and of the approximate amount by which such fee would be increased pursuant to Section 6(a) if such increase were effective as of the date of such notice.

(h) Upon termination of this Agreement, BRAE shall cooperate with Owner either to sell or otherwise dispose of the Cars or to effect an orderly transition of the management or use of the Cars to any new manager or any new lessee thereof, as the case may be (it being understood that any costs of constructive or physical redelivery of Cars to Owner will be borne by Owner).

3. Duties of BRAE.

In consideration of the compensation to be paid to BRAE by Owner pursuant to Section 6(a), subject to any provisions herein requiring BRAE to obtain the consent of Owner, and subject to the agreement of Owner to reimburse BRAE pursuant to Section 7, BRAE shall, and is hereby authorized to, provide and perform the services on behalf of Owner and to take the action described below during the term of this Agreement:

(a) Immediately upon execution of this Ageement, or as soon thereafter as reasonably practicable, inspect the Cars in order to ascertain their conformity to the Manufacturer's specifications and applicable governmental regulations and, if found to be so in conformity, accept and take delivery of the Cars as agent and attorney for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Seek, observing the standards of performance specified in Section 17(g), to keep the Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to railroads, shippers or other financially responsible parties for that purpose on terms and conditions which are customary in the industry (provided, however, that BRAE may not enter into a lease of a Car for a term longer than six years unless BRAE gives written notice to Owner that it intends to enter into such lease and Owner does not object thereto in writing within 25 days of the date of such notice) and using its best efforts to take such steps as may, based on its good faith judgment, be desirable and prudent to insure that all obligations and duties arising under such leases, whether of lessors or lessees, are performed or complied with in an orderly and timely fashion; it being understood that, subject to the

State of ~~California~~ New York
~~City and~~ County of ~~San Francisco~~ New York SS:

On this 31 day of December, 1980, before me personally appeared Jerry A Rosen (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the Vice President (title of office) of BRAE 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 act and deed of said corporation.

[SEAL]

Connie L Kluever
Notary Public

My Commission Expires

CONNIE L. KLUEVER
Notary Public, State of New York
No. 60-2151600
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1981

into; but shall not include (y) any day after a lease covering the car has expired or otherwise terminated but prior to delivery of such car to the next lessee thereof and the commencement of accrual of rentals under such lease, if such car is then subject to a successor lease that has been signed and delivered and provides for the delivery of cars subject thereto as soon as may be reasonably practicable, and (z) any day on which there is a "force majeure event". For the purpose of this Section 2(c)(ii), "force majeure event" shall mean any delay caused by any alterations, modifications, improvements or additions to the car of the type referred to in Section 7(d); the failure of Owner to consent to such alterations, modifications, improvements or additions; any acts of God; acts of a public enemy; riot; civil commotion; storms; fire; floods; earthquakes; strikes; lockouts; material shortages; inability to procure labor, materials or supplies after diligent efforts to do so; delays in the delivery of materials or supplies; defaults on the part of any repair facility, repairman, contractor, subcontractor, supplier or materialman; and other events or circumstances of a similar nature beyond BRAE's reasonable control. The "number of car days during such 12-month period" shall mean the sum for each car managed under the Management Program of the number of days during the same 12-month period as is used in computing the numerator on which such car was managed under the Management Program.

Within 60 days after the end of any such 12-month period, BRAE shall notify Owner of Owner's right to terminate this agreement and such termination shall be effective only if written notice thereof shall be given to BRAE within 90 days of notice to Owner.

If Owner terminates this Agreement pursuant to this Section 2(c), BRAE may, in its sole discretion, at or after the date of such termination, require pursuant to Section 11(d) the transfer to BRAE, without recourse, of all of Owner's

(c) Portion of commencement fee referred to in Section 6(a)(ii) of the Purchase Contract paid to BRAE that is paid to Merrill Lynch as a placement agent's fee _____

4. Owner (if a married individual) will claim first-year "bonus depreciation" with respect to the Cars in the amount of $4,000. Other Owners will claim no "bonus depreciation." _____

5. Owner will initially utilize the 200% declining balance method in determining the depreciation allowance for each Car and will change to the sum-of-the-years'-digits method when the latter method results in greater depreciation deduction than the former. _____

6. The salvage value of each Car is 10% of cost which is reduced by 10% of cost pursuant to Section 167(f) of the Code. _____

7. The portion of the commencement fee paid to BRAE which is paid to Merrill Lynch Leasing Inc. as a fee for its advisory services in structuring the Management Program is amortized over 15 years. _____

8. Owner will elect to use the Asset Depreciation Range "Class Life" (ADR) System for the determination of the depreciation allowance for the Cars and will elect to use the half-year convention, pursuant to which the depreciation allowance for the Cars for 1980 will be determined by treating

sale or foreclosure is consummated or such Car is lost or destroyed.

(ii) shall terminate if BRAE shall dissolve, or shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the institution of bankruptcy proceedings against it, or shall file a petition or answer or consent seeking reorganization under the Bankruptcy Act of the United States, or shall consent to the filing of any such petition or the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of it or all or a substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if there shall have continued undischarged or unstayed for 90 days an order of a court of competent jurisdiction adjudging BRAE a bankrupt or insolvent or approving as properly filed a petition seeking reorganization of BRAE under the Bankruptcy Act or any similar Federal or State law or appointing a receiver, trustee or assignee in bankruptcy or insolvency of BRAE or all or a substantial part of its property or winding up or liquidating the affairs of BRAE on the application of any creditor in any insolvency or bankruptcy proceedings or other creditor's suit, which termination shall be effective as of the 5th day following the giving of written notice of such termination.

(iii) may be terminated by Owner, in Owner's sole discretion, if:

(x) there shall have occurred and be continuing uncured and unwaived any default under any instrument covering a debt obligation of BRAE arising from any failure to pay an obligation when due or from any act indicating the insolvency or bankruptcy of BRAE; or

(y) there shall have occurred and continued uncured and unwaived for 90 days and be continuing uncured and unwaived any

SCHEDULE B TO THE MANAGEMENT AGREEMENT

Borrowings, referred to in the Management Agreement, the proceeds of which have been applied to the purchase of Cars (to be completed by Owners who have requested special distributions of Net Earnings, provided for in Section 7(a), and/or who may request that the Manager assist in refinancing, as provided in Section 3(o)):

Lender (Name and Address): _____

_____

Original Principal Amount of Loan: _____

Amount of Each Periodic Payment of Debt Service: _____

Periods With Respect to Which Debt Service is Payable (e.g., monthly, quarterly): _____

Due Dates of Debt Service Payments (e.g., first day of each month, last day of each quarter): _____

Person, Account No. and/or Other Address to Which Payments of Debt Service Should be Sent: _____

Maturity of Loan: _____

Balloon Payment, If Any, Due Upon Maturity of the Loan: _____

EXHIBIT A TO THE MANAGEMENT AGREEMENT

Cars subject to the Management Agreement:

Manufacturer	Number of Cars	Description of Cars	Reporting Marks and Serial Numbers
FMC	4	____ cubic foot capacity, 100-ton capacity, steel covered hopper cars	BRAX 260177 BRAX 260178 BRAX 260179 BRAX 260180