

RECORDATION NO. 11965-8 Filed 1425

JUL 3 1980 -10 45 AM

INTERSTATE COMMERCE COMMISSION

STEPTOE & JOHNSON

1250 CONNECTICUT AVENUE N.E.  
RECORDATION NO. 11965 Filed 1425  
WASHINGTON, D.C. 20036

JUL 3 1980 -10 45 AM

INTERSTATE COMMERCE COMMISSION

CHERYL A. SKIGIN  
(202) 862-2053

No. 0-185,000

Date JUL 3 1980

Fee \$ 90.00

July 3, 1980

ICC Washington, D. C.

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

RECORDATION NO. 11965 Filed 1425

JUL 3 1980 -10 45 AM

INTERSTATE COMMERCE COMMISSION

FEE OPERATION BR.  
I.C.C.

JUL 3 10 43 AM '80

RECEIVED

Dear Ms. Mergenovich:

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

1. Credit and Security Agreement by and among Brae Corporation and Manufacturers Hanover Trust Co. The First National Bank of Boston, Crocker National Bank, The Bank of California, N.A. and Manufacturers Hanover Trust Co., as Agent dated as of October 1, 1979;
2. First Amendment dated as of April 15, 1979 to the Credit and Security Agreement dated as of October 1, 1979; and,
3. Supplement No. 1 dated as of July 3, 1980 to the Credit and Security Agreement dated as of October 1, 1979

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

Debtor: Brae Corporation  
3 Embarcadero Center  
San Francisco, CA 94111

Agent for the Banks: Manufacturers Hanover Trust Company  
741 Fifth Avenue  
New York, NY 10022

The Credit and Security Agreement functions as an assignment to the Agent of Brae Corporation's interest in the railroad equipment described in Schedule A.

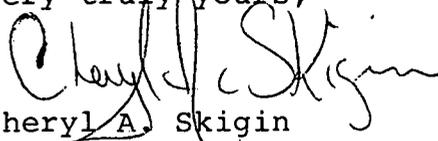
*adament*

*Counterpart Disc*

It is requested that these documents be filed and recorded under the names of the parties set forth above. Additionally, it is requested that they be cross-indexed under the name of Texas, Oklahoma & Eastern RR Co., 810 Whittington Avenue, Hot Springs, AR 71901. An additional \$30 has been included in the filing fee to cover the cross-indexing. Check number 12678 in the amount of \$90.00 is enclosed to cover the filing fees.

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

Very truly yours,

  
Cheryl A. Skigin

mbm

Enclosures

SCHEDULE A

<u>No. of Units</u>	<u>Description</u>	<u>AAR Designation</u>	<u>Identification Numbers</u>	<u>Name of Lessee</u>	<u>Date of Lease</u>	<u>Term of Lease</u>
111	50'6" 100-Ton	XP	TOE 3200-TOE 3202 TOE 3204-TOE 3215 TOE 3219-TOE 3229 TOE 3232-TOE 3234 TOE 3238-TOE 3240 TOE 3243-TOE 3248 TOE 3250-TOE 3259 TOE 3261-TOE 3270 TOE 3274-TOE 3286 TOE 3289-TOE 3298 TOE 3300-TOE 3320 TOE 3322-TOE 3324 TOE 3326 TOE 3330-TOE 3334	Texas, Okla- homa & Eastern RR Co.	June 2, 1980	15 Years

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

OFFICE OF THE SECRETARY

Dear **Cheryl A; Skigin**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **7/3/80** at **10:45am**, and assigned re-  
recording number (s). **11965-A and B**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

11965

RECORDATION NO. \_\_\_\_\_ Filed 1425

JUL 3 1980 - 10 45 AM

EXECUTION COPY

INTERSTATE COMMERCE COMMISSION

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CREDIT AND SECURITY AGREEMENT

among

BRAE CORPORATION

and

MANUFACTURERS HANOVER TRUST COMPANY

THE FIRST NATIONAL BANK OF BOSTON

CROCKER NATIONAL BANK

THE BANK OF CALIFORNIA, N.A.

and

MANUFACTURERS HANOVER TRUST COMPANY, as Agent

Dated as of October 1, 1979

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## SCHEDULES

Schedule I      Jurisdictions in which Company is  
Qualified to do Business

## EXHIBITS

Exhibit A      Form of Revolving Credit Note  
Exhibit B      Form of Term Note  
Exhibit C      Form of Legal opinion of Counsel to the  
Company  
Exhibit D      Form of Legal Opinion of Special Counsel  
to the Company  
Exhibit E      Notice to Lessee  
Exhibit F      Form of Lease Schedule  
Exhibit G      Form of Legal Opinion of Counsel to the  
Company (with respect to Term Loan)  
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to the Company (with respect to Term Loan)  
Exhibit I      Supplement  
Exhibit J      Bill of Sale  
Exhibit K      Form of Legal Opinion of Counsel to the  
Company (with respect to Leases)  
Exhibit L      Form of Legal Opinion of Special Counsel  
to the Company (with respect to Leases)  
Exhibit M      Form of Lease  
Exhibit N      Form of Lease  
Exhibit O      Form of Lease  
Exhibit P      Form of Lease  
Exhibit Q      Matters to be Covered by Opinions of  
Special Canadian Counsel to the Company

CREDIT AND SECURITY AGREEMENT, dated as of October 1, 1979, among BRAE CORPORATION, a Delaware corporation (the "Company"), the several banks parties hereto (collectively, the "Banks" and individually, a "Bank") and MANUFACTURERS HANOVER TRUST COMPANY CORPORATION, a New York corporation, as agent for the Banks hereunder (such agent and any successor agent hereunder are herein in such capacity called the "Agent").

W I T N E S S E T H :

WHEREAS, the Company is in the business of purchasing and leasing to various railroads railroad rolling stock; and

WHEREAS, the Company desires to obtain loans from the Banks in order to finance 80% of the purchase price and/or rebuilding cost of certain railroad rolling stock; and

WHEREAS, the Company proposes to lease such railroad rolling stock to various railroads or shippers; and

WHEREAS, the Company will evidence its borrowings hereunder by promissory notes which, together with the Company's obligations and liabilities under this Agreement, will be secured by a lien on and security interest in such railroad rolling stock and the rights of the Company under the leases of such railroad rolling stock; and

WHEREAS, the Banks are agreeable to making the loans on the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement the following terms shall have the following meanings:

"Agreement" shall mean this Credit and Security Agreement, including all Schedules and Exhibits and all Supplements hereto, as the same may from time to time be amended, supplemented or otherwise modified.

"Assigned Lease" shall mean a duly executed Lease, a copy of which shall have theretofore been delivered to each of the Banks, which Lease and/or lease schedule has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, the rental payments under which are not more than 30 days overdue, and with respect to which the Agent shall have received the following:

(i) A duly executed and completed Supplement describing such Lease and/or lease schedule and subjecting such Lease and/or lease schedule to the lien and security interest created by this Agreement, which Supplement shall have been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303 and that a financing statement with respect thereto has been duly filed with the Secretary of State of California (together with evidence of such filing);

(ii) An opinion of Messrs. Heller, Ehrman, White & McAuliffe, counsel to the Company, with a counterpart for each Bank, substantially in the form of Exhibit K hereto;

(iii) An opinion of Messrs. Connor, Moore & Corber, special counsel to the Company, with a counterpart for each Bank, substantially in the form of Exhibit L hereto;

(iv) A certificate, signed by the President or any Vice President of the Company, to the effect that the Rail-cars specified in such Lease and/or lease schedule have been duly leased to the lessee under such Lease (or under the Lease referred to in such lease schedule) (and specifying such Rail-cars); and

(v) A duly executed lease directive, substantially in the form of Exhibit E hereto (a

"Lease Directive") to the lessee under such Lease (or under the Lease referred to in such lease schedule).

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday under the laws of New York or California.

"Casualty Occurrence" shall mean any of the following events or conditions with respect to any Unit:

(i) such Unit shall become worn out, stolen, destroyed or irreparably damaged from any cause whatsoever; or

(ii) the confiscation, condemnation, seizure or forfeiture of, or other requisition of title to, such Unit by any governmental authority or any Person acting under color of governmental authority; or

(iii) such Unit shall become an Unprotected Unit, and the Rail-car Cost thereof together with the Rail-car Costs of all other Unprotected Units shall exceed an amount equal to 5% of the aggregate Rail-car Costs of all Units then subject to the lien and security interest of this Agreement; or

(iv) for a period of 45 consecutive days, such Unit shall not be subject to an Assigned Lease or shall be lost from revenue producing service for any other reason (except if such loss is covered by business interruption insurance).

"Casualty Value" with respect to any Unit shall mean the amount obtained by multiplying the aggregate unpaid principal amount of the Notes at the time Casualty Value is being determined by a fraction the numerator of which is the Rail-car Cost of such Unit and the denominator of which is the aggregate Rail-car Costs of all Rail-cars which are then subject to the lien and security interest of this Agreement.

"Casualty Value Prepayment Date" shall have the meaning set forth in Subsection 6.13 (a) hereof.

"Collateral" shall mean the Rail-cars, the Leases, and all other property, interests and rights described or referred to in Subsection 5.1 or 5.2 hereof or in any Supplement, or otherwise subjected to the lien and security interest created by this Agreement or intended so to be.

"Consolidated Tangible Net Worth" shall mean, at a particular date, all amounts which would, in conformity with generally accepted accounting principles, be included under shareholders' equity (including both common stock equity and preferred stock equity) on a consolidated balance sheet of the Company and its Restricted Subsidiaries at such date; provided, however, such amounts are to be net of amounts carried on the books of the Company and its Restricted Subsidiaries for (a) any write-up in the book value of any assets of the Company or any of its Restricted Subsidiaries resulting from a revaluation thereof subsequent to March 31, 1979 (b) treasury stock, (c) unamortized debt discount and expense, (d) any cost of investments in excess of net assets acquired at any time of acquisition by the Company or any of its Restricted Subsidiaries and (e) patents, patent applications, copyrights, trademarks, trade names, good will, experimental or organizational expenses and other like intangibles.

"Damaged Unit" shall mean any Unit which has suffered a Casualty Occurrence.

"Default" shall mean any of the events specified in Section 9 hereof, whether or not there has been satisfied any requirement in connection with such event for the giving of notice or the lapse of time, or both.

"Event of Default" shall mean any of the events specified in Section 9 hereof, provided that there has been satisfied any requirement in connection with such event for the giving of notice, or the lapse of time, or both.

"Lease" shall mean a duly executed lease of Rail-cars with the Company, as lessor, substantially in the form of Exhibits M, N, O or P hereto or such other form approved in writing by the Required Banks and shall include any duly executed lease schedule substantially in the form of Exhibit F hereto subjecting Rail-cars to such Lease.

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, security interest, lien or encumbrance, priority or other security agreement or arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any lease having substantially the same economic effect as a conditional sale or other title retention agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"1978 Agreement" shall be the reference to the Equipment Trust Agreement, dated as of November 1, 1978 between the Company and Morgan Guaranty Trust Company of New York, as Trustee, conformed copies of which, together with all consents, waivers, amendments or supplements thereto have heretofore been delivered to the Banks and certain provisions of which are incorporated by reference as set forth in Section 7 hereof.

"MHTC Rate" shall mean the commercial loan rate of Manufacturers Hanover Trust Company from time to time generally in effect in New York City on unsecured borrowings having a 90-day maturity by its most responsible and substantial domestic corporate borrowers.

"Non-Removable Improvement" shall mean any addition or improvement incorporated in or installed on or attached to any Rail-car which is not readily removable without causing material damage to such Rail-car or without diminishing or impairing the

utility or condition which such Rail-car would have had at the time of removal had such addition or improvement not been made.

"Notes" shall mean, collectively, the Revolving Credit Notes and the Term Notes.

"Obligations" shall have the meaning set forth in Section 5 hereof.

"Permitted Liens" shall mean, with respect to any Unit, (i) the rights of the lessee under the Lease of such Unit, (ii) Liens for taxes which are not yet due or the payment of which is not at the time required to be made in accordance with the provisions of Subsection 6.6(a) hereof, and (iii) materialmen's, mechanics', repairmen's and other like Liens arising in the ordinary course of business securing obligations which are not more than 30 days overdue or the payment of which is not at the time required to be made in accordance with the provisions of Subsection 6.6(a) hereof.

"Person" shall mean an individual, partnership, corporation, joint venture, trust, unincorporated organization, or government or any agency or political subdivision thereof.

"Proceeds" shall have the meaning assigned to it under the Uniform Commercial Code of the State of New York and, in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to the Company from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to the Company from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any of the Collateral by any governmental authority (or any Person acting under color of governmental authority), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Rail-cars" shall mean at any time box-cars, covered hopper cars, flat cars, chip cars, gondola cars and any other railroad rolling stock which are described in the Supplements at such time, together with (i) any and all parts, mechanisms, devices and replacements referred to in Subsection 6.14 hereof from time to time incorporated in or installed on or attached to any of such rail-cars, (ii) any and all additions and improvements from time to time incorporated in or installed on or attached to any of such rail-cars pursuant to requirement of law or governmental regulation and (iii) any and all Non-Removable Improvements.

"Rail-car Cost" shall mean, for each Unit, the invoice purchase price thereof to the Company and/or the capitalized cost of rebuilding such Unit, including all delivery charges, inspection fees and duties (if the purchase of such Rail-cars is from a foreign source) and all applicable local or state sales taxes, if any, as set forth in the manufacturer's invoice with respect to such Unit; provided, however, that delivery charges and inspection fees with respect to such Unit in excess of 4% of the actual cost of such Unit shall be excluded from the Rail-car Cost of such Unit.

"Replacement Unit" shall have the meaning set forth in Subsection 6.13(c) hereof.

"Required Banks" shall mean, as of a particular date, the holders of at least 75% of the aggregate unpaid principal amount of the Notes or, if no amounts are outstanding under the Notes, Banks having at least 75% of the Commitments hereunder.

"Restricted Subsidiary" shall mean any Subsidiary 80% of the stock of every class of which, except directors' qualifying shares, shall be owned by the Company either directly or through other Restricted Subsidiaries, and which has been designated by the Board of Directors of the Company or an Executive Committee of the Board of Directors of the Company as a Restricted Subsidiary. The Company may, at any time, by written

notice to the Banks, withdraw the designation of a Restricted Subsidiary if, after giving effect thereto, (i) such Subsidiary shall not own any capital stock or Debt of any other Restricted Subsidiary, (ii) there shall exist no Event of Default or Default, (iii) the net tangible assets of such Subsidiary (computed in the same manner as Consolidated Net Tangible Assets) shall not constitute 10% or more of Consolidated Net Tangible Assets and such Subsidiary shall not have contributed 10% or more of Consolidated Net Earnings in any of the last three fiscal years prior to such designation and (iv) the Company and its Restricted Subsidiaries shall be able to incur at least One Dollar of additional Consolidated Senior Funded Debt in compliance with the provisions of Section 6.05(d) of the 1978 Agreement as incorporated by reference in Section 7 hereof. Upon such withdrawal such Subsidiary shall cease to be a Restricted Subsidiary and it may not at any time within 36 months after such withdrawal, directly or indirectly, be redesignated as a Restricted Subsidiary. As used in this definition, the terms "Consolidated Net Tangible Assets", "Consolidated Net Earnings", "Consolidated Senior Funded Debt" and "Debt" shall have the respective meanings assigned to such terms in the 1978 Agreement.

"Revolving Credit Notes" shall have the meaning assigned to such term in Subsection 2.3 hereof.

"Subsidiary" shall mean any corporation more than 50% of the issued and outstanding shares of Voting Stock of which at the time is owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries.

"Supplement" shall mean any supplement substantially in the form of Exhibit I hereto which is executed and delivered by the Company to the Agent pursuant to this Agreement.

"Termination Date" shall mean September 30, 1981, or such earlier Business Day as the Company shall designate by at least four Business Days'

prior written notice (effective upon receipt) to the Banks and the Agent.

"Term Notes" shall have the meaning assigned to such term in Subsection 2.7 hereof.

"Unit" shall mean one of the Rail-cars.

"Unprotected Unit" shall mean, at any time, any Rail-car which is then located in a jurisdiction in which the lien on and security interest in such Rail-car created by this Agreement is not prior to all other Liens of third parties except Permitted Liens.

"Voting Stock" of a corporation shall mean stock having ordinary voting power for the election of a majority of the board of directors, managers or trustees of such corporation, other than stock having such power only by reason of the happening of a contingency.

1.2 Use of Defined Terms. All terms defined in this Agreement shall have their defined meanings when used in any Notes, certificates, reports or other documents made or delivered pursuant hereto. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

1.3 Other Definitional Provisions. (a) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural and vice versa.

## SECTION 2. AMOUNT AND TERMS OF LOANS

2.1 The Revolving Credit Commitment. Subject to the terms and conditions of this Agreement, each Bank

severally agrees to make loans to the Company from time to time from the date hereof to and including the Termination Date in an aggregate principal amount not to exceed the amount set opposite such Bank's name below (such amount, as the same may be reduced as provided herein, being called the "Commitment" of such Bank and the aggregate amount for all the Banks being called the "Commitments"):

<u>Bank</u>	<u>Commitment</u>	<u>% of Total Commitments</u>
Manufacturers Hanover Trust Company	\$ 3,000,000	50 %
The First National Bank of Boston	2,000,000	33-1/3%
Crocker National Bank	500,000	8-1/3%
The Bank of California, N.A.	<u>500,000</u>	<u>8-1/3%</u>
	<u>\$ 6,000,000</u>	<u>100.00%</u>

During such period the Company may use the Commitments by borrowing, prepaying the Revolving Credit Notes and reborrowing, all in accordance with the terms and conditions hereof.

2.2 Use of Proceeds. The Company will use the proceeds of each loan hereunder solely to pay, or to reimburse the Company for payments made by it with respect to, 80% of the aggregate Rail-car Costs of the Units described in the Supplement executed and delivered by the Company in connection with such loan.

2.3 The Revolving Credit Notes. The revolving credit loans made by each Bank hereunder shall be evidenced by a promissory note of the Company payable to such Bank in substantially the form of Exhibit A hereto (collectively, the "Revolving Credit Notes") representing the obligation of the Company to pay the amount of the Commitment of such Bank or, if less, the aggregate unpaid principal amount of all revolving credit loans made by such Bank, with interest thereon as prescribed in this subsection 2.3. Each Revolving Credit Note shall (a) be

dated the date the first revolving credit loans are made, (b) be stated to mature on the Termination Date and (c) bear interest from the date thereof on the unpaid principal amount thereof until such amount shall become due and payable (whether at the stated maturity, by acceleration or otherwise) at a fluctuating rate per annum equal to 110% of the MHTC Rate, and after such amount shall have become due and payable at a rate per annum equal to 120% of the MHTC Rate until such amount is paid in full (as well after as before judgment). Interest on the Revolving Credit Notes shall be payable on the last day of each March, June, September and December, commencing on the first such date to occur after the date of the Revolving Credit Notes, and upon payment (including prepayment) in full thereof.

#### 2.4 Procedure for Revolving Credit Borrowings.

The Company shall give the Banks and the Agent at least four Business Days' prior written notice (effective upon receipt) of its intention to borrow pursuant to the Commitments, specifying the date and amount of the borrowing. Not later than 12:00 P.M., New York City time, on the date specified in such notice, each Bank shall make available to the Agent at its office specified in Subsection 12.2 hereof, in immediately available funds, the amount to be advanced by such Bank. Loan proceeds received by the Agent hereunder shall be deposited in the Company's account with the Agent on the date specified in such notice. Each borrowing pursuant to the Commitments shall not exceed 80% of the aggregate Rail-car Costs of the Units being purchased or rebuilt by the Company (or with respect to the purchase price of which the Company is seeking reimbursement) with the proceeds of such borrowing.

2.5. Commitment Fee. The Company agrees to pay to the Agent for the account of each Bank a commitment fee for the period from and including the date hereof to the Termination Date, computed at the rate of 1/2% per annum on the average daily unused portion of such Bank's Commitment in effect during the period for which payment is made, payable quarterly on the last day of each March, June, September and December, commencing on the first such

date to occur after the date hereof, and on the Termination Date or such earlier date upon which its Commitments shall terminate pursuant to the terms hereof.

**2.6 Termination or Reduction of Commitments.**

The Company shall have the right, upon not less than four Business Days' prior notice to the Banks and the Agent to terminate or, from time to time, permanently reduce the Commitments, provided that (a) any such reduction of the Commitments shall be accompanied by the ratable prepayment of the Revolving Credit Notes, together with accrued interest on the amount so prepaid to the date of such prepayment, to the extent, if any, that the aggregate unpaid principal amount thereof then outstanding exceeds the Commitments as then reduced and (b) any such termination of the Commitments shall be accompanied by prepayment in full of the unpaid principal amount of the Revolving Credit Notes then outstanding, together with accrued interest thereon to the date of such prepayment, and the payment of any commitment fee then accrued hereunder. Any such partial reduction shall be in an aggregate amount of \$100,000 or any whole multiple thereof and shall ratably reduce permanently the Commitments then in effect hereunder. Termination of the Commitments shall also terminate in full the obligation of the Banks to make the term loans referred to in subsection 2.7 hereof.

**2.7 Term Loans and Term Notes.** (a) Subject to the terms and conditions hereof, each Bank severally agrees to make a term loan to the Company on the Termination Date in an amount designated by the Company up to but not exceeding the amount of the Commitment of such Bank then in effect. The term loan of each Bank shall be evidenced by a promissory note of the Company, substantially in the form annexed hereto as Exhibit B (collectively, the "Term Notes"), with appropriate insertions therein as to date, payee and principal amount, payable to the order of such Bank. Each Term Note shall (i) be dated the date the term loans are made, (ii) be stated to mature in twenty consecutive equal quarterly installments on the last day of each March, June, September and December commencing on the first such date to occur after the date of the Term Notes and (iii) bear interest from the date thereof on the unpaid principal amount thereof until such

amount shall become due and payable (whether at the stated maturity, by acceleration or otherwise) at a fluctuating rate per annum equal to 115% of the MHTC Rate, and thereafter at a rate per annum equal to 125% of the MHTC Rate until such amount is paid in full (as well after as before judgment). Interest on the Term Notes shall be payable quarterly on the last day of each March, June, September and December, commencing on the first such date to occur after the date of the Term Notes, and upon payment in full of the unpaid principal amount thereof.

(b) The Company shall give each Bank and the Agent at least four Business Days' prior written notice requesting the Banks to make the term loans in the aggregate principal amount specified in such notice. Not later than 12:00 noon New York City time on the date of borrowing, each Bank shall make available to the Agent at its office specified in Subsection 12.2 hereof (a) such Bank's Revolving Credit Note, if any, duly cancelled and (b) the amount, if any, in immediately available funds, by which the term loan being made by such Bank exceeds the unpaid principal amount of its Revolving Credit Note. If the aggregate principal amount of the term loans is to be less than the aggregate unpaid principal amount of the Revolving Credit Notes, the Company shall pay the difference to the Agent for the account of the Banks. The term loans shall be made against delivery by the Company to the Agent for the account of each Bank of a Term Note meeting the requirements of Subsection 2.7(a) hereof together with accrued interest on the Revolving Credit Note payable to such Bank and accrued and unpaid commitment fee hereunder to and including the date of the borrowing and by the delivery by the Agent to the Company of the Revolving Credit Notes, duly cancelled. Loan proceeds received hereunder by the Agent shall be deposited in the account of the Company with the Agent.

2.8 Prepayments. The Company may, at its option, at any one time or from time to time, prepay the Notes, in whole or in part, without premium or penalty, upon at least four Business Days' prior notice to the Agent and the Banks, specifying the date and amount of prepayment, and if such notice is given the Company shall be obligated to make such prepayment, together with

accrued interest on the amount prepaid to the date of such prepayment. Partial prepayments of the Term Notes shall be applied to proportionately reduce each of the installments of principal thereof. Prepayments on account of the Term Notes may not be reborrowed. Partial prepayments of the Notes shall be in an aggregate principal amount of at least \$100,000.

2.9 Computation of Interest and Commitment Fees. Interest and commitment fees shall be calculated on the bank basis of a 360-day year for the actual days elapsed. Any change in the interest rate on any Note resulting from a change in the MHTC Rate shall become effective as of the opening of business on the day on which such change in the MHTC Rate shall become effective. The Agent shall notify the Company of the effective date and the amount of each such change in the interest rate.

2.10 Pro Rata Treatment and Payments. Each borrowing by the Company from the Banks, each payment (including each prepayment) by the Company on account of the principal of and interest on the Notes and on account of any commitment fee hereunder and any reduction of the Commitments of the Banks hereunder shall be made pro rata according to the original Commitments. All payments (including prepayments) by the Company on account of principal, interest and commitment fees shall be made to the Agent for the account of each Bank at the office of the Agent referred to in Subsection 12.2 hereof in lawful money of the United States of America and in immediately available funds. If any payment hereunder or on any Note becomes due and payable on a day other than a business day, the maturity thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

2.11 Release of Collateral. If no Default or Event of Default has occurred and is continuing, upon any prepayment of the Notes pursuant to Subsection 2.8 hereof the Agent will execute and deliver to the Company such instruments as shall be necessary to release from the lien and security interest of this Agreement, without recourse

to, or representation or warranty by, the Agent, that number of Units (together with the Proceeds thereof, the applicable Leases to the extent that they relate to such Units and any Lease Directive with respect to any Lease no longer subject to the lien and security interest of this Agreement) the aggregate invoice purchase price of which Units bears the same relation to the aggregate Rail-Car Cost of all the Rail-cars which are then subject to the lien and security interest of this Agreement (without giving effect to such proposed release) as the aggregate principal amount of the Notes so prepaid bears to the aggregate unpaid principal amount of the Notes immediately prior to such prepayment. Subject to the written approval of the Agent (which approval shall not be unreasonably withheld), the Company shall specify the particular Units to be so released.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

In order to induce the Banks to enter into this Agreement and to make the loans hereunder, the Company represents and warrants to the Banks that:

3.1 Corporate Existence. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and the Company is duly qualified as a foreign corporation and in good standing in each other jurisdiction where the conduct of its business or the ownership or lease of its properties requires such qualification and the failure to be so qualified could have a material adverse effect on the business, operations, properties or assets or on the condition, financial or other, of the Company. As of the date hereof, such jurisdictions consist of those listed in Schedule I hereto.

3.2 Power and Authorization. The Company has full corporate power, authority and legal right to own its properties and to conduct its business as now conducted and to execute, deliver and perform this Agreement, the Supplements and the Notes, and the Company has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement, the Supplements and the Notes on the terms hereof and thereof. This Agreement has been duly executed and delivered by the Company and constitutes, and each Supplement and each Note

when executed and delivered by the Company will constitute, a valid and binding obligation of the Company enforceable in accordance with its terms. No consent of any other party (including stockholders of the Company) and no consent, license, approval or authorization of, exemption by, or registration or declaration with, any governmental authority is required in connection with the execution, delivery and performance by the Company of this Agreement, any Supplement or any Note except for the filing of this Agreement and each Supplement with the Interstate Commerce Commission and the filing of financing statements with respect hereto with the Secretary of State of California.

3.3 No Legal Bar. The execution, delivery and performance by the Company of this Agreement, the Supplements, the Notes and each Lease will not violate any provision of any existing law or regulation to which the Company is subject or of any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company or of the Articles of Incorporation, By-Laws or any preferred stock provision of the Company or of any mortgage, indenture, contract or other agreement to which the Company is a party or which is binding upon the Company or any of its properties or assets, and will not constitute a default thereunder, and (except as contemplated by this Agreement) will not result in the creation or imposition of any Lien on any of the properties or assets of the Company. The Company is not in default in the performance or observance of any of the obligations, covenants or conditions contained in any bond, debenture or note, or in any mortgage, deed of trust, indenture or loan agreement, of the Company.

3.4 No Material Litigation. Except as set forth in a letter dated October 1, 1979 from the Company to the Banks, there are no actions, suits or proceedings (whether or not purportedly on behalf of the Company) pending or, to the knowledge of the Company, threatened against the Company or any of its properties or assets in any court or before any arbitrator of any kind or before or by any governmental body which (i) relate to any of the Collateral or to any of the transactions contemplated by this Agreement, or (ii) would, if adversely determined,

materially impair the right or ability of the Company to carry on its business substantially as now conducted and presently proposed to be conducted by it, or (iii) would, if adversely determined, have a material adverse effect on the operating results or on the condition, financial or other, of the Company. The Company is not in default with respect to any material order, judgment, award, decree, rule or regulation of any court, arbitrator or governmental body.

**3.5 No Default.** No Default or Event of Default has occurred and is continuing under this Agreement.

**3.6 Financial Condition.** The consolidated balance sheet of the Company and its Subsidiaries as of March 31, 1979 and June 30, 1979, respectively, and the related consolidated statements of income and retained earnings and changes in financial position for the fiscal periods ended on such dates, reported on in the case of such statements as at and for the period ended March 31, 1979, by Arthur Andersen & Co., and certified, in the case of such interim statements, by the principal accounting officer of the Company, copies of which have heretofore been delivered to each Bank, are true, complete and correct and present fairly the consolidated financial condition of the Company and its Subsidiaries as at such dates, and the consolidated results of their operations for the fiscal periods then ended, and have been prepared in accordance with generally accepted accounting principles. There has been no material adverse change in the condition, financial or other, of the Company since March 31, 1979.

**3.7 Payment of Taxes.** The Company has filed all federal, state and local tax returns and declarations of estimated tax which are required to be filed (except for certain state and local tax returns with respect to which the Company has no material liability and which will be filed by the Company as soon as is practicable) and has paid all taxes which have become due pursuant to such returns and declarations or pursuant to any assessment received by it, and the Company has no knowledge of any deficiency or additional assessment in connection therewith not adequately provided for on the books of the

Company. In the opinion of the Company, all tax liabilities of the Company were adequately provided for as of March 31, 1979, and are now so provided for, on the books of the Company.

3.8 Force Majeure. Since March 31, 1979, the business, operations, properties and assets of the Company have not been materially and adversely affected in any way as the result of any fire, explosion, earthquake, disaster, accident, labor disturbance, requisition or taking of property by governmental authority, flood, drought, embargo, riot, civil disturbance, uprising, activity of armed forces, or act of God or the public enemy.

3.9 Burdensome Provisions. The Company is not a party to any agreement or instrument, or subject to any charter or other corporate restriction or to any judgment, order, writ, injunction, decree, award, rule or regulation, which materially and adversely affects the business, operations, properties or assets or the condition, financial or other, of the Company.

3.10 Leases. (a) Each Lease has been duly authorized, executed and delivered by the Company and the lessee thereunder and constitutes a valid and binding obligation of the Company and such lessee, enforceable in accordance with its terms. All consents, licenses, approvals or authorizations of, exemptions by, and registrations or declarations with, any governmental authority required to be obtained, effected or given in connection with the execution, delivery and performance of each such Lease by each party thereto have been duly obtained, effected or given and are in full force and effect, other than the filing of each such Lease with the Interstate Commerce Commission, which filing, in the case of each Assigned Lease, has been duly effected.

(b) Neither the Company nor (to the best of the Company's knowledge) the lessee under any Lease is in default in the performance or observance of any covenant, term or condition contained in such Lease, and no event has occurred and no condition exists which constitutes, or which with the lapse of time or the giving of

notice or both would constitute, an event of default under such Lease. The Company has fully performed all its obligations under each such Lease and no defense, offset, counterclaim or claim has been asserted or alleged against the Company with respect to any such Lease.

3.11 Title to Rail-cars. Whenever the Company executes and delivers a Supplement to the Agent on behalf of the Banks, the Company will have good and valid title to, and will be the lawful owner of, each Unit described in such Supplement, free and clear of all Liens whatsoever except (i) the lien and security interest created by this Agreement and (ii) Permitted Liens.

3.12 First Lien. Upon the filing of this Agreement, each Lease and any Supplement in the manner prescribed in 49 United States Code §11303, and in the regulations of the Interstate Commerce Commission promulgated thereunder, and the filing of a financing statement covering the Collateral in the office of the Secretary of State of California, this Agreement will constitute a legal, valid and perfected first lien on and first priority security interest in each of the Units described in such Supplement (and any Proceeds thereof) and each such Lease (and the Proceeds thereof) to the extent such Lease relates to such Units, as security for the Obligations, free and clear of all other Liens whatsoever except Permitted Liens. No security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral, which has been signed by the Company or which the Company has authorized any other Person to sign or file or record, is on file or of record with the Interstate Commerce Commission or with any other public office, except such as may have been filed by or on behalf of the Company in favor of the Agent pursuant to this Agreement.

3.13 Federal Regulations. Neither the Company nor any of its Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation

U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect, and no part of the proceeds of any borrowing hereunder will be used for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any such margin stock or to extend credit to, or invest in, others for the purpose of purchasing or carrying any such margin stock or to reduce or retire any indebtedness incurred for any such purpose.

#### SECTION 4. CONDITIONS OF BORROWING

4.1 Conditions of Initial Revolving Credit Loans. The Banks shall not be required to make the initial loans hereunder unless the Agent shall receive, for the account of each Bank, in addition to the documents described in Subsection 4.2 hereof, the following documents, each in form and substance satisfactory to the Agent:

- (a) a copy, certified by the Secretary or Assistant Secretary of the Company on the date of such loans, of the resolutions of the Board of Directors of the Company, with a counterpart for each Bank, approving the transactions contemplated by this Agreement and authorizing the execution, delivery and performance by the Company of this Agreement, the Notes, the Supplements, each Lease and all other documents and instruments required hereby;
- (b) a certificate of the Secretary or Assistant Secretary of the Company, dated the date of such loans, with a counterpart for each Bank, as to the incumbency and signatures of each of the officers of the Company executing this Agreement or any document relating hereto on behalf of the Company;
- (c) an opinion of Messrs. Heller, Ehrman, White & McAuliffe, counsel for the Company, substantially in the form of Exhibit C hereto, and an opinion of Messrs. Connor, Moore & Corber, special counsel for the Company, substantially in the form of Exhibit D

hereto, with a counterpart of each such opinion for each Bank;

(d) evidence that this Agreement has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303;

(e) a Revolving Credit Note payable to each Bank duly executed by a duly authorized officer of the Company conforming to the requirements of Subsection 2.3 hereof; and

(f) an opinion of special Canadian counsel for the Company covering the matters set forth in Exhibit Q hereto.

#### 4.2 Conditions of All Revolving Credit Loans.

The Banks shall not be required to make any loan hereunder unless:

(a) the representations and warranties contained in Section 3 hereof shall be true and correct on and as of the date of the making of such loan with the same effect as if made on and as of such date, and no Default or Event of Default shall be in existence on the date of the making of such loan or would occur as a result of such loan; and

(b) the Agent shall have received, for the account of each Bank, the following documents, each in form and substance satisfactory to the Agent:

(i) a copy of the warranty bill of sale from the manufacturer or vendor of the Rail-cars being financed by such loan, substantially in the form of Exhibit J hereto, transferring to the Company good title to such Rail-cars free and clear of all Liens except for the purchase money security interest in favor of such manufacturer;

(ii) a copy of the invoice from the manufacturer or vendor of the Rail-cars being financed by such loan and, in the event such

Rail-cars have been rebuilt, an invoice from the company which rebuilt such Rail-cars, specifying in each case the Rail-car Costs thereof, and accompanied by or having endorsed thereon a certification by an authorized officer of the Company as to the correctness of the information set forth in such invoice;

(iii) a completed Supplement duly executed by the Company, identifying the Rail-cars being financed by such loan and subjecting such Rail-cars to the lien and security interest created by this Agreement, together with evidence that such Supplement has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303;

(iv) evidence of insurance on the Rail-cars being financed by such loan which indicates compliance with the provisions of Subsection 6.12 hereof;

(v) a certificate, dated the date of such loan and signed by the President or any Vice President of the Company, to the same effect as paragraph (a) of this Subsection 4.2 and to the further effect that (A) the Rail-cars being financed by such loan have been delivered to and accepted by the Company; (B) the Company has valid and legal title to, and is the lawful owner of, such Rail-cars, free and clear of all Liens except the lien and security interest created by this Agreement and Permitted Liens; and (C) either (1) such Rail-cars have been duly leased to the lessee under an Assigned Lease (specifying the particular Assigned Lease and the Rail-cars which are leased under such Assigned Lease) or (2) in the event the Company has not subjected such Rail-cars to an Assigned Lease, acknowledging that if within 45 days of such loan such Rail-cars have not been so subjected to an Assigned Lease, a Casualty Occurrence with respect to such Rail-cars shall be deemed to have occurred.

(vi) an opinion of Messrs. Connor, Moore & Corber, special counsel for the Company, with a counterpart for each Bank, dated the date of such loan and addressed to the Banks and the Agent, to the effect that (A) the Company has valid and legal title to, and is the lawful owner of, the Rail-cars being financed by such loan, free and clear of all Liens except the lien and security interest created by this Agreement and Permitted Liens; (B) the Supplement describing such Rail-cars has been duly filed, registered and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303; (C) this Agreement, as supplemented by such Supplement, constitutes a legal, valid and perfected first lien on and first priority security interest in each of such Rail-cars (and any Proceeds thereof); and (D) no further action, including any filing or recording of any document, is necessary or advisable in order to create and maintain in favor of the Agent the lien and security interest referred to in the foregoing clause (C) (or, if any action is necessary or advisable, specifying the same);

(vii) an opinion of counsel for the seller of the Rail-cars being financed by such loan (the "Seller"), with a counterpart for each Bank, dated the date of such loan and addressed to the Company, the Banks and the Agent, in form and substance satisfactory to counsel for the Agent, to the effect that (A) the Seller is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to own its property and to conduct its business as presently conducted; and (B) the Seller's bill of sale relating to the Rail-cars being financed by such loan has been duly authorized, executed and delivered by the Seller and is effective to transfer to the Company good and marketable title to the Rail-cars, free and clear (as of the date of delivery of such Rail-cars by the Seller to the Company) of all claims, charges, liens, security interests and other encumbrances, except the purchase money security interest in favor of the Seller, which purchase

money security interest has been terminated as of the date of such opinion, and except the rights of the Agent under this Agreement;

(viii) if such loan finances the rebuilding of Rail-cars, a certificate signed by an authorized officer of the company which performed the rebuilding of such Rail-cars to the effect that (a) the invoice of such company with respect to such rebuilding has been paid in full and (b) such company has no claim, security interest or other interest in such Rail-cars; and

(ix) any other documents, affidavits or certificates that the Agent may reasonably request.

4.3 Conditions to Term Loans. The Banks shall not be required to make the term loans pursuant to Subsection 2.7(a) hereof unless as of the Termination Date:

(a) the Company shall pay to the Agent for the account of each Bank all interest accrued on the Revolving Credit Notes to and including the Termination Date;

(b) the Agent shall have received for the account of each Bank a Term Note conforming to the requirements of Subsection 2.7(a) hereof and duly executed by a duly authorized officer of the Company;

(c) the representations and warranties made by the Company herein shall be true and correct as if made on and as of the Termination Date and no Default or Event of Default shall be in existence on the Termination Date, and the Agent shall have received, with a counterpart for each Bank, a certificate, dated the Termination Date and signed by the President or a Vice President of the Company, to such effect;

(d) the Agent shall have received, with a counterpart for each Bank, (i) an opinion of counsel for the Company, dated the Termination Date, substantially in the form of Exhibit G hereto, (ii) an opinion of special counsel to the Company dated the Termination Date, substantially in the form of Exhibit H hereto and (iii) an opinion of special Canadian counsel for the Company, covering the matters set forth in Exhibit Q hereto.

## SECTION 5. GRANT OF LIEN AND SECURITY INTEREST

As collateral security for (a) the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration or otherwise) of the unpaid principal of, premium, if any, and interest on the Notes, (b) the due and punctual payment and performance by the Company of all of its obligations and liabilities under or arising out of or in connection with this Agreement, and (c) the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration or otherwise) of all indebtedness, obligations and liabilities of the Company hereunder to the Banks, whether now existing or hereafter incurred (all of the foregoing being hereinafter called the "Obligations"), and in order to induce the Banks to make the loans hereunder:

5.1 Rail-cars. The Company does hereby assign, convey, mortgage, pledge and transfer to the Agent, for the ratable benefit of the Banks, and does hereby grant to the Agent, for the ratable benefit of the Banks, a continuing security interest in, all Rail-cars now owned or at any time hereafter acquired by the Company and any and all Proceeds thereof, provided that the Agent does not consent to the sale or other disposal thereof.

5.2 Leases. The Company does hereby assign, convey, mortgage, pledge and transfer to the Agent, for the ratable benefit of the Banks, and does hereby grant to the Agent, for the ratable benefit of the Banks, a continuing security interest in, all of the right, title and interest of the Company in, to and under each Lease, whether now or hereafter in effect, including, without limitation, all right, title and interest of the Company in and to all rents, issues, profits, revenues and other income arising under each Lease and other moneys due and to become due to the Company under each Lease, all proceeds of and all claims for damages arising out of the breach of each Lease, the right of the Company to terminate each Lease and to compel performance of the terms and provisions thereof, and all chattel paper, contracts, instruments and other documents evidencing each Lease or any moneys due or to become due thereunder or related thereto, but only to the extent that all the foregoing

relate to, derive from or arise out of the Rail-cars. Each and every copy of each Lease which the Company directly or indirectly has in its control or possession shall have attached thereto a notice indicating the Agent's interest therein. Until an Event of Default has occurred and is continuing, each executed Lease Directive which has been delivered by the Company to the Agent shall be held by the Agent in escrow for the Company.

If an Event of Default has occurred and is continuing, upon the demand of the Agent the Company will specifically authorize and direct the lessee under each Lease to make payment of all moneys due and to become due under or arising out of such Lease on account of such Rail-cars directly to the Agent (and the Company hereby specifically authorizes the Agent upon such occurrence to send to such lessee the applicable Lease Directive or Lease Directives) and upon such demand the Company irrevocably authorized and empowers the Agent to ask, demand, receive, receipt and give acquittance for any and all such amounts which may be or become due or payable or remain unpaid to the Company by such lessee at any time or times under or arising out of its respective Lease; to endorse any checks, drafts or other orders for the payment of money payable to the Company in payment therefor; and in the Agent's discretion to file any claims or take any action or proceedings either in its own name or in the name of the Company or otherwise which the Agent may deem to be necessary or advisable in the premises. The Company hereby irrevocably authorizes the Agent after any such demand has been made, in its own name or in the name and on behalf of the Company, to give notification to the lessee under each Lease that payment thereunder is to be made directly to the Agent.

It is expressly agreed by the Company that, anything herein to the contrary notwithstanding, the Company shall remain liable under each Lease to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof. Neither the Agent nor any of the Banks shall have any obligation or liability under any Lease by reason of or arising out of this Agreement or the assignment

of such Lease to the Agent or the receipt by the Agent of any payment relating to such Lease pursuant hereto, nor shall the Agent or any of the Banks be required or obligated in any manner to perform or fulfill any of the obligations of the Company under or pursuant to any Lease, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any performance by any party under such Lease, or to present or file any claim, or to take any action to enforce the observance of any obligations of any party to such Lease.

#### SECTION 6. COVENANTS

The Company hereby covenants and agrees that from the date of this Agreement and so long as any of the Notes remain outstanding and unpaid:

6.1 Financial Statements and Reports. The Company will furnish to each of the Banks (a) as soon as available but in any event not later than 90 days after the close of each fiscal year of the Company, a balance sheet of the Company as at the end of such fiscal year and the related statements of income and of changes in financial position of the Company for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied in a basis consistently maintained throughout such fiscal year and accompanied by a report or opinion of Arthur Andersen & Co. or other independent public accountants of nationally recognized standing selected by the Company and satisfactory to the Banks; (b) as soon as available, but in any event within 90 days after the close of each fiscal year of the Company, consolidated and consolidating financial statements of the Company and its Subsidiaries, including therein (i) consolidated and consolidating balance sheets of the Company and its Subsidiaries as at the end of such fiscal year showing inter-company eliminations, and (ii) related consolidated and consolidating statements of income and retained earnings of the Company and its Subsidiaries, showing inter-company eliminations, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period

involved and with the prior year, such financial statements being certified by the chief financial officer of the Company and accompanied by the report of the independent public accountants certifying the annual audit report referred to in (a) above that such consolidated and consolidating financial statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Company and its Subsidiaries taken as a whole; (c) as soon as available, but in any event not later than 45 days after the end of each of the first three quarterly periods of each fiscal year of the Company, unaudited consolidated and consolidating financial statements of the Company and its Subsidiaries, including therein (i) consolidated and consolidating balance sheets of the Company and its Subsidiaries as at the end of such fiscal quarter, showing inter-company eliminations, (ii) related consolidated and consolidating statements of income and retained earnings of the Company and its Subsidiaries, showing inter-company eliminations, and (iii) the related consolidated statement of changes in financial position of the Company and its Subsidiaries all for the period from the beginning of such fiscal year to the end of such fiscal quarter, the consolidated financial statements of the Company and its Subsidiaries setting forth in the case of the Company and its Subsidiaries corresponding figures for the like period of the preceding fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and with prior periods and certified by the chief financial officer of the Company (subject to normal year-end audit adjustments); (d) concurrently with the delivery of the financial statements referred to in clauses (a), (b) and (c) above, a certificate of the principal financial or accounting officer of the Company (1) stating that, to the best of his knowledge after due inquiry, the Company has observed and performed each and every covenant and agreement of the Company contained in this Agreement and the Notes and that no Default or Event of Default has occurred during the period covered by such financial statements or is then in existence, except as specifically indicated, and (2) setting forth in reasonable detail all computations required to determine if the Company was in compliance during the period covered by such financial

statements with the provisions of Subsection 6.4 hereof and Subsections 6.05(b), 6.05(d) and 6.05(e) of the 1978 Agreement as incorporated by reference in Section 7 of this Agreement; (e) concurrently with the delivery of the financial statements referred to in clause (a) above, a certificate of the independent public accountants which certified such statements to the effect that, in making the examination necessary for the audit of such financial statements, they obtained no knowledge of any default by the Company in the observance or performance of any of its covenants or agreements contained in this Agreement or the Notes, except as specifically indicated; (f) promptly upon their becoming available, copies of all regular and periodic reports, if any, which the Company or any of its Subsidiaries shall file with the Securities and Exchange Commission or any similar or corresponding governmental department, commission, board, bureau or agency substituted therefor, or with any national securities exchange; and (g) promptly, such additional financial and other information as any Bank may from time to time reasonably request.

6.2 Utilization Reports. The Company will furnish to each of the Banks as soon as available, but in any event not later than 45 days after the close of each fiscal quarter of each fiscal year of the Company, (a) information setting forth the average utilization during such fiscal quarter of all railroad rolling stock (including the Rail-cars) owned by the Company and its Subsidiaries leased under per diem leases (the rental payments under which are based upon utilization rate), all in reasonable detail and certified by the principal financial or accounting officer of the Company, (b) the same information required by the preceding clause (a) but limited solely to Rail-cars leased under per diem Leases and (c) with respect to all Leases other than such per diem Leases, a schedule setting forth each Lease with respect to which rental payments are more than 30 days overdue, and the amount of such overdue payments. For the purpose of this Subsection 6.2, the "average utilization" of an item of railroad rolling stock owned by the Company or a Subsidiary during a fiscal quarter shall be determined by dividing the aggregate number of days in such fiscal quarter that car-hire charges are earned by such rolling stock by the aggregate number of days in such fiscal

quarter that such rolling stock was owned by the Company or a Restricted Subsidiary.

6.3 Sale, Lease, Merger or Consolidation by Company. The Company will not sell, lease, transfer or otherwise dispose of all or substantially all of its properties and assets as an entirety, or consolidate with or merge into any Person, or permit any Person to merge into it, unless:

(a) the Company is the continuing and surviving corporation; and

(b) immediately after giving effect to such transaction and to the assumption of the obligations, covenants and agreements of the Company under this Agreement and the Notes, the Company (i) shall not be in default in the performance or observance of any covenant, agreement or condition contained in this Agreement, and (ii) shall be able to incur at least \$1 of additional Funded Debt (as defined in the 1978 Agreement) in compliance with the provisions of Subsection 6.4 of the 1978 Agreement as incorporated by reference herein.

6.4 Maintenance of Consolidated Tangible Net Worth. The Company will not permit Consolidated Tangible Net Worth to be at any time less than \$39,000,000.

6.5 Limitation on Prepayments. The Company will not, nor will it permit any Restricted Subsidiary to, directly or indirectly, prepay, purchase, redeem, retire or otherwise acquire, or make any payment on account of any principal of, interest on, or premium payable in connection with the prepayment, redemption or retirement of, any indebtedness for borrowed money except (a) such redemptions and/or payments as may be required under the terms of the respective instruments (as in effect on the date of execution hereof) evidencing such indebtedness or under which such indebtedness is incurred and (b) such payments of Current Debt (as defined in the 1978 Agreement) as may be necessary to comply with provisions in any instrument under which any indebtedness for borrowed money is incurred which provisions require the reduction of such Current Debt.

6.6 Payment of Taxes; Corporate Existence; Line of Business Maintenance of Properties; Principal Office; Management. (a) The Company will promptly pay and discharge or cause to be paid and discharged, before the same shall become in default, all lawful taxes, assessments and governmental charges or levies imposed upon the Company or any Restricted Subsidiary, or upon any property, real, personal or mixed, belonging to the Company or any Restricted Subsidiary, or upon any part thereof, as well as all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any such property or any part thereof; provided, however, that the Company shall not be required to pay and discharge or to cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as (i) the validity thereof shall be contested in good faith by appropriate proceedings, (ii) such proceedings do not involve any danger of the sale, forfeiture or loss of the Collateral or any part thereof, and (iii) the Company or such Restricted Subsidiary, as the case may be, shall have set aside on its books adequate reserves with respect thereto in accordance with generally accepted accounting principles.

(b) The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises and the corporate existence, rights and franchises of each of its Restricted Subsidiaries, and will comply with and cause each Subsidiary to comply with all valid and applicable statutes and governmental regulations except any such statute or regulation the validity or applicability of which is being contested in good faith; provided, however, that nothing in this Subsection 6.6(b) shall prevent a consolidation or merger of, or a sale, lease, transfer or other disposition of all or substantially all of the property and assets of, the Company not prohibited by the provisions of Subsection 6.3 hereof; and provided, further, that nothing in this Subsection 6.6(b) shall prevent (i) the consolidation or merger of any Restricted Subsidiary with or into the Company, (ii) the consolidation or merger of any Restricted Subsidiary with or into any other Restricted Subsidiary, or (iii) the abandonment or termination of the corporate

existence, rights and franchises of any Restricted Subsidiary if such abandonment or termination is, in the opinion of the Board of Directors of the Company, in the interest of the Company and not disadvantageous to the holders of the Notes.

(c) The Company will not enter into a line of business other than one relating to transportation or leasing or other similar services unless such business is closely related to the business then being carried on by the Company and its Restricted Subsidiaries.

(d) The Company will at all times maintain and keep, or cause to be maintained and kept, in good repair, working order and condition all property of the Company and its Restricted Subsidiaries used or useful in the conduct of their respective businesses, and will from time to time make or cause to be made all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

(e) The Company represents that its principal place of business, chief executive office and the place at which its books and records are kept is 3 Embarcadero Center, San Francisco, California 94111. The Company will not change the location of its principal place of business, chief executive office or the place at which its books and records are kept unless it shall have given each Bank and the Agent at least 30 days prior written notice of such change, and the Company will at all times maintain its principal place of business, chief executive office and the place at which its books and records are kept within the United States of America.

(f) The executive management of the Company shall at all times be reasonably satisfactory to the Banks, it being understood that the present executive management group is so satisfactory.

6.7 Indemnities, etc. (a) In any suit, proceeding or action brought by the Agent under any Lease or to enforce any provisions thereof, the Company

will save, indemnify and keep the Agent and the Banks harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the lessee thereunder, arising out of a breach by the Company of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such lessee or its successors from the Company, and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Agent and the Banks.

(b) The Company agrees to indemnify and hold the Agent and the Banks harmless against any and all liabilities, obligations, losses, damages, claims, suits, costs, expenses and disbursements (including legal fees and expenses) incurred by or asserted against the Agent and the Banks with respect to claims for personal injury or property damage arising from its participation in the transactions contemplated by this Agreement, any Lease or the Notes.

6.8 Performance of Leases. The Company will perform and comply in all material respects with all its obligations under each Lease and all other agreements to which it is a party or by which it is bound relating to the Collateral, and the Company will use its best efforts to cause each other party to any thereof to so perform and comply.

6.9 Preservation of Collateral. (a) The Company will not create, permit or suffer to exist, and will defend the Collateral against and take such other action as is necessary to remove, any Lien, claim or right in or to the Collateral (other than the lien and security interest created by this Agreement and Permitted Liens), and will defend the right, title and interest of the Agent in and to the Company's rights under each Lease and rights in the Rail-cars and in and to the Proceeds thereof against the claims and demands of all other Persons whomsoever.

(b) The Company will not, without the prior written consent of the Agent, sell, transfer or otherwise dispose of any of the Collateral or attempt or offer to do so.

(c) The Company will not, without the prior written consent of the Agent, agree to or permit any amendment or other modification of any Lease which (i) shortens the initial lease term of such Lease, (ii) reduces the amount of rental or any other amount payable to the Company thereunder, or changes the time of any such payment, or changes the method of determining such rental or other amount in a manner which is likely to reduce the amount thereof payable to the Company or (iii) changes any of the provisions regarding the relationship between the Rail-cars and the other railroad rolling stock leased under such Lease as to loading or other use thereof.

(d) The Company will advise the Agent promptly, in reasonable detail, of any Lien or claim made or asserted against any of the Collateral and of any event affecting the Agent's lien on and security interest in the Collateral.

6.10 Further Assurances; Recordation and Filing. The Company will, at its sole cost and expense, do, execute, acknowledge and deliver all further acts, supplements, mortgages, security agreements, conveyances, transfers and assurances necessary or advisable for the perfection and preservation of the lien and security interest created by this Agreement in the Collateral, whether now owned or hereafter acquired. The Company will cause this Agreement and all Supplements hereto, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at no expense to the Agent or any of the Banks in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Agent hereunder.

6.11 ICC Jurisdiction. The Company will not take or permit to be taken any action within its control which would subject it or any Subsidiary or its or any

such Subsidiary's operations to the jurisdiction of the Interstate Commerce Commission, if such jurisdiction will adversely affect the ability of the Company to perform its obligations under this Agreement, any Note or any Lease or adversely affect the validity or enforceability of this Agreement, any Note or any Lease.

6.12 Maintenance of Insurance. Upon the delivery of any Rail-cars the Company will promptly effect and maintain or cause to be effected and maintained with financially sound and reputable companies, insurance policies (i) insuring each such Rail-car against loss by fire, explosion, theft and such other casualties as are usually insured against by companies engaged in the same or a similar business and with coverage in an amount at least equal to the Casualty Value of such Rail-car (but such coverage for all freight cars owned or leased by the Company may be limited to \$1,000,000 for each occurrence), (ii) insuring the Company and the Agent against liability for personal injury and property damage caused by or relating to such Rail-cars or their use with coverage in the amount of at least \$5,000,000, and (iii) insuring the Company for the loss of revenues from any Unit which becomes inoperable due to damage, for an 80-day period commencing 10 days after the date of such damage, all such insurance policies to be in such form and to have such coverage as shall be satisfactory to the Agent, with losses payable to the Company and the Agent as their respective interests may appear. The Company shall, if so requested by any Bank, deliver to the Banks within a reasonable time, and as often as any Bank may reasonably request, a report of a reputable insurance broker with respect to the insurance on the Rail-cars.

6.13 Casualty Occurrence. (a) In the event of a Casualty Occurrence with respect to any Unit, the Company shall promptly give the Agent written notice of such Casualty Occurrence, which notice shall (i) identify the Unit which has suffered the Casualty Occurrence and (ii) set forth the Casualty Value of such Damaged Unit (and the calculations used in the determination thereof) as of the date of such notice. Subject to the following paragraph (b) of this Subsection 6.13, the Company will, on the date which is 45 days after the date of such notice

(the "Casualty Value Prepayment Date"), (i) prepay the Notes in an aggregate principal amount equal to the Casualty Value of the Damaged Unit as so notified to the Agent and (ii) pay the accrued interest on the principal amount so prepaid to the date of prepayment. Such prepayments shall be applied in accordance with Subsection 2.8 hereof.

(b) The mandatory prepayment required by the preceding paragraph (a) of this Subsection 6.13 shall not be required if, prior to the Casualty Value Prepayment Date, the Company shall take the following action with respect to the Damaged Unit:

(i) If such Casualty Occurrence is an occurrence described in clauses (i), (ii) or (iii) of the definition of Casualty Occurrence in Subsection 1.1 hereof, the Company (A) replaces the Damaged Unit with a rail-car of the same type which has a value and utility at least equal to, and which is in as good condition as, the Damaged Unit immediately prior to the Casualty Occurrence (assuming that such Damaged Unit was then in the condition required to be maintained by Subsection 6.14 hereof) and which is free and clear of all Liens other than Permitted Liens, (B) takes all steps necessary to subject such replacement rail-car (the "Replacement Unit") to the lien and security interest of this Agreement and to lease such Replacement Unit under the applicable Assigned Lease, and (C) delivers to the Agent for the account of the Banks such documents evidencing the foregoing as the Agent may reasonably request, including (without limitation) a duly executed Supplement describing the Replacement Unit and such other documents and opinions of counsel with respect thereto which would have been required were such Replacement Unit to originally have been financed by the proceeds of a loan hereunder and been made subject to an Assigned Lease; or

(ii) If such Casualty Occurrence is an occurrence described in clause (iv) of the definition of Casualty Occurrence in Subsection 1.1 hereof, the Company subjects such Unit to an Assigned Lease.

The Agent will, if the Company has complied with paragraph (a) of this Subsection 6.13 or clause (i) of this paragraph (b), execute and deliver to the Company such instruments as shall be necessary to release from the lien and security interest of this Agreement (without recourse to, or representation or warranty by, the Agent) such Damaged Unit, the Proceeds thereof and the applicable Lease to the extent that it relates to such Unit.

6.14 Maintenance. The Company will, at its expense, keep and maintain the Rail-cars in good repair, condition and working order and will cause to be furnished all parts, mechanisms, devices and servicing required therefor so that the value, condition and operating efficiency thereof will at all times be maintained and preserved, ordinary wear and tear excepted.

6.15 Notice of Default; etc. The Company will promptly give written notice to the Agent and the Banks of (a) the occurrence of any Default or Event of Default; (b) any litigation or proceeding affecting the Company or any of its Subsidiaries or any of the properties or assets of the Company or any of its Subsidiaries which, if adversely determined, might have a material adverse effect upon the financial condition, business or operations of the Company or of the Company and its Subsidiaries taken as a whole; (c) any dispute between the Company or any of its Subsidiaries and any governmental regulatory body that might materially interfere with the normal business operations of the Company or any of its Subsidiaries; and (d) with respect to any new Leases entered into by the Company, the identity of all lessees under all such Leases and of the terms of each such Lease.

6.16 Books and Records. The Company will, and will cause each Subsidiary to, keep proper books of record and account in which full, true and correct entries in accordance with generally accepted accounting principles will be made of all dealings or transactions in relation to its business and activities.

6.17 Inspection. The Company will permit any Bank or any person designated by any Bank to visit

and inspect any of the Collateral (subject to the rights of the lessees under the Leases) and any of the corporate books and financial records of the Company and its Subsidiaries and to discuss the affairs, finances and accounts of the Company and its Subsidiaries with their respective officers, all at such reasonable times and as often as any Bank may reasonably request.

6.18 Protection of Lien in Canada. The Company will, within 30 days after any Rail-car becomes subject to the lien and security interest of this Agreement, at its sole cost and expense, record, register or file this Agreement (or any financing statement or similar notice) in each Province of Canada (other than Prince Edward Island) in which the Company is permitted under applicable law to make such recording, registration or filing in order to perfect and protect the lien and security interest of this Agreement on such Rail-car.

6.19 Marking of Rail-cars. The Company will cause each Unit to be kept numbered with such identifying number as shall be set forth in the Supplement pertaining to such Unit and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following: "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate words designated by the Agent, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Agent's interest in the Rail-cars and its rights under this Agreement. The Company will not permit any such Unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any Unit to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been delivered to the Agent and filed, recorded and deposited by the Company in all public offices where this Agreement shall have been filed, recorded or deposited.

## SECTION 7. INCORPORATED COVENANTS

The Company hereby covenants that, so long as the Commitments remain in effect or any of the Notes remain outstanding and unpaid, the Company will observe, perform and fulfill each and every covenant, term and provision contained in Subsections 6.05(b), 6.05(c), 6.05(d) and 6.05(e); and will cause each Restricted Subsidiary to observe, perform and fulfill each and every covenant, term and provision contained in Subsections 6.05(c), 6.05(d) and 6.05(e) of the 1978 Agreement as the same are in effect on the date of this Agreement (including, without limitation, the effect of any waivers of any of the provisions thereof to the date hereof), which subsections, together with the definitions of all defined terms used therein and all other sections of the 1978 Agreement to which reference is made in such subsections, are by this reference deemed incorporated in this Agreement as if the provisions thereof were originally contracted with the Banks and set forth in full in this Agreement, except that (i) where the words "Equipment Trust Agreement" are used in said subsections they shall be deemed to mean this Agreement, (ii) where the words "Trust Certificates" are used in said sections they shall be deemed to include the Notes issued pursuant to this Agreement, (iii) where the number "\$2,000,000" is used in Subsection 6.05(b) of the 1978 Agreement, such number shall be deemed to be "\$4,000,000", (iv) where the date "December 31, 1978" appears in two places in Subsection 6.05(b) of the 1978 Agreement, such date shall be deemed to be "June 30, 1979", (v) where the words "Subsection 6.05(e)" appear in two places in Subsection 6.05(b) of the 1978 Agreement, such words shall be deemed to refer to Subsection 6.05(e) of the 1978 Agreement as incorporated by reference herein, (vi) where the words "(whether or not provision has been made for the equal and ratable securing of the Trust Certificate in accordance with the provisions of Section 6.06)" are used in Subsection 6.05(c) of the 1978 Agreement, such words shall be deleted and (vii) where the words "Subsection 6.05(b)" appear in Subsection 6.05(e) of the 1978 Agreement, they shall be deemed to refer to Subsection 6.05(b) of the 1978 Agreement as incorporated by reference herein. The provisions and definitions of the 1978 Agreement as

incorporated by reference in this Agreement (x) shall be binding on the Company without giving effect to any consent or waiver with respect to such provisions or to any amendment, modification or cancellation of the 1978 Agreement, unless such consent, waiver, amendment, modification or cancellation shall have been first consented to in writing by the Required Banks, and (y) shall survive, for the purposes of this Agreement, the expiration or termination of the 1978 Agreement.

#### SECTION 8. POWER OF ATTORNEY

8.1 Appointment. The Company hereby irrevocably constitutes and appoints the Agent and any officer or agent thereof, with full power of substitution, as cable power and authority in the place and stead of the Company and in the name of the Company or in its own name, from time to time in the Agent's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, the Company hereby gives the Agent the power and right, on behalf of the Company, without notice to or assent by the Company, to do the following:

(a) upon default by the Company in the performance of Subsection 6.6(a) or 6.12 hereof, the Agent may, but shall not be obligated to, (i) effect any insurance called for by the terms of Subsection 6.12 hereof and pay all or any part of the premiums therefor and the costs thereof and (ii) pay and discharge any taxes, liens and encumbrances on the Collateral; and

(b) upon the occurrence and continuance of any Default specified in paragraph (h) of Section 9 hereof or of any Event of Default, (i) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (ii) to sign and indorse any invoices,

freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts and other documents relating to the Collateral; (iii) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any thereof and to enforce any other right in respect of any of the Collateral; (iv) to defend any suit, action or proceeding brought against the Company with respect to any of the Collateral; (v) to settle, compromise or adjust any suit, action or proceeding described in clause (iv) above and, in connection therewith, to give such discharges or releases as the Agent may deem appropriate; and (vi) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Agent were the absolute owner thereof for all purposes, and to do, at the Agent's option and the Company's expense, at any time or from time to time, all acts and things which the Agent deems necessary to protect, preserve or realize upon the Collateral and the Agent's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Company might do.

The Company hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

8.2 No Duty. The powers conferred on the Agent hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Company for any act or failure to act, except for its or their own gross negligence or willful misconduct.

8.3 Additional Rights. (a) The Company authorizes the Agent, at any time and from time to time, to execute, in connection with the sale provided for in Subsection 10(b) of this Agreement, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(b) If the Company fails to perform or comply with any of its agreements contained herein, the Agent may itself perform or comply, or otherwise cause performance or compliance, with such agreement, and the expenses of the Agent incurred in connection with such performance or compliance, together with interest thereon at the same rate per annum payable on the Notes at such time, shall be payable by the Company to the Agent on demand and shall constitute part of the Obligations secured hereby.

#### SECTION 9. EVENTS OF DEFAULT

If any of the following Events of Default shall occur and be continuing:

(a) Failure by the Company to pay the principal of or any installment of the principal of any Note when due, or to pay any interest on any Note or any commitment fee hereunder within ten days after such interest or commitment fee becomes due;

(b) Any representation or warranty made by the Company in this Agreement, or made by the Company or any officer thereof in any document, certificate or financial or other statement furnished at any time under or in connection with this Agreement, shall prove to have been untrue when made in any material respect;

(c) Default by the Company in the observance or performance of any covenant contained in Subsections 6.3, 6.4, 6.5, 6.9, 6.12, 6.13, 6.14, 6.18, and 6.19 hereof or any of the covenants contained in the 1978 Agreement incorporated by reference in Section 7 hereof;

(d) Default by the Company in the observance or performance of any other covenant or agreement contained in this Agreement and not referred to in paragraph (c) of this Section 9, and such default shall continue for 30 days;

(e) The occurrence of any event or condition which constitutes a material event of default by the Company under any Lease;

(f) The Company or any Restricted Subsidiary shall default (and such default shall not have been cured or waived) in any payment of principal of, or interest on, any obligation for borrowed money (other than the Notes) or for the deferred purchase price of any property or asset (unless the aggregate amount of all such defaulted obligations for deferred purchase price does not exceed \$250,000 and the Company or the appropriate Restricted Subsidiary is disputing such obligations in good faith and by appropriate proceedings), or any obligation guaranteed by it or in respect of which it is liable, beyond the period of grace, if any, applicable to such default; or the Company or any Restricted Subsidiary shall default in the performance or observance of any other term, condition or covenant contained in any obligation referred to above or in any agreement or instrument relating thereto if as a result of such default such obligation has become, or has been declared to be, due and payable prior to its stated maturity;

(g) Filing by the Company or any Restricted Subsidiary of a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing, or any action by the Company or any Restricted Subsidiary indicating its consent to, approval of, or acquiescence in, any such petition or proceeding; the

application by the Company or any Restricted Subsidiary for, or the appointment by consent or acquiescence of, a receiver or trustee for the Company or any Restricted Subsidiary or for all or a substantial part of its property; the making by the Company or any Restricted Subsidiary of an assignment for the benefit of creditors; the inability of the Company or any Restricted Subsidiary, or the admission by the Company or any Restricted Subsidiary in writing of its inability, to pay its debts as they mature;

(h) Filing of an involuntary petition against the Company or any Restricted Subsidiary in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing; or the involuntary appointment of a receiver or trustee of the Company or any Restricted Subsidiary or for all or a substantial part of its property; or the service on the Company or any Restricted Subsidiary of a warrant of attachment, execution or similar process against any substantial part of the property of the Company or such Restricted Subsidiary; and the continuance of any of such events for 60 days undismissed, unbonded, unstayed or undischarged; or

(i) Final judgment for the payment of money in excess of \$100,000 shall be rendered against the Company or a Restricted Subsidiary and the same shall remain undischarged for a period of 60 days during which execution shall not be effectively stayed;

then, and in any such event, the Required Banks may exercise any and all remedies granted to it under this Agreement and under applicable law, and may further, by notice of default given to the Company, (i) terminate forthwith the commitments of the Banks to make loans hereunder, and/or (ii) declare the Notes to be forthwith

due and payable, whereupon the principal amount of the Notes, together with accrued interest thereon, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding.

SECTION 10. REMEDIES WITH RESPECT TO COLLATERAL

If an Event of Default shall occur and be continuing:

(a) All payments received by the Company in connection with or arising out of any of the Collateral shall be held by the Company in trust for the Agent, shall be segregated from other funds of the Company and shall forthwith upon receipt by the Company be turned over to the Agent, in the same form as received by the Company (duly indorsed by the Company to the Agent, if required); any and all such payments so received by the Agent (whether from the Company or otherwise) may, in the sole discretion of the Agent, be held by the Agent as collateral security for the Obligations, and/or then or at any time thereafter applied in whole or in part by the Agent against all or any part of the Obligations then due in such order as the Agent shall elect. Any balance of such payments held by the Agent and remaining after payment in full of all the Obligations shall be paid over to the Company or to whomsoever may be lawfully entitled to receive the same;

(b) The Agent may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the Uniform Commercial Code of the State of New York. Without limiting the generality of the foregoing, the Company expressly agrees that in any such event the Agent, without demand of performance or other demand, advertisement or notice of any kind (except

the notice specified below of time and place of public or private sale) to or upon the Company or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral or any part thereof and may take possession of the Rail-cars and/or may forthwith sell, assign, give option or options to purchase, or sell, lease or otherwise dispose of and deliver the Collateral, or any part thereof, in any manner permitted by applicable law (or contract to do so) in one or more parcels at public or private sale or sales, at the office of any broker or at any of the Agent's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk, with the right of the Agent upon any such sale or sales, public or private, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Company, which right or equity of redemption is hereby expressly waived or released. The Agent shall give the Company at least ten (10) days' prior written notice of such disposition, such notice to be deemed duly given if mailed, postage prepaid, addressed to the Company at the address set forth in subsection 12.2 hereof and, if any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonable and proper if so given. The Company further agrees, at the Agent's request, to collect the Rail-cars (to the extent possible) and make them available to the Agent at places which the Agent shall reasonably select. The Agent shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization and sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of the Agent hereunder, including reasonable attorney's fees and legal expenses, to the payment in whole or in part of the Obligations, in such order as the Agent may elect, the Company remaining liable for any deficiency remaining unpaid

after such application, and only after so applying such net proceeds and after the payment by the Lender of any other amount required by any provision of law, including Section 9-504(1)(c) of the Uniform Commercial Code of the State of New York, need the Agent account for the surplus, if any, to the Company.

(c) To the extent permitted by applicable law, the Company waives all claims, damages and demands against the Agent or any Bank arising out of the repossession, retention or sale of the Collateral. The Company shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which the Agent is entitled, the Company also being liable for the fees of any attorneys employed by the Agent to collect such deficiency. The Company hereby waives presentment, demand, protest and any notice (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral; and

(d) Beyond the use of reasonable care in the custody thereof the Agent shall not have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or as to any income therefrom.

## SECTION 11. THE AGENT

11.1 Appointment. Each Bank hereby irrevocably designates and appoints Manufacturers Hanover Trust Company as the Agent of such Bank under this Agreement to take such action on its behalf under the provisions of this Agreement and to exercise such powers as are expressly delegated to the Agent by the terms of this Agreement, together with such other powers as are reasonably incidental thereto. The Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any of the Banks and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Agent.

11.2 Delegation of Duties. The Agent may execute any of its duties under this Agreement by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties.

11.3 Exculpatory Provisions. Neither the Agent nor any of its officers, directors, employees, agents or attorneys-in-fact shall be liable for any action lawfully taken or omitted to be taken by it or them under or in connection with this Agreement except for its or their own gross negligence or wilful misconduct. Neither the Agent nor any of its affiliates shall be responsible in any manner to any of the Banks for any recitals, statements, representations or warranties made by the Company or any officer thereof contained in this Agreement or in any certificate, report, statement or other document referred to or provided for in or received by the Agent under or in connection with this Agreement or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any Notes, or for any failure of the Company to perform its obligations thereunder. The Agent shall not be under any obligation to any of the Banks to ascertain or to inquire as to the observance or performance of any of the terms, covenants or conditions of this Agreement on the part of the Company or to inspect the properties, books or records of the Company.

11.4 Reliance by Agent. The Agent shall be entitled to rely, and shall be fully protected in relying, upon any Note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Company), independent accountants and other experts selected by the Agent. The Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement unless

it shall first receive advice or concurrence of the Banks or the Required Banks as it deems appropriate or it shall first be indemnified to its satisfaction by the Banks against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Required Banks, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Banks and all present and future holders of the Notes.

11.5 Non-Reliance on Agent and Other Banks.

Each Bank expressly acknowledges that neither the Agent nor any of its affiliates has made any representations or warranties to it and that no act by the Agent hereinafter taken, including any review of the affairs of the Company, shall be deemed to constitute any representation or warranty by the Agent to any Bank. Each Bank represents to the Agent that it has, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the financial condition, creditworthiness, affairs, status and nature of the Company and made its own decision to enter into this Agreement. Each Bank also represents that it will, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and to make such investigation as it deems necessary to inform itself as to the status and affairs, financial or otherwise, of the Company. Except for notices, reports and other documents expressly required to be furnished to the Banks by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the affairs, financial condition or business of the Company which may come into the possession of the Agent or any of its affiliates.

11.6 Indemnification. The Banks agree to indemnify the Agent in its capacity as such (to the extent not reimbursed by the Company and without limiting the obligations of the Company so to do), ratably according to the respective principal amount of the Notes held by them (or, if no Notes are outstanding, ratably in accordance with their Commitments as initially in effect) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, those expenses specified in Subsection 12.6 of this Agreement which are not reimbursed by the Company) which may at any time (including without limitation at any time following the payment of the Notes) be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of this Agreement or any documents contemplated by or referred to herein or the transactions contemplated hereby or any action taken or omitted by the Agent under or in connection with any of the foregoing; provided that no Bank shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or wilful misconduct. The agreements in this Subsection shall survive the payment of the Notes and the termination of this Agreement.

11.7 Agent in Its Individual Capacity. The Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Company as though the Agent were not the Agent hereunder. With respect to its Commitment or loans made or renewed by it and any Note issued to it, the Agent shall have the same rights and powers under this Agreement as any Bank and may exercise the same as though it were not the Agent, and the terms "Bank" and "Banks" shall, unless the context otherwise indicates, include the Agent in its individual capacity.

11.8 Successor Agent. If the Agent shall resign as Agent under this Agreement, then the Required Banks shall appoint a successor Agent for the Banks which

successor Agent shall be approved by the Company, whereupon such successor Agent shall succeed to the rights, powers and duties of the Agent, and the former Agent's rights, powers and duties as Agent shall be terminated and cancelled, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 11 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

## SECTION 12. MISCELLANEOUS

12.1 Amendments and Waivers. With the written consent of the Required Banks, the Agent and the Company may, from time to time, enter into agreements supplemental hereto for the purpose of adding any provisions to this Agreement or the Notes or changing in any manner the rights of the Banks, the Agent or of the Company hereunder or thereunder and with the consent of the Required Banks the Agent on behalf of the Banks may execute and deliver to the Company a written instrument waiving any of the requirements of this Agreement or the Notes or any default in the observance or performance of any condition, covenant or other term of this Agreement or the Notes or any Default or Event of Default which shall have occurred hereunder and its consequences; provided, however, that no such waiver and no such supplemental agreement shall (a) extend the maturity of any Note or reduce the rate or extend the time of payment of interest thereon or reduce the principal amount thereof without the written consent of all the Banks, (b) change the amount of any Bank's Commitment without the written consent of all the Banks, (c) amend, modify or waive any provision of this Subsection 12.1 or reduce the percentage specified in the definition of Required Banks without the written consent of all the Banks, or (d) amend, modify or waive any provision of Section 11 hereof without the written consent of the then Agent. Any such supplemental agreement or waiver shall apply equally to each of the Banks and shall be binding upon the Company, the Banks, the Agent and all present and future holders of the Notes. In the

case of any waiver, the Company, the Banks and the Agent shall be restored to their former positions and rights hereunder and under any Note, respectively, and any Default or any Event of Default so waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

12.2 Notices. All notices, requests and demands to or upon the respective parties hereto shall be in writing and shall be deemed to have been duly given or made when deposited in the mail, postage prepaid, or, in the case of telex notice, when sent, addressed as follows or to such other address as may be hereafter designated in writing by the respective parties hereto;

The Company: Brae Corporation  
3 Embarcadero Center  
San Francisco, California 94111  
Attention: Lawrence W. Briscoe,  
Vice President - Finance

The Banks: Their respective names and  
addresses set forth with  
their signatures below.

The Agent: Manufacturers Hanover Trust  
Company  
741 Fifth Avenue  
New York, New York 10022  
Attention: Richard D. Wood,  
Vice President

12.3 Adjustments. If any Bank shall at any time receive payment of all or part of any Note held by it, whether by set-off or otherwise, in a greater proportion than the payments made on the Notes held by the other Banks, such Bank shall purchase for cash, ratably from each of the other Banks, such portion of the Notes held by such other Banks so that after such purchase each Bank shall hold an unpaid principal amount of the Notes bearing the same proportion to the total principal amount of Notes at such time outstanding as existed immediately prior to any such greater proportionate

payment. In the event that at any time any Bank shall be required to refund any amounts which have been paid to, or received by, it on account of any Note held by such Bank and which have been applied to the purchase of portions of Notes held by other Banks pursuant to this Subsection 12.3 then, upon notice from such Bank, each of the other Banks shall repurchase said portions for cash to the extent of their ratable share of such refund. The Company agrees that each Bank so purchasing a portion of the Notes from another Bank hereunder may exercise all rights of payment (including, without limitation, rights of set-off) with respect to such portion as fully as if such Bank were the direct holder of such portion.

12.4 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent or any Bank, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

12.5 Survival of Representations and Warranties. All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto shall survive the execution and delivery of this Agreement and the Notes.

12.6 Payment of Expenses and Taxes. The Company agrees, whether or not the transactions contemplated by this Agreement shall be consummated, (a) to pay or reimburse the Agent for all its out-of-pocket costs and expenses incurred in connection with the development, preparation, execution and consummation, and any amendment or modification to, this Agreement and the Notes and any other documents prepared in connection herewith, including the fees and expenses of counsel to the Agent, (b) to pay or reimburse each Bank and the Agent for all its costs and expenses incurred in connection with the enforcement of, or the preservation of, any rights under this Agreement and the Notes, (c) to pay, indemnify, and to hold each

Bank and the Agent harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation of any of the transactions contemplated by, or any amendment or modification of or any waiver or consent under or in respect of, this Agreement or the Notes.

12.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Company, the Banks and the Agent and their respective successors and assigns, except that the Company may not assign or transfer any of its rights under this Agreement without the prior written consent of each Bank.

12.8 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. After the execution of this Agreement, the Agent shall transmit to each Bank a conformed copy of this Agreement. A set of the copies of this Agreement signed by all the parties shall be lodged with the Company and the Agent.

12.9 Governing Law. This Agreement and the Notes and the rights and obligations of the parties under this Agreement and the Notes shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

12.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability

in any jurisdiction shall not invalidate or render un-enforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BRAE CORPORATION

Attest:

By Ernest L. Brazil  
Title: Asst. Secretary

(Seal)

By Lawrence U. Bischoff  
Title: Vice President - Finance

MANUFACTURERS HANOVER TRUST COMPANY

Attest:

By [Signature]  
Title:

(Seal)

By Richard D. Wood  
Title: **RICHARD D. WOOD**  
**VICE PRESIDENT**

THE FIRST NATIONAL BANK OF BOSTON

Attest:

By [Signature]  
Title: VICE PRESIDENT

(Seal)

By Richard C. Wallace  
Title: Vice President  
[Address] 100 Federal St.  
Boston  
Mass. 02110

CROCKER NATIONAL BANK

Attest:

By Ernest T. Kelly  
Title: CORPORATE BANKING OFFICER

By Robert M. Walker  
Title: Senior Vice President  
[Address]

(Seal)

THE BANK OF CALIFORNIA, N.A.

Attest:

By James F. Marduzic  
Title: Asst Vice-President  
400 Calif St

By Ross Wm Seewant  
Title: Vice President  
[Address] 400 California St  
San Francisco, Ca 94104

(Seal)

STATE OF California )  
COUNTY OF San Francisco ) : ss.:

On this 10<sup>th</sup> day of October, 1979, before me personally appeared JAMES W. BRISCOE, to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT - FINANCE of BRAE CORPORATION, that one of the seals 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.



Mirella R. Abbo  
Notary Public

My commission expires: 2/25/83

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) : ss.:

On this 9 day of Oct, 1979, before me personally appeared RICHARD D. WOOD, to me personally known, who being by me duly sworn, says that he is a VICE PRES of MANUFACTURERS HANOVER TRUST COMPANY, that one of the seals 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)

Dorothy Barouch  
Notary Public

My commission expires:

DOROTHY BAROUCH  
Notary Public, State of New York  
No. 41-4522591  
Qualified in Queens County  
Commission Expires March 30, 1980

STATE OF MASSACHUSETTS )  
 : ss.:  
 COUNTY OF SUFFOLK )

On this 16<sup>th</sup> day of OCTOBER, 1979, before me personally appeared RICHARD C. WALLACE, to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT of THE FIRST NATIONAL BANK OF BOSTON, that one of the seals 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)

Theodore E. Santarelli de Brasca  
 Notary Public Theodore E. Santarelli de Brasca

My commission expires:  
OCTOBER 16, 1981

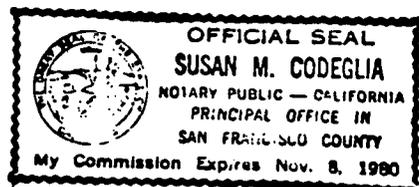
STATE OF California )  
 : ss.:  
 COUNTY OF San Francisco

On this 15<sup>th</sup> day of October, 1979, before me personally appeared Robert M. Walker, to me personally known, who being by me duly sworn, says that he is a Senior V.P. of CROCKER NATIONAL BANK, that one of the seals 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)

Susan M. Codeglia  
 Notary Public

My commission expires: Nov. 8, 1980



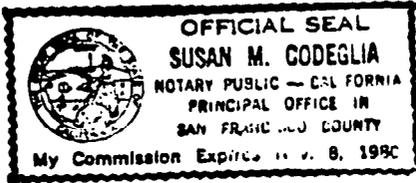
STATE OF *California* )  
COUNTY *San Francisco* ss.:

On this *15<sup>th</sup>* day of *October*, 1979, before me personally appeared *Robert W. Serventi*, to me personally known, who being by me duly sworn, says that he is a *Vice President* of THE BANK OF CALIFORNIA, N.A., that one of the seals 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)

*Susan M. Codeglia*  
Notary Public

My commission expires: *Nov. 8, 1980*



SCHEDULE I

JURISDICTIONS IN WHICH COMPANY IS  
QUALIFIED TO DO BUSINESS

Alabama

Arizona

Arkansas

California

Georgia

Illinois

Indiana

Maryland

Massachusetts

Michigan

Mississippi

New Hampshire

North Carolina

Ohio

Tennessee

Vermont

Washington

[FORM OF REVOLVING CREDIT NOTE]

§

\*

New York, New York  
, 1979

FOR VALUE RECEIVED, the undersigned, BRAE CORPORATION, promises to pay on \_\_\_\_\_, 19\_\_\_\_, to the order of \_\_\_\_\_ (the "Bank") at the office of Manufacturers Hanover Trust Company located at 741 Fifth Avenue, New York, New York 10022, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ (\$ \_\_\_\_\_) or, if less than such principal amount, the aggregate unpaid principal amount of all loans made by the Bank to the undersigned pursuant to Subsection 2.1 of the Credit and Security Agreement hereinafter referred to. The undersigned further agrees to pay interest at said office, in like money, on the unpaid principal amount owing hereunder from time to time from the date hereof at a fluctuating rate per annum equal to 110% of the MHTC Rate until such principal amount shall become due and payable (whether at maturity, by acceleration or otherwise), and thereafter at a rate per annum equal to 120% of the MHTC rate until such principal amount shall be paid in full. As used herein, the MHTC Rate shall mean the commercial loan rate of Manufacturers Hanover Trust Company from time to time generally in effect in New York City on unsecured borrowings having a 90-day maturity by its most responsible and substantial domestic corporate borrowers. Any change in the interest rate resulting from a change in such MHTC Rate shall become effective as of the opening of business on the day on which such change in such MHTC Rate occurs. Interest shall be payable on the last day of each March, June, September and December, commencing on the first such date to occur after the date hereof, and upon payment in full of the unpaid principal amount hereof. All loans made by the Bank pursuant to Subsection 2.1 of the Credit and Security Agreement, and all payments of the

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\* Insert Termination Date.

\*\* Insert or revise as per Subsection 2.3 of Credit and Security Agreement.

principal amount of such loans, shall be indorsed by the holder of this Note on the schedule annexed hereto.

If any payment on this Note becomes due and payable on a Saturday, Sunday or other day on which commercial banks are authorized or required to close under the laws of the State of New York, the maturity thereof shall be extended to the next succeeding business day and, with respect to payments of principal, interest thereon shall be payable during such extension at the then applicable rate during such extension.

This Note is one of the Revolving Credit Notes referred to in a Credit and Security Agreement dated as of \_\_\_\_\_, 1979 among the undersigned, the banks parties thereto (including the Bank) and Manufacturers Hanover Trust Company as Agent for such banks, and is entitled to the benefits thereof and may be, or may be required to be, prepaid in whole or in part as provided therein.

Upon the occurrence of any one or more of the Events of Default specified in said Credit and Security Agreement, all amounts then remaining unpaid on this Note may be declared to be immediately due and payable as provided in said Credit and Security Agreement.

This Note, together with the other Notes referred to in said Credit and Security Agreement, is secured by the Collateral described in said Credit and Security Agreement. Reference is made to said Credit and Security Agreement for a description of the nature and extent of the security for this Note and the rights of the holder hereof with respect to such security.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

BRAE CORPORATION

By \_\_\_\_\_

Title:



[FORM OF TERM NOTE]

\$

\*

New York, New York  
, 19\_\_

FOR VALUE RECEIVED, the undersigned, BRAE CORPORATION, promises to pay to the order of \_\_\_\_\_ (the "Bank") at the office of MANUFACTURERS HANOVER TRUST COMPANY located at 741 Fifth Avenue, New York, New York 10022, in lawful money of the United States of America, the principal amount of \_\_\_\_\_\* DOLLARS (\$ \_\_\_\_\_\*) in twenty (20) consecutive quarterly installments, each in the amount of \$ \_\_\_\_\_, on the last day of each March, June, September and December commencing on the first such date to occur after the date hereof. The undersigned further promises to pay interest in like money at said office from the date hereof on the unpaid principal amount hereof at a fluctuating rate per annum equal to 115% of the MHTC Rate until such amount shall become due and payable (whether at maturity, by acceleration or otherwise), and thereafter at a rate per annum equal to 125% of the MHTC Rate until such overdue principal amount is paid in full. As used herein, the MHTC Rate shall mean the commercial loan rate of Manufacturers Hanover Trust Company from time to time generally in effect in New York City on unsecured borrowings having a 90-day maturity by its most responsible and substantial domestic corporate borrowers. Any change in the interest rate resulting from a change in such MHTC Rate shall become effective as of the opening of business on the day on which such change in such MHTC Rate occurs. Interest shall be payable on the last day of each March, June, September and December, commencing on the first such date to occur after the date hereof, and upon payment in full of the unpaid principal amount hereof.

If any payment on this Note becomes due and payable on a Saturday, Sunday or other day on which

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\* Insert or revise as per Subsection 2.7 of the Credit and Security Agreement.

commercial banks are authorized or required to close under the laws of the State of New York, the maturity thereof shall be extended to the next succeeding business day and, with respect to payments of principal, interest thereon shall be payable during such extension at the then applicable rate during such extension.

This Note is one of the Term Notes referred to in a Credit and Security Agreement dated as of \_\_\_\_\_, 1979 among the undersigned, the banks parties thereto (including the Bank) and Manufacturer Hanover Trust Company as Agent for such banks, and is entitled to the benefits thereof and may be or may be required to be prepaid in whole or in part as provided therein.

Upon the occurrence of any one or more of the Events of Default specified in said Credit and Security Agreement, all amounts then remaining unpaid on this Note may be declared to be immediately due and payable as provided in said Credit and Security Agreement.

This Note, together with the other Notes referred to in said Credit Agreement, is secured by the Collateral described in said Credit and Security Agreement. Reference is made to said Credit and Security Agreement for a description of the nature and extent of the security for this Note and the rights of the holder hereof with respect to such security.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

BRAE CORPORATION

By \_\_\_\_\_  
Title:

[Form of Legal Opinion of  
Counsel to the Company]

, 1979

To the Banks Listed on  
Schedule I annexed hereto

Dear Sirs:

We have acted as counsel for Brae Corporation, a Delaware corporation (the "Company"), in connection with the execution and delivery of the Credit and Security Agreement dated as of \_\_\_\_\_, 1979 (the "Agreement") among the Company, the banks parties thereto (the "Banks") and Manufacturers Hanover Trust Company, as Agent for the Banks, and the execution and delivery of the promissory notes of the Company, dated the date hereof, one of which is payable to each of you in the amount of your Commitment.

This opinion is furnished pursuant to paragraph (c) of Subsection 4.1 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, Supplement No. 1 thereto, the executed Revolving Credit Notes, and such corporate documents and records of the Company, such certificates of public officials and of officers of the Company, and such other documents, as we have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has the corporate power and authority to own its properties and assets and to transact the business in which it is presently engaged (including the purchase of the Rail-cars and the leasing thereof) and is duly qualified as a foreign corporation and in good standing under the laws of each state listed in Schedule I to the Agreement.

2. The Company has the corporate power and authority to execute, deliver and perform the Agreement, the Supplements and the Notes, to grant the lien and security interest created by the Agreement and the Supplements and to lease the Rail-cars and the Company has taken all necessary corporate action to authorize the execution, delivery and performance of the Agreement, the Supplements and the Notes. No consent of the stockholders of the Company, and no consent, license, permit, approval or authorization of, exemption by, or registration or declaration with, any governmental authority, is required in connection with the execution, delivery or performance by the Company of the Agreement, the Supplements, the Notes or the Leases, except for the filings and recordings referred to in paragraph 8 below.

3. The Agreement, Supplement No. 1 and the Revolving Credit Notes have been executed and delivered by duly authorized officers of the Company and constitute, and each other Supplement and the Term Notes when executed and delivered by the President or a Vice President of the Company will constitute, the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles, provided that such general equitable principles will not impair the ability of the holder of any Note to recover the principal, interest thereon or make the remedies provided for in the Agreement inadequate for the practical realization of the benefits of the collateral security provided thereby.

4. The execution, delivery and performance by the Company of the Agreement, the Supplements and the Notes will not violate any provision of, or constitute a default under, any existing law of the United States of America or the State of California to which the Company is subject, or any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company of which we have knowledge (having made due inquiry of the President and Vice Presidents of the Company), or the Articles of Incorporation, By-Laws or any preferred stock provision of the Company, or any mortgage, indenture, contract or other agreement of which we have knowledge (having made due inquiry of the President and Vice Presidents of the Company) to which the Company is a party or which is binding upon the Company or any of its properties or assets, and will not result in the creation or imposition of any Lien (other than the Lien created by the Agreement) on any of the properties or assets of the Company pursuant to the provisions of any such mortgage, indenture, contract or other agreement.

5. To the best of our knowledge (having made due inquiry of the President and Vice Presidents of the Company), except as set forth in a letter dated October 1, 1979 from the Company to the Banks (a copy of which is attached hereto) there are no actions, suits or proceedings (whether or not purportedly on behalf of the Company) pending or threatened against the Company or any of its properties or assets in any court or before any arbitrator or before or by any governmental body which (i) relate to any of the Collateral or to any of the transactions contemplated by the Agreement, or (ii) would, if adversely determined, materially impair the right or ability of the Company to carry on its business substantially as now conducted, or (iii) would, if adversely determined, have a materially adverse effect on the operating results or on the condition, financial or other, of the Company.

6. We have reviewed an opinion of even date herewith of counsel to the manufacturer of the Rail-cars described in Supplement No. 1, addressed to you and the Company, as to the transfer to the Company of legal

title to such Rail-cars. Relying solely on such opinion and on the certificate of an officer of the Company to the effect that the Company has not transferred title or any interest in such Rail-cars except as contemplated by the Agreement, we are of the opinion that the Company has valid and legal title to, and is the lawful owner of, the Rail-cars described in Supplement No. 1.

7. We have reviewed the opinion of even date herewith of Messrs. Connor, Moore & Corber, delivered to you pursuant to Subsection 4.1(c) of the Agreement, to the effect that the Agreement and Supplement No. 1 have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, and to the effect that no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Rail-cars. We have relied upon a certificate of the Company to the effect that such Rail-cars have been marked as provided by Section 6.19 of the Agreement. No other filing, registration or recording or other action is necessary in order to perfect, protect and preserve, as security for the Obligations, the lien on and security interest in the Rail-cars created by the Agreement in the United States of America, except that each Supplement hereafter executed and delivered by the Company must be filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303. The Agreement, as supplemented by Supplement No. 1, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Rail-cars described in such Supplement, as security for the Obligations.

In rendering the opinions expressed in paragraph 7 above, we have relied as to matters governed by the Interstate Commerce Act, as amended, and as to the filings and recordings with the Interstate Commerce Commission (or the lack of such filings and recordings), upon the opinion of Messrs. Connor, Moore & Corber,

delivered to you on the date hereof pursuant to paragraph (c) of Subsection 4.1 of the Agreement. Such opinion is satisfactory in form and substance to us, and we believe that we and you are justified in relying thereon.

Very truly yours,

[Form of Legal Opinion of  
Special Counsel to the Company]

, 1979

To the Banks listed on  
Schedule I annexed hereto

Dear Sirs:

We have acted as special counsel for Brae Corporation, a Delaware corporation (the "Company"), in connection with the execution and delivery of the Credit and Security Agreement dated as of \_\_\_\_\_, 1979 (the "Agreement") among the Company, the banks parties thereto (the "Banks") and Manufacturers Hanover Trust Company, as Agent for the Banks.

This opinion is furnished pursuant to paragraph (c) of Subsection 4.1 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, Supplement No. 1 thereto and such other documents as we have deemed necessary or appropriate for the purposes hereof. We have assumed that the manufacturer of the Rail-cars described in Supplement No. 1 transferred valid and legal title to such Rail-cars to the Company free and clear of all Liens, other than your rights under the Agreement.

Based upon the foregoing, we are of the opinion that:

1. The Agreement and Supplement No. 1 have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, and no other agreement or document has been so

filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Rail-cars. No other filing, registration or recording is necessary in order to perfect, protect and preserve, as security for the Obligations, the lien on and security interest in the Rail-cars created by the Agreement, except that each Supplement hereafter executed and delivered by the Company must be filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303.

2. The Agreement, as supplemented by Supplement No. 1, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Rail-cars described in such Supplement, as security for the Obligations.

Very truly yours,

NOTICE TO LESSEE

BRAE CORPORATION, as lessor under the lease agreement dated \_\_\_\_\_, 1979 between Brae Corporation and \_\_\_\_\_ ("Lessee"), hereby notifies Lessee of the assignment to Manufacturers Hanover Trust Company of the portion of said lease, and the rentals payable thereunder, related to the Rail-cars listed on the schedule attached hereto.

You are hereby directed to pay to Manufacturers Hanover Trust Company or as it may direct all rentals and other sums payable to us under said lease which are attributable to, or constitute rentals in respect of, the Rail-cars listed on the schedule attached hereto.

BRAE CORPORATION

By \_\_\_\_\_  
Title:

[FORM OF LEASE SCHEDULE]

Brae Corporation hereby leases the following  
Rail-cars to \_\_\_\_\_ pursuant to that  
certain Lease Agreement dated as of \_\_\_\_\_, 197\_\_.

A.A.R.  
Mech.  
Design

<u>Description</u>	<u>Numbers</u>	<u>Length</u>	<u>Dimensions</u> <u>Inside</u> <u>Width</u>	<u>Height</u>	<u>Doors</u> <u>Width</u>	<u>Number</u> <u>of</u> <u>Cars</u>
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BRAE CORPORATION

[Name of Lessee]

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

[Form of Legal Opinion of  
Counsel to the Company]

\_\_\_\_\_, 197\_

To the Banks listed on  
Schedule I annexed hereto

Dear Sirs:

We have acted as counsel for Brae Corporation, a Delaware corporation (the "Company"), in connection with (i) the execution and delivery of the Credit and Security Agreement dated as of \_\_\_\_\_, 1979 among the Company and each of you (the "Agreement"), and (ii) the execution and delivery of the Company's term notes, dated the date hereof, one of which is payable to each of you.

This opinion is furnished pursuant to paragraph (d) of Subsection 4.3 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, the Supplements, the Leases identified in Schedule I hereto (the "Leases") and the lease schedules thereto, the executed Term Notes, and such corporate documents and records of the Company, certificates of public officials and of officers of the Company, and such other documents as we have deemed necessary or appropriate for the purposes hereof. We have been informed that you are a duly licensed personal property broker registered under the laws of the State of California.

Based upon the foregoing, we are of the opinion that:

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of

the State of Delaware, has the corporate power and authority to own its properties and assets and to transact the business in which it is presently engaged (including the purchase of the Rail-cars and the leasing thereof under the Lease).

2. The Company has the corporate power and authority to execute, deliver and perform the Term Notes, and has taken all necessary corporate action to authorize the execution, delivery and performance thereof. No consent of the stockholders of the Company, and no consent, license, permit, approval or authorization of, exemption by, or registration or declaration with, any governmental authority, is required in connection with the execution, delivery or performance by the Company of the Term Notes, except for the filings referred to in paragraph 6 below.

3. The Agreement, the Supplements, the Term Notes and the Leases have been executed and delivered by duly authorized officers of the Company and constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles, provided that such general equitable principles will not impair the ability of any holder of the Term Notes to recover the principal, interest and premium (if any) thereon or make the remedies provided for in the Agreement inadequate for the practical realization of the benefits of the collateral security provided thereby.

4. The execution, delivery and performance by the Company of the Agreement, the Supplements, the Term Notes and the Leases will not violate any provision of, or constitute a default under, any existing law of the United States of America or the State of California to which the Company is subject, or any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company of which we have knowledge (having made due inquiry of the President and the Vice President of the Company), or the Articles of

Incorporation, By-Laws or any preferred stock provision of the Company, or any mortgage, indenture, contract or other agreement of which we have knowledge (having made due inquiry of the President and the Vice President of the Company) to which the Company is a party or which is binding upon the Company or any of its properties or assets, and will not result in the creation or imposition of any Lien (other than the Lien created by the Agreement) on any of the properties or assets of the Company pursuant to the provisions of any such mortgage, indenture, contract or other agreement.

5. We have reviewed opinions of counsel to the manufacturer of the Rail-cars described in the Supplements, heretofore delivered to you and the Company, as to the transfer to the Company of legal title to such Rail-cars. Relying solely on such opinions and on the certificate of an officer of the Company to the effect that the Company has not transferred title or any interest in such Rail-cars except as contemplated by the Agreement, we are of the opinion that the Company has valid and legal title to, and is the lawful owner of, the Rail-cars described in the Supplements.

6. We have reviewed the opinion of even date herewith of Messrs. \_\_\_\_\_, delivered to you pursuant to Subsection 4.3(d) of the Agreement, to the effect that the Agreement, the Supplements, the Lease and the lease schedule thereto subjecting the Rail-cars described in the Supplements to the Leases have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, and to the effect that no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien to the Rail-cars or the Leases (to the extent that the Leases relate to the Rail-cars). We have relied upon a certificate of the Company to the effect that such Rail-cars have been marked as provided by Section 6.19 of the Agreement. A financing statement describing the security interest of the Agent in the Leases (and the Proceeds thereof) has been duly filed with the Secretary of State of California, and no other financing statement asserting the grant by the Company of a security interest in the Leases (or the Proceeds

thereof) has been so filed. We are informed that the Agent has possession of all of the Company's signed copies of the Leases. No other filing, registration or recording or other action is necessary in order to perfect, protect and preserve, as security for the Term Notes and the other Obligations, the lien on and security interest in the Rail-cars and the Leases created by the Agreement in the United States of America, except that (i) each Supplement hereafter executed and delivered by the Company, and each additional lease with respect to the Rail-cars described in such Supplement or lease schedule subjecting to the Leases the Rail-cars described in such Supplement, must be filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, and (ii) a continuation statement must be filed within six months prior to the expiration of each five-year period following the date of filing of the financing statement filed with the Secretary of State of California and appropriate amendments or continuation statements must be filed in the event the Company changes its name or principal place of business. The Agreement, as supplemented by the Supplements, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Rail-cars described in the Supplements and in each of the Lease to the extent that the Lease relate to such Rail-cars, as security for the Term Notes and the other Obligations.

In rendering the opinions expressed in paragraph 6 above, we have relied as to matters governed by the Interstate Commerce Act, as amended, and as to the filings and recordings with the Interstate Commerce Commission (or the lack of such filings and recordings), upon the opinion of Messrs. \_\_\_\_\_, delivered to you on the date hereof pursuant to paragraph (d) of Subsection 4.3 of the Agreement. Such opinion is satisfactory in form and substance to us, and we believe that we and you are justified in relying thereon.

Very truly yours,

[Form of Legal Opinion of Special  
Counsel to the Company]

\_\_\_\_\_, 197\_

To the Banks listed on  
Schedule I annexed hereto

Dear Sirs:

We have acted as special counsel for Brae Corporation, a Delaware corporation (the "Company"), in connection with (i) the execution and delivery of the Credit and Security Agreement dated as of \_\_\_\_\_, 1979 (the "Agreement") among the Company, the banks parties thereto and Manufacturers Hanover Trust Company, as Agent, and (ii) the execution and delivery of the Company's term notes, dated the date hereof, one of which is payable to each of you.

This opinion is furnished pursuant to paragraph (d) of Subsection 4.3 of the Agreement. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, the Supplements, the leases identified in Schedule I hereto (the "Leases") and the lease schedules thereto, the execution form of the Term Notes, and such other documents as we have deemed necessary or appropriate for the purposes hereof. We have assumed that the manufacturer of the Rail-cars described in the Supplements transferred valid and legal title to such Rail-cars to the Company free and clear of all Liens, other than your rights under the Agreement.

Based upon the foregoing, we are of the opinion that:

1. The Agreement, the Supplements, the Leases and the lease schedules thereto subjecting the Rail-cars described in the Supplements to such Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, and no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Rail-cars or the Lease (to the extent that the Lease relates to the Rail-cars). No other filing, registration or recording is necessary in order to perfect, protect and preserve, as security for the Term Notes and the other Obligations, the lien and security interest in the Rail-cars and in the Lease created by the Agreement, except that any Supplements hereafter executed and delivered by the Company, and each additional Lease with respect to the Rail-cars described in such Supplement and lease schedule subjecting to the Lease the Rail-cars described in such Supplement, must be filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303.

2. The Agreement, as supplemented by the Supplements, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Rail-cars described in the Supplements and in the Lease to the extent that the Lease relates to such Rail-cars, as security for the Term Note and the other Obligations.

Very truly yours,

ICC Recordation No.

SUPPLEMENT

Supplement No. \_\_\_\_\_ to Credit and Security Agreement dated as of \_\_\_\_\_, 1979 ("Agreement") among BRAE CORPORATION ("Company"), the banks parties thereto (the "Banks") and MANUFACTURERS HANOVER TRUST COMPANY, as Agent for the Banks (the "Agent").

1. This Supplement is executed and delivered pursuant to the Agreement in order to more particularly identify certain of the Collateral in which the Company has granted a lien and security interest to the Agent for the ratable benefit of the Banks, and to confirm the lien and security interest created by the Agreement on such Collateral. Any term defined in the Agreement and used herein shall have its defined meaning herein.

2. The Company has assigned, conveyed, mortgaged, pledged and transferred to the Agent for the ratable benefit of the Banks and granted to the Agent for the ratable benefit of the Banks a security interest in, and does hereby assign, convey, mortgage, pledge and transfer to the Agent for the ratable benefit of the Banks and grant to the Agent for the ratable benefit of the Banks a security interest in, the following Collateral:

(a) the Rail-cars described in the schedule attached hereto and any Proceeds thereof; [and/or]

(b) a lease agreement and all rentals and Proceeds thereunder and thereof, described in the schedule attached hereto, to the extent such lease covers [insert either (i) "the Rail-cars identified in paragraph (a) above" or (ii) "the Rail-cars identified in the schedule to a previously filed Supplement with ICC Recordation No. \_\_\_\_\_"].

3. All the terms and conditions of the Agreement are hereby incorporated in this Supplement and made a part hereof. By their execution and delivery of this

Supplement the parties hereto hereby reaffirm all of the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Supplement on \_\_\_\_\_, 197\_.

BRAE CORPORATION

By \_\_\_\_\_  
Title:

MANUFACTURERS HANOVER TRUST  
COMPANY

By \_\_\_\_\_  
Title:

BILL OF SALE

\_\_\_\_\_ (the "Builder"),  
in consideration of the sum of One Dollar and other good  
and valuable consideration paid by Brae Corporation (the  
"Buyer"), receipt of which is hereby acknowledged, does  
hereby grant, bargain, sell, transfer and set over unto  
the Buyer, its successors and assigns, the following  
described equipment which has been delivered by the  
Builder to the Buyer, to wit:

<u>Number of Units</u>	<u>Description</u>	<u>Serial Numbers</u>
------------------------	--------------------	-----------------------

TO HAVE AND TO HOLD all and singular the equipment above  
described to the Buyer, its successors and assigns, for  
its and their only use and behoof forever.

And the Builder hereby warrants to the Buyer, its succes-  
sors and assigns, that at the time of delivery to the  
Buyer the Builder is the lawful owner of said equipment;  
that title to said equipment is free from all prior  
claims, liens and encumbrances suffered by or through the  
Builder except for a purchase money security interest in  
favor of the Builder which will be terminated upon payment  
in full to the Builder by the Buyer of \$ \_\_\_\_\_; and  
that the Builder has good right to sell the same as  
aforesaid; and the Builder covenants that it will warrant  
and defend such title against all claims and demands  
whatsoever.

By: \_\_\_\_\_  
Title:

Dated: \_\_\_\_\_, 197\_.

[Form of Legal Opinion of  
Counsel to the Company]

, 197\_

To the Banks Listed on  
Schedule I annexed hereto

Dear Sirs:

We have acted as counsel for Brae Corporation, a Delaware corporation (the "Company"), in connection with the Credit and Security Agreement dated as of \_\_\_\_\_, 1979 (the "Agreement") among the Company, the banks parties thereto (the "Banks") and Manufacturers Hanover Trust Company, as Agent for the Banks Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, Supplement No. \_\_\_\_\_ thereto (the "Supplement"), the leases [and lease schedules thereto] identified in Schedule I hereto (the "Leases") and such corporate documents and records of the Company, such certificates of public officials and of officers of the Company, and such other documents, as we have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, we are of the opinion that:

1. The Agreement, the Supplement and the Leases have been executed and delivered by duly authorized officers of the Company and constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or

similar laws affecting the enforcement of creditors' rights generally or by general equitable principles, provided that such general equitable principles will not impair the ability of the holder of any Note to recover the principal, interest thereon or make the remedies provided for in the Agreement inadequate for the practical realization of the benefits of the collateral security provided thereby.

2. We have reviewed the opinion of even date herewith of Messrs. Connor, Moore & Corber, to the effect that the Agreement, the Supplement, and the Leases have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, and to the effect that no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Leases (to the extent that the Leases relate to the Rail-cars specified therein). A financing statement describing the security interest of the Agent in the Leases (and the Proceeds thereof) has been duly filed with the Secretary of State of California, and no other financing statement asserting the grant by the Company of a security interest in the Leases (or the Proceeds thereof) has been so filed. We are informed that the Agent has possession of all of the Company's signed copies of the Leases. No other filing, registration or recording or other action is necessary in order to perfect, protect and preserve, as security for the Obligations, the lien on and security interest in the Leases created by the Agreement in the United States of America, except that (i) each Supplement hereafter executed and delivered by the Company, and each additional Lease with respect to the Rail-cars described in such Supplement or lease schedule subjecting to any Lease the Rail-cars described in such Supplement, must be filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, and (ii) a continuation statement must be filed within six months prior to the expiration of each five-year period following the date of filing of the financing statement filed with the Secretary of State of California and appropriate amendments or continuation statements must be filed in

the event the Company changes its name or principal place of business. The Agreement, as supplemented by the Supplement, constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Leases to the extent that the Leases relate to the Rail-cars specified therein, as security for the Obligations.

In rendering the opinions expressed in paragraph 2 above, we have relied as to matters governed by the Interstate Commerce Act, as amended, and as to the filings and recordings with the Interstate Commerce Commission (or the lack of such filings and recordings), upon the opinion of Messrs. Connor, Moore & Corber, delivered to you on the date hereof. Such opinion is satisfactory in form and substance to us, and we believe that we and you are justified in relying thereon.

Very truly yours,

[Form of Legal Opinion of  
Special Counsel to the Company]

, 197\_

To the Banks listed on  
Schedule I annexed hereto

Dear Sirs:

We have acted as special counsel for Brae Corporation, a Delaware corporation (the "Company"), in connection with the Credit and Security Agreement dated as of \_\_\_\_\_, 1979 (the "Agreement") among the Company, the banks parties thereto (the "Banks") and Manufacturers Hanover Trust Company, as Agent for the Banks. Terms used herein which are defined in the Agreement shall have the respective meanings set forth in the Agreement, unless otherwise defined herein.

In connection with this opinion, we have examined executed counterparts of the Agreement, Supplement No. \_\_\_\_ thereto (the "Supplement"), the leases [and the lease schedules thereto] identified in Schedule I hereto (the "Leases") and such other documents as we have deemed necessary or appropriate for the purposes hereof.

Based upon the foregoing, we are of the opinion that:

1. The Agreement, the Supplement and the Leases have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303, and no other agreement or document has been so filed or recorded as of the date hereof asserting a grant by the Company of an interest in or a Lien on the Leases (to the extent that the Leases relate to the Rail-cars specified therein). No other filing, registration or recording is necessary in order to perfect, protect and preserve, as security for the Obligations, the lien on and

security interest in the Rail-cars and in the Leases created by the Agreement, except that each Supplement hereafter executed and delivered by the Company, and each additional Lease with respect to the Rail-cars described in such Supplement or lease schedule subjecting to the Leases the Rail-cars described in such Supplement, must be filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code §11303.

2. The Agreement, as supplemented by the Supplement constitutes in the United States of America a legal, valid and perfected first lien on and first priority security interest in each of the Leases to the extent that the Leases relate to the Rail-cars specified in the Leases and the Lease Schedules thereto, as security for the Obligations.

Very truly yours,

# BRAE CORPORATION

## LEASE AGREEMENT

LEASE AGREEMENT, made as of this . . . . day of . . . . ., 19. . . , between the BRAE CORPORATION, a Delaware corporation, Three Embarcadero Center, San Francisco, California 94111 ("BRAE"), as Lessor, and . . . . ., a . . . . . corporation, . . . . . (address of Lessee)

("Lessee"), as Lessee.

### 1. Scope of Agreement

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

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

### 2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The lease pursuant to this Agreement with respect to each Car shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until fifteen (15) years (the "initial lease term") have expired from the actual date of delivery, as provided in Section 3A hereof, for the last of the Cars described on the Schedule on which such Car is described.

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

### 3. Supply Provisions

A. BRAE will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to BRAE that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all

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

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Lessee shall give preference to BRAE and shall load the Cars leased from BRAE prior to loading substantially similar freight cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; *provided, however*, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties hereto. Such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by BRAE and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to manufacturer's delivery schedules, the availability of financing on terms satisfactory to BRAE and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6A hereof) of all Cars on lease to Lessee to less than        per cent in any calendar quarter. If, due to any of the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the initial lease term shall terminate fifteen (15) years from the delivery date for the final Car actually delivered, as provided in Section 3A hereof.

#### 4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, such Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. BRAE and Lessee further agree that any Car may also be marked with the name of BRAE and any other information required by an owner or secured party under a financing agreement entered into by BRAE in connection with the acquisition of such Car. All such names, insignia and other information shall comply with all applicable regulations.

B. At no cost to Lessee, BRAE shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but shall not be limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

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

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

## 5. Maintenance, Taxes and Insurance

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

B. Except as provided in Section 5A hereof, BRAE shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs, at BRAE's expense, to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with BRAE (or its assignee).

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance. Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish to BRAE concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months certificates of insurance with respect to such insurance signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

D. BRAE agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery

or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. BRAE shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. BRAE and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. BRAE shall review all applicable tax returns prior to filing.

## 6. Lease Rental

A. Lessee agrees, subject to Section 6D hereof, to pay the following rent to BRAE for the use of the Cars:

(i) BRAE shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "payments") if the Utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than per cent. For the purpose of determining Utilization, "Car Hour" shall mean one hour during which one Car is on lease hereunder, commencing on the initial loading of such Car. For the purpose of this Agreement, "Utilization" shall mean with respect to any period a fraction the numerator of which is (x) the aggregate number of Car Hours for which payments are earned by the Lessee during such period, and the denominator of which is (y) the aggregate number of Car Hours during such period. In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their initial loading.

(ii) In the event Utilization exceeds per cent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental plus an amount equal to one-half of the payments earned in excess of the BRAE Base Rental. For the purpose hereof, BRAE Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is per cent and the denominator of which is the Utilization for such calendar year. (The above determination of BRAE Base Rental insures that Lessee will, if Utilization is greater than per cent in any calendar year, receive one-half of all the payments made by other railroads for use or handling of the Cars in excess of the BRAE Base Rental.)

(iii) If BRAE pays other railroads to move Cars in accordance with Section 3A hereof, except for any payments incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse BRAE for such payments, but only from and out of the monies received by Lessee pursuant to Subsection 6A(ii) hereof.

(iv) The rental charges payable to BRAE by Lessee shall be paid from the payments received by Lessee in the following order until BRAE receives the amounts due it pursuant to this Section 6A: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other.

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

B. The calculations required above shall be made within five months after the end of each calendar year. However, to enable BRAE to meet its financial commitments, BRAE may, prior to such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due BRAE, BRAE shall within three months after the end of each calendar quarter, calculate on a quarterly

basis rather than a yearly basis the amount due it pursuant to this Section 6. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, *provided, however,* that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than \_\_\_\_\_ per cent, BRAE may, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine.

D. If the ICC shall, at any time, (1) issue an order reducing incentive car hire payments for Cars on an annual basis to less than three months without a corresponding increase (including the increase contemplated by the ICC order served April 6, 1979 in Ex Parte 334) in straight car hire payments or other monies available to both BRAE and Lessee at least equal in amount to such reduction or (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this Section 6, BRAE may, at its election which shall be effective promptly upon written notice to Lessee, either (i) terminate this Agreement, or (ii) keep this Agreement in effect except that it shall be modified so that thereafter the rent which Lessee shall pay to BRAE for the use of the Cars, notwithstanding anything contained in Section 6A hereof to the contrary, shall be 100% of the payments, of whatever character, made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to, mileage charges, straight car hire payments and incentive car hire payments.

E. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B hereof, Lessee shall be liable for and remit to BRAE an amount equal to the payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

## 7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of some or all of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist (except as provided in Section 7A) any mortgage, pledge, lien, charge, encumbrance, or other security interest

or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule hereto. Lessee will promptly, at its expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

## 8. Default

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

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

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

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

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

(v) The subsection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the laws of the United States of America or of any state.

(vii) Lessee shall be merged with or consolidated into another corporation which after such merger or consolidation shall have a net worth less than that of Lessee immediately prior thereto.

B. Upon the occurrence of any event of default, BRAE may, at its option,

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, provided that BRAE shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to the date on which BRAE took such possession; or

(ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement. Lessee agrees to bear the costs and expenses, including without limitation reasonable attorneys' fees, incurred by BRAE in connection with the exercise of its remedies pursuant to this Section 8B.

## 9. Termination

At the expiration or termination of this Agreement as to any Car, Lessee will surrender possession of such Car to BRAE by delivering the same to BRAE at such place reasonably convenient to Lessee as BRAE shall designate. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the placing thereon of such markings as may be designated by BRAE, either, at the option of BRAE, (1) by Lessee upon return of such Car to Lessee' railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such

Car. If such Car is not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. If such Car is on the railroad line of Lessee upon such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five (5) working days remove Lessee's railroad markings from such Car and place thereon such markings as may be designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days' free storage on its railroad tracks for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Sections 6C, 6E or 8 hereof prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint such Car and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

#### 10. Indemnities

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

#### 11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement.

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

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

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

(v) Lessee has during the years 1964-1968 neither built, leased nor purchased any new or rebuilt freight cars.

#### 12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax

lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements submitted to the ICC or its shareholders generally.

**13. Miscellaneous**

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of BRAE assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void. Lessee agrees to acknowledge, upon receipt, any assignment of this Agreement by BRAE to an owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of all or part of the Cars leased hereunder. Lessee hereby agrees that any such assignment may be with respect to all or part of the Cars to be leased hereunder and may relate to all or part of the Cars on any Schedule hereto. Any assignment of this Agreement by BRAE to an owner or secured party shall not subject that owner or secured party to any of BRAE's obligations hereunder. Those obligations shall remain enforceable by Lessee solely against BRAE.

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

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

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

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

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

G. No security interest in this Agreement, as chattel paper (as defined in the Uniform Commercial Code), may be created by the transfer of possession except by transfer of an original, duplicate or photocopy of this Agreement and the only original counterpart of the applicable Schedule or Schedules. The original counterpart of each Schedule shall be marked "Original" and delivered to BRAE and all other counterparts thereof shall be duplicates and shall be marked "Duplicate."

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

BRAE CORPORATION

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



STATE OF ..... }  
COUNTY OF .....

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

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA }  
CITY AND COUNTY OF SAN FRANCISCO }

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

\_\_\_\_\_  
Notary Public

# BRAE RAILCAR MANAGEMENT, INC.

## FULL SERVICE LEASE AGREEMENT

LEASE AGREEMENT dated as of ....., 19 .... between BRAE RAILCAR MANAGEMENT, INC., a California corporation, or its assignee ("Lessor"), and ....., a ..... corporation ("Lessee").

### 1. Scope

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, railroad equipment of the types and description set forth in the equipment schedule or schedules ("Schedules") executed by Lessor and Lessee concurrently herewith or hereafter, substantially in form attached hereto as Exhibit A. Upon execution each Schedule shall be incorporated herein and made a part of this Agreement. The items of equipment listed on any Schedule are hereinafter referred to as "Cars".

### 2. Term

The term of lease with respect to each Car shall commence upon the Effective Date (as defined in Section 3B) with respect to such Car and continue through the termination date for such Car specified in Paragraph 1 of the Schedule on which such Car is listed.

### 3. Delivery and Acceptance

A. Prior to the delivery and acceptance of the first Car listed on any Schedule, Lessee shall confirm in writing to Lessor that a sample Car (one for each different type of Car on such Schedule) made available for Lessee's inspection conforms to specifications acceptable to Lessee.

B. Lessor shall deliver each Car to Lessee at the delivery point set forth in Paragraph 4 of the Schedule on which such Car is listed during the delivery period specified in Paragraph 5 of such Schedule. Each Car shall be delivered to Lessee in a physical condition satisfactory for Lessee's purpose specified in Paragraph 6 of the Schedule on which it is listed. Lessee shall have the right to refuse to accept delivery of any Car found not fit for such purpose or suitable for operation pursuant to the Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic ("Code of Rules") of the Association of American Railroads ("AAR"). Should any Car be so rejected by Lessee, such Car shall not become subject to this Agreement until later accepted by Lessee. The date on which Lessee inspects and accepts each Car hereunder is referred to as the "Effective Date" with respect to such Car.

C. The delivery of each Car to Lessee under this Agreement is subject to manufacturers' delivery schedules and the availability of financing on terms satisfactory to Lessor.

### 4. Markings

A. Lessor shall cause each Car to be marked clearly and conspicuously to show the interests of Lessor, any secured party or any assignee of either thereof in such Car. Any such secured party or assignee may from time to time, at its cost, require new or changed markings to be placed on the Cars disclosing its interest in the Cars. If any such marking shall be removed, defaced or destroyed, Lessee shall immediately cause it to be restored or replaced at Lessor's cost.

B. Other than as required by Section 4A, Lessee shall not place, or permit to be placed, upon the Cars any lettering or marking of any kind without Lessor's prior written consent, except that, for the purpose of evidencing the operation of the Cars in Lessee's service, Lessee may board, placard

or stencil the Cars with letters not to exceed one inch in height with the recording marks and such other information as required by the rules of the AAR.

#### 5. Fixed Rent

The monthly fixed rent with respect to each Car is specified in Paragraph 2 of the Schedule on which such Car is listed. Fixed rent shall commence to accrue for each Car on the Effective Date for such Car and shall continue to accrue throughout the term of this Agreement, unless such Car is removed from service without replacement as provided in Section 9E or destroyed as described in Section 10. The first fixed rent payment for each Car shall be made on the last day of the month in which the Effective Date occurs and shall be in an amount equal to one-thirtieth of the monthly fixed rent multiplied by the number of days from the Effective Date through the last day of such month. Subsequent payments of fixed rent shall be made in advance on or before the first day of each succeeding month during the term of this Agreement. The last payment of fixed rent shall be in an amount equal to one-thirtieth of the monthly fixed rent, multiplied by the number of days from the first day of the final month through the termination date of this Agreement.

#### 6. Additional Rent

On or before April 1 of each year, Lessor shall determine the total number of miles that each Car has travelled both loaded and empty during (i) the preceding calendar year ("Full Year") or (ii) in the case of calendar years in which the Effective Date is subsequent to January 1 or the termination date is prior to December 31, that portion of the year during which such Car is leased pursuant to this Agreement ("Partial Year").

For each Car traveling more miles during any Full or Partial Year than the number of miles set forth in Paragraph 3 of the Schedule on which such Car is listed, Lessee will pay to Lessor as additional rent the amount set forth in such Paragraph 3. The determination of the total number of miles travelled by each Car during any Full or Partial Year shall be made by multiplying by two the total number of miles that such Car travelled while loaded, unless Lessor has in its possession information sufficient to ascertain more precisely the total mileage travelled by such Car.

#### 7. Allowances

A. Any mileage allowances or other compensation payable by railroads for use of the Cars ("Allowances") shall be collected by Lessor. Lessee shall report regularly to Lessor movements of the Cars, giving the date, destination and routing of the Cars and loading and unloading information, together with all other relevant information which Lessee may receive from railroads or other sources.

B. Insofar as applicable laws and regulations permit, Lessee (unless an event of default specified in Section 20 shall have occurred and be continuing) shall be entitled to all Allowances collected by Lessor from railroads as a credit against fixed rent and additional rent, but in no event shall such credit exceed the total of fixed rent and additional rent payable by Lessee during the term of this Agreement.

#### 8. Use of Cars

A. Lessee agrees, to the extent possible, to use the Cars so that mileage under load will equal or exceed mileage empty on each railroad over which the Cars move. In the event that empty mileage should exceed loaded mileage on any railroad, and Lessor is notified by such railroad to equalize such mileage or to pay for such excess, Lessee shall, upon notice from Lessor, equalize such excess empty mileage within the time limit established by the railroad or pay Lessor such excess at the rate established by applicable tariffs.

B. Lessee shall use the Cars exclusively within the continental United States of America. Lessee agrees that if any of the Cars are inadvertently used outside the continental United States of America, Lessee shall reimburse Lessor for any customs, duties, taxes or other expenses resulting from such use.

## 9. Maintenance

A. Lessee will preserve the Cars in good condition and will not alter the physical structure of any Car without the prior written consent of Lessor. Lessee agrees to give Lessor prompt written notice of the need to repair or perform maintenance upon any Car.

B. Except as otherwise provided in this Section 9, Lessor agrees at its expense to maintain the Cars in good condition and repair in accordance with the Code of Rules and the rules and regulations of the Federal Railway Administration. All manufacturers' warranties with respect to the Cars shall inure to the benefit of Lessor.

C. Lessor's obligation to maintain and repair the Cars under Section 9B shall not extend to mandatory changes in the design of any Car, its components, configurations or safety appliances or other changes required by legislation or regulations effective after the Effective Date for such Car. In the event of such a change applicable to any Car Lessor may but need not terminate this Agreement with respect to such Car. Lessor's maintenance obligations shall not extend to repair or maintenance required as a result of, or attributable to: (i) defects in the manufacture or workmanship of any Car or any component thereof or any material incorporated therein by the manufacturer thereof or by any person other than the Lessor, its agents or representatives; (ii) damage caused by Lessee, its agents or representatives or any third party (other than a railroad), or while any Car is in Lessee's possession; (iii) damage caused to any Car by any corrosive or abrasive substance loaded therein or used in connection therewith; (iv) damage caused to any Car by open flames, vibrations, sledges or other similar devices during loading or unloading; (v) excessive or unbalanced loading; and (vi) special interior linings, interior loading devices and removable parts.

D. Lessor shall forward to Lessee any bills for repairs made to the Cars by railroads because of damage caused in any of the circumstances set forth in Section 9C, and Lessee shall promptly pay such bills. In the case of damage caused to the Cars which is the responsibility of a railroad under the Code of Rules, Lessor shall perform the necessary repairs and shall prepare and submit such documents and take such other actions as are necessary to recover the cost of such repairs in accordance with the Code of Rules. Lessor shall be entitled to any costs so recovered.

E. If any Car is (i) unavailable for use as a result of casualty (less than complete destruction) or failure of Lessor properly to maintain and repair such Car for any reason not specifically excepted in Section 9C and (ii) reported by Lessee to Lessor as in need of repair, the fixed rent for such Car shall abate from the seventh day after the date when such Car is so reported until it is repaired and returned to service or replaced by another Car. At Lessor's option, this Agreement may be terminated as to any such Car and, if so terminated, such Car need not be repaired or replaced. Lessor shall have the right, but shall not be obligated, to substitute for any Car which shall be so damaged or destroyed another Car of similar type, capacity and condition.

## 10. Destruction of Cars

Responsibility for loss, destruction, or damage to the Cars (including parts and appurtenances) shall be fixed by the then prevailing Code of Rules. The Code of Rules shall establish the rights, obligations and liabilities of Lessor, Lessee, and any railroad subscribing thereto and moving the Cars over its lines in respect of all matters to which the Code of Rules relates. In the event that any Car is lost, damaged, or destroyed while on the tracks of Lessee, any private track, or on the tracks of a railroad that does not subscribe to the Code of Rules, or in the event that any Car is damaged by any commodity transported or stored in it, such repairs, renewals, or replacements as may be necessary to replace such Car or to place it in good order and repair shall be at the sole cost and expense of Lessee, provided that in the event of destruction of or irreparable damage to any Car, at Lessor's option, Lessee shall promptly pay to Lessor the value of such Car in accordance with the Code of Rules. Lessor and Lessee agree to cooperate with and to assist each other in any

reasonable manner requested to establish proper claims against third parties responsible for loss, destruction or damage to the Cars.

#### 11. Indemnities

A. Except as otherwise provided in Section 10, Lessee agrees to indemnify and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (whether as a result of damage to the Cars or injury to third parties or their property), regardless of the cause thereof, and any expense in connection therewith (including legal fees), arising out of the use or operation of the Cars during the term of this Agreement.

B. Lessor shall not be liable for any loss of or damage to any commodities loaded or shipped in the Cars. Lessee agrees to assume responsibility for, to indemnify Lessor against, and to hold Lessor harmless from, any claim in respect of such loss or damage and to assume responsibility for any damage caused to any Car by such commodities.

#### 12. Insurance

A. Lessee shall maintain (or cause to be maintained) during the term of this Agreement policies of property damage and public liability insurance (or programs of self insurance) on the Cars in such form and amount and covering such risks and with such carriers as Lessor reasonably may designate.

B. Lessee covenants that it will not do any act or voluntarily permit any act to be done whereby any insurance on the Cars shall or may be suspended, impaired or defeated. In the event that any Car shall be lost, destroyed, or irreparably damaged from any cause whatsoever during the term of this Agreement, Lessor and Lessee shall proceed diligently and cooperate fully with each other in the recovery of any and all proceeds of insurance applicable thereto.

#### 13. Disclaimer of Warranties by Lessor

EXCEPT AS PROVIDED IN SECTION 9, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PRACTICAL PURPOSE WITH RESPECT TO THE CARS. LESSOR SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS ARISING IN STRICT LIABILITY.

#### 14. Investment Tax Credit

Lessee recognizes that Lessor will utilize the investment credit afforded in respect of the Cars by Sections 38 and 46 through 50 of the Internal Revenue Code. Lessee agrees that it will not commit any act, or fail to take any act, as a result of which Lessor shall lose the benefit of all or any portion of such investment credit.

#### 15. Taxes

A. Lessor shall be responsible for and shall pay all property taxes levied upon the Cars and file all property tax reports relating thereto.

B. Lessor shall not be responsible for the payment of any tax, tariff, duty, customs, switching, demurrage or other charge made by any governmental agency, railroad or other person in respect of any Car, except as provided in Section 15A. Lessee agrees to pay or reimburse Lessor promptly for any such tax, tariff, demurrage or other charges.

#### 16. Assignment; Subordination; Title

A. Lessor's rights hereunder may be assigned, mortgaged or otherwise transferred, either in whole or in part, and Lessor may assign, mortgage or otherwise transfer title to any Car with or without notice to Lessee.

B. This Agreement and all of Lessee's rights under this Agreement, and all rights of any person who claims rights under this Agreement through Lessee are subject and subordinate to the terms, covenants and conditions of all chattel mortgages, conditional sales agreements, assignments, equipment trust agreements, finance leases or other security documents covering the Cars or any of them heretofore or hereafter created and entered into by Lessor and to all of the rights of any such chattel mortgagee, assignee, trustee, owner or other holder of interest in the Cars. In the event of any such assignment, mortgage or transfer, Lessee agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's interest in and to the Cars and this Agreement, and to confirm the subordination provisions contained in this Section 16B.

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

#### 17. Sublease

Lessee shall make no transfer, sublease, or assignment of this Agreement or of any Car (by operation of law or otherwise) without the prior written consent of Lessor. Lessee agrees (i) that no sublease shall permit use of the Cars outside of the continental United States of America, (ii) that no sublessee shall be a tax-exempt organization or governmental unit and (iii) that all subleases shall be expressly subordinate as provided in Section 16B. No sublease shall in any way relieve Lessee from its obligations to Lessor under this Agreement.

#### 18. Compliance with Regulations

A. At the time of delivery of the Cars by Lessor to Lessee, the Cars will conform to the applicable specifications and to all governmental laws, regulations, requirements and rules, and to all of the standards recommended by the AAR for railroad equipment of the character of the Cars. Except as provided in Section 18B, Lessee shall, at its own expense, comply with all governmental laws, regulations and requirements, with the Code of Rules and with the rules and regulations of the Federal Railway Administration with respect to the use, maintenance, and operation of the Cars. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for use of the Cars and shall bear all risk of failure to obtain such permission, approval and consent, or of cancellation thereof. Lessor shall take all actions reasonably requested by Lessee in order to assist Lessee in obtaining such permissions, approvals, or consents.

B. In case any equipment or appliance on any Car shall be required to be changed or replaced in order to comply with applicable laws, regulations, requirements or rules, Lessor agrees to cause such changes or replacements to be made at its expense, subject to Section 9C. Any part or parts installed or replacements made upon any Car by Lessor or Lessee shall be considered accessions to such Car, and title thereto shall immediately vest in Lessor without further act.

#### 19. Inspections

Lessee will make the Cars available to Lessor or any secured party of Lessor at any reasonable time on request for maintenance inspection and for regular maintenance in accordance with Lessor's maintenance responsibility. Lessee will be responsible for all costs of transporting the Cars to maintenance facilities.

#### 20. Events of Default

A. The occurrence of any of the following shall constitute an Event of Default:

(i) the failure by Lessee to make any payment of fixed or additional rent or other amount required to be paid by Lessee under this Agreement within ten days after the date such payment is due;

(ii) any breach by Lessee of any agreement or covenant contained in this Agreement, which is not cured within 10 days after notice thereof from Lessor to Lessee;

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

(iv) the filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within 45 days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within 45 days from the date of such filing or appointment;

(v) any attempt by Lessee, without Lessor's consent, to assign, sublease or transfer this Agreement or any interest in or the right to use or possession of the Cars;

(vi) the failure by Lessee to redeliver to the Lessor any Car in the manner described in Section 21 on or before the date this Agreement expires with respect to such Car.

B. Upon the occurrence of any Event of Default, Lessor may, at its option:

(i) proceed by appropriate court action or actions either at law or in equity to enforce specific performance by Lessee of this Agreement and/or to recover damages for breach hereof; or

(ii) terminate this Agreement, whereupon all rights of Lessee to the use of the Cars shall absolutely cease and terminate as though this Agreement had never been made, and all fixed rent not theretofore due and payable with respect to the Cars shall forthwith become due and payable.

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

Upon the occurrence of an Event of Default, Lessor may exercise its remedies with respect to some or all of the Cars and some or all of the Cars on any Schedule. Lessee shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Car. The remedies provided in this Agreement in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies existing at law or in equity. To the extent permitted by applicable law, Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided.

#### 21. Return of Cars

Upon termination of this Agreement with respect to a Car, Lessee, at its sole expense, shall return such Car to Lessor at any location specified by Lessor within 1000 miles of the point at which Lessor originally delivered such Car to Lessee. Such Car shall be (i) empty and free from residue, (ii) in such condition as will permit Lessor immediately to sell or relet such Car without repair (other than repairs that Lessor is required to make pursuant to Section 9) and (iii) in compliance with all applicable laws and regulations. Lessee shall, on demand, reimburse Lessor for the cost of cleaning any returned Car. In the event that any Car is not redelivered to Lessor on or before the date this Agreement expires with respect to such Car, all of the obligations of Lessee under this Agreement with respect to such Car shall remain in full force and effect until such Car is redelivered to Lessor; *provided, however*, that the fixed rent for such Car after the expiration date shall be 150% the fixed rent for such Car specified in the Schedule on which such Car is listed.

22. Miscellaneous

A. Each party agrees to execute the documents contemplated by this Agreement and such other documents as may reasonably be required in furtherance of this Agreement.

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

C. All notices hereunder shall be in writing and shall be deemed given when delivered personally or 72 hours after it has been deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the following address: if to Lessor: Brae Railcar Management, Inc., Three Embarcadero Center, San Francisco, California 94111 Attention Director of Full Service Leasing; or if to Lessee: .....

D. No failure or delay by Lessor to exercise its rights or remedies hereunder shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor.

E. Headings to the sections 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.

F. 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.

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

LESSOR:  
BRAE RAILCAR MANAGEMENT, INC.

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

LESSEE:  
  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

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**EXHIBIT A**

**EQUIPMENT SCHEDULE**

Brae Railcar Management, Inc., or its assignee ("Lessor"), hereby leases the following Cars to .....  
..... ("Lessee") on the terms and conditions contained in the Lease Agreement to which this Schedule is  
attached.

<u>AAR Mech. Design</u>	<u>Description</u>	<u>Numbers</u>	<u>Dimensions</u>			<u>Number of Cars</u>	<u>Effective Date</u>
			<u>Length</u>	<u>Inside Width</u>	<u>Height</u>		

**BRAE RAILCAR MANAGEMENT, INC.**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

EXHIBIT A (reverse side)

1. Term of Agreement

The term of this Agreement as to each Car shall begin on the Effective Date for such Car and terminate ..... months from the end of the calendar month in which the Effective Date occurs.

2. Fixed Rent

The monthly fixed rent for each Car shall equal ....% of the manufacturer's quoted invoice price for such Car.

If the term of this Agreement with respect to any Car exceeds 60 months, then fixed rent shall be recomputed at the sixtieth month and every 12 months thereafter by multiplying the original monthly fixed rent by a fraction, the denominator of which is the AAR index for Labor and Steel for the Effective Date and the numerator of which is such AAR index for the most recent available period at the time such recomputation is being made.

3. Additional Rent

The additional rent for each Car for a Full Year shall equal two cents (\$.02) multiplied by the number of miles which such Car has travelled in excess of 30,000 miles during such Full Year.

The additional rent for each Car for each Partial Year shall be calculated by (1) dividing the total number of days during which such Car was leased by Lessor to Lessee during such Partial Year (the "total daily usage") into the total number of miles that such Car travelled during such Partial Year, and (2) subtracting therefrom the figure ..... If the resulting figure ("excess daily mileage") is positive, then additional rent shall be payable for such Partial Year and shall equal the following:

$$(\text{excess daily mileage}) \times (\text{total daily usage}) \times (\$ \dots)$$

4. Delivery Point

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

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5. Delivery Period

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6. Lessee's Purpose

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## SHIPPER AGREEMENT

SHIPPER AGREEMENT, dated as of \_\_\_\_\_,  
 19\_\_\_\_\_, between BRAE CORPORATION, a Delaware corporation  
 ("BRAE"), and \_\_\_\_\_  
 a \_\_\_\_\_ corporation ("Shipper").

RECITAL

BRAE has acquired or will acquire certain railroad cars ("Cars") more specifically described in the Equipment Schedule ("Schedule") attached to Exhibit I to this Agreement. Shipper desires to obtain the use of the Cars.

## THE PARTIES AGREE AS FOLLOWS:

1. The Cars.

BRAE shall lease the Cars to a railroad designated by BRAE which will provide them to an originating carrier for assignment to Shipper. BRAE has previously delivered to Shipper a copy of the lease with its railroad lessee, and Shipper hereby confirms to BRAE that such railroad does not participate in the transport of Shipper's commodities.

2. Confirmation of Originating Carrier.

Shipper has previously obtained written confirmation from an originating carrier accepting the Cars in assignment to one of Shipper's loading points. Shipper has delivered to BRAE a copy of such confirmation and has notified BRAE in writing of such loading point (the "Loading Point").

3. Delivery.

BRAE shall inspect each Car tendered by the manufacturer for delivery. Prior to such inspection, however, Shipper shall confirm in writing to BRAE that the sample Car which will be made available (prior to the commencement of the deliveries by the manufacturer) for Shipper's inspection conforms to the specifications previously agreed to by Shipper. Upon approval by Shipper and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all applicable regulatory requirements and if this Agreement or the Lease (as defined in Section 6A) shall be in effect, BRAE shall

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accept delivery of such Car at the manufacturer's facility and shall notify Shipper in writing of such acceptance. The Cars shall be moved, at no cost to Shipper, to the Loading Point as soon after acceptance by BRAE from the manufacturer as is consistent with mutual convenience and economy. Shipper acknowledges that BRAE, consistent with its obligation of the preceding sentence, may load the cars enroute to the Loading Point and shall in any event deliver the Cars to the Shipper reasonably clean and free of residue. The initial delivery of Cars to Shipper shall be subject to the manufacturers' delivery schedules and the availability of financing on terms satisfactory to BRAE. This Agreement shall commence with respect to each Car and such Car shall be deemed to be accepted by Shipper upon its delivery by BRAE to the Loading Point; provided, however, that, in the event the Lease shall be in effect with respect to any Car upon its acceptance by BRAE from the manufacturer, the Lease shall commence with respect to such Car and such Car shall be deemed to be accepted by Shipper (as Lessee under the Lease) immediately upon its acceptance from the manufacturer by BRAE.

#### 4. Term.

The term of this Agreement (and Shipper's obligations pursuant to Section 5) shall commence as to each Car upon the acceptance of such Car by Shipper at the Loading Point and shall expire as to all Cars five years from the date on which the last Car is so accepted (or the last Car actually accepted if for any reason fewer than all the Cars listed on the Schedule are accepted.

#### 5. Shipper Guarantees.

A. Shipper covenants and agrees that it shall use its best efforts to cause the Cars to travel an average of \_\_\_\_\_ miles per Car per day during the term of this Agreement. In order to insure that the Cars travel an average of \_\_\_\_\_ miles per Car per day, Shipper shall load the Cars prior to loading substantially similar freight cars owned or leased by Shipper or provided to it by railroads subsequent to the effective date of this Agreement. In the event that the Cars do not average \_\_\_\_\_ miles per Car per day during any calendar year, Shipper shall be liable to BRAE as provided in Section 5B.

B. The amount, if any, owed to BRAE by Shipper pursuant to Section 5A for any period shall be determined by multiplying \_\_\_\_\_ times the aggregate number of "Car Days" during such period and subtracting from that product the total number of miles travelled by all Cars during that period. If

the difference is a positive number, then the difference shall be multiplied by the mileage rate then prescribed by the Interstate Commerce Commission ("ICC") as applicable to railcars of the same type as the Cars and which bear railroad markings and that product shall be the mileage deficiency fee for such period. If the difference is a negative number, then there shall be no mileage deficiency fee for such period, but that difference shall be multiplied by the mileage rate then prescribed by the ICC as applicable to railcars of the same type as the Cars and which bear railroad markings and the product shall be a credit available for application as provided in the Section 5D. For the purpose of making these determinations, "Car Day" shall mean one day on which one Car is subject to this Agreement, commencing upon the acceptance of such Car by Shipper at the Loading Point pursuant to Section 3.

C. BRAE shall determine the mileage deficiency fee quarterly within 90 days after the last day of each March, June, September and December during the term of this Agreement. BRAE shall also make an annual determination within 90 days after the last day of each December 31 during the term of this Agreement and shall make a final determination within 60 days after the date this Agreement expires. BRAE shall notify Shipper of each such determination promptly after it has been made.

D. Shipper shall pay BRAE the mileage deficiency fee, if any, quarterly in arrears not later than 15 days after BRAE has notified Shipper of its quarterly determination. Notwithstanding the fact that the mileage deficiency fee is payable quarterly, it shall be computed on an annual basis. Accordingly, if during any quarter the average daily mileage of the Cars exceeds 65 miles per Car per day, the credit available from such excess mileage shall be used to offset any mileage deficiency fee paid in respect of any preceding quarter during such year and, to the extent not so used, shall remain available for use as a credit to offset any mileage deficiency fee which may become payable in respect of any subsequent quarter during such year. If, because of quarterly variations in average daily mileage, Shipper has paid excess mileage deficiency fees to BRAE during any calendar year, BRAE shall refund such excess mileage deficiency fees to Shipper within 15 days after notifying Shipper of its annual determination for such year. Except as provided in the preceding sentence, BRAE shall be entitled to all mileage payments made by railroads with respect to the Cars. Credits resulting from average daily mileage exceeding \_\_\_\_\_ miles per Car per day shall terminate if not used at the end of each calendar year.

E. BRAE shall be entitled to receive all straight car hire (per diem) charges for the Cars while they are in use under this Agreement. In the event of nonpayment of such per diem charges at any time during the term of this Agreement by any other party with respect to any of the Cars which are idle and not used for loading purposes, Shipper will guarantee payment to BRAE of the difference, if any, between the aggregate per diem

payments which the Cars would have earned assuming 100% utilization of such Cars during such nonpayment period and the aggregate per diem payments which the Cars actually did earn during such nonpayment period.

F. The mileage and utilization guarantees set forth in this Section 5 shall abate with respect to any Car which is "bad ordered" and subject to Mechanical Rule 108 of the AAR Interchange Rules or which is out of service for maintenance and repairs. Such abatement shall commence on the eighth day after the date on which such condition is reported to BRAE.

6. Full Service Lease.

A. Concurrently with the execution of this Agreement, BRAE and Shipper have executed the full service lease agreement annexed hereto as Exhibit I ("Lease"), the term of which is the same as the term of this Agreement.

B. In the event that the confirmation of assignment of the originating carrier referred to in Section 2 shall for any reason cease to be in effect at any time with respect to one or more of the Cars and Shipper shall not have obtained from another originating carrier a confirmation of assignment satisfactory to BRAE, this Agreement (other than Sections 6C, D and E) shall be of no further effect with respect to such Car or Cars and the Lease shall without further act become effective with respect to such Car or Cars.

C. Shipper may, upon notice to BRAE, elect to delay the effectiveness of the Lease with respect to specified Cars for a period of up to 30 days in order to obtain from another originating carrier a confirmation of assignment satisfactory to BRAE. In such event, this Agreement shall remain in full force and effect and Shipper shall remain obligated under Section 5 with respect to the specified Cars, and, in addition, Shipper shall pay to BRAE immediately upon demand an amount equal to the difference between the car hire (per diem) payments and incentive car hire incentive (per diem) payments, if any, actually earned by the Cars and those that would have been earned if all Cars had been utilized off the tracks of BRAE's lessee railroad 100% of the time, all computed at the then applicable car hire rate prescribed by the ICC.

D. If the Lease becomes effective with respect to one or more Cars and Shipper thereafter obtains from an originating carrier a confirmation of assignment satisfactory to BRAE, Shipper may, at its option, cancel the effectiveness of the Lease as to the Car or Cars covered by such assignment and reassume its obligations under this Agreement (including Section 5) with respect to such Car or Cars. Any cancellation of the effectiveness of the Lease shall be preceded by ten days' notice from Shipper to BRAE.

E. Upon the effectiveness of the Lease or the cancellation thereof with respect to any Car, Shipper shall bear all costs and expenses associated therewith, including remarking or restencilling such Car. At such time, Shipper agrees to mark or stencil the reporting marks of BRAE on such Car(s) and BRAE shall, at Shipper's expense, endeavor to obtain all necessary railroad, AAR and regulatory consents and approvals.

7. Compliance with Regulations.

The operation of the Cars and their assignment to Shipper by the originating carrier shall at all times be in compliance with the provisions of the Interstate Commerce Act, the regulations of the ICC, the Department of Transportation and other regulatory agencies, and the rules established by the Association of American Railroads ("AAR").

8. Other Obligations.

A. All insurance, tax and maintenance obligations with respect to the Cars which are not the express obligations of Shipper under this Agreement shall be the responsibility of BRAE.

B. Shipper shall be responsible for all losses or damage to the Cars or the contents thereof caused by (i) Shipper, its agents or representatives, (ii) anyone while the Cars are in Shipper's possession, (iii) by any corrosive or abrasive substance loaded therein, and (iv) by excessive or unbalanced loading.

C. Shipper shall be responsible for payment of all reclaim charges payable with respect to the Cars pursuant to I.C.C. Rule 22 for such period(s) as the Car(s) may be idle and not used for loading purposes at Shipper's facilities.

D. Shipper shall give BRAE prompt telephone or telegraphic notice (confirmed in writing) of any damage of which Shipper becomes aware to any Car, regardless of who is responsible for repairing such damage.

9. Assignment.

A. BRAE's rights hereunder may be assigned, mortgaged or otherwise transferred, either in whole or in part, and BRAE may assign, mortgage or otherwise transfer title to any Car with or without notice to Shipper.

B. This Agreement and all of BRAE's rights under this Agreement, and all rights of any person who claims rights under this Agreement through Shipper are subject and subordinate to the terms, covenants and conditions of all chattel mortgages,

conditional sales agreements, assignments, equipment trust agreements, finance leases or other security documents covering the Cars or any of them heretofore or hereafter created and entered into by BRAE and to all of the rights of any such chattel mortgagee, assignee, trustee, owner or other holder of interest in the Cars. In the event of any such assignment, mortgage or transfer, Shipper agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's interest in and to the Cars and this Agreement, and to confirm the subordination provisions contained in this Section 9B.

C. Without limiting the generality of Sections 9A and B, BRAE may assign this Agreement as it relates to specified Cars to the owner of such Cars, provided that BRAE also assigns the Lease as it relates to such Cars to their owner and BRAE or one of its affiliates enters into a management agreement with such owner relating to its Cars. Upon delivery to Shipper of a notice signed by BRAE regarding such assignment and the effectiveness of the related management agreement, (i) the term "BRAE" when used herein shall mean with respect to the Cars covered by such management agreement, the owner of such Cars, (ii) BRAE shall be relieved of all of its obligations and liabilities under this Agreement relating to such Cars and (iii) Shipper with respect to such Cars shall look solely to the owner of such Cars for the performance of BRAE's obligations hereunder. Shipper agrees that any such assignment may relate to one, some or all of the Cars subject to this Agreement.

D. Shipper may not assign any of its rights under this Agreement without the prior written consent of BRAE, except that the Shipper may assign its rights hereunder to any of its subsidiaries or affiliates, provided that Shipper at all times remains primarily liable to BRAE hereunder.

#### 10. Representations, Warranties and Covenants.

Shipper represents, warrants and covenants that:

(i) Shipper is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement and the Lease.

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

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

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

(v) Shipper does not have a facility located on the railroad tracks of the lessee railroad referred to in Section 1. Such railroad does not and will not participate at any time in the transport of any commodities of Shipper.

(vi) Shipper will cause the Cars to be used predominantly in the continental United States of America.

#### 11. Events of Default.

A. The occurrence of any of the following shall constitute an Event of Default:

(i) the failure by Shipper to make any payment required to be made by Shipper pursuant to Section 5 within five days after the date such payment is due;

(ii) the breach by Shipper of any agreement or covenant contained in this Agreement, which is not cured within ten days after notice thereof from BRAE to Shipper.

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

(iv) any attempt by Shipper, without BRAE's consent, to assign any of its rights under this Agreement, except as authorized in Section 9D.

B. Upon the occurrence of an Event of Default, BRAE may, at its option:

(i) proceed by appropriate court action at law or in equity to enforce specific performance by Shipper of this Agreement and/or to recover damages for breach hereof; or

(ii) terminate this Agreement, whereupon all rights of Shipper to the use of the Cars shall absolutely cease and terminate as though this Agreement had never been made.

Upon the occurrence of any Event of Default, BRAE may exercise its remedies with respect to some or all of the Cars. Shipper shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of BRAE's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Car.

## 12. Termination.

A. BRAE shall have the right in its sole discretion to terminate this Agreement with respect to one or more Cars in the event that any addition, alteration, modification or improvement to any of the Cars is required by the ICC, AAR, the Department of Transportation or any other regulatory agency or is otherwise required in order to comply with applicable laws, regulations, or requirements affecting the use or ownership of any of the Cars or in the event of material adverse changes to the car service rules. This termination right shall apply only to those Cars which require such addition, alteration, modification or improvement and shall be exercisable upon 30 days' written notice to Shipper within 120 days of the date any such requirement is first announced.

B. In the event that any Car is destroyed or damaged to such an extent that repair is uneconomic in BRAE's judgment, such Car shall without further act by either party be removed from the coverage of this Agreement. BRAE may but need not replace such Car with another railcar of a similar type, capacity and condition.

C. BRAE may terminate this Agreement promptly upon 48 hours' notice to Shipper if for any reason the lease between BRAE and its railroad lessee shall be terminated.

D. If any of the circumstances described in Section 12A or C shall occur, BRAE may, in lieu of exercising its right of termination, declare the Lease effective with respect to the affected Cars. In the event that the circumstances described in Section 12A shall occur and BRAE shall declare the Lease effective, BRAE shall bear the expense of causing the affected Cars to comply with applicable laws, regulations or requirements.

## 13. Return of Cars.

Upon the termination of this Agreement for any reason whatsoever unless the Lease shall be in effect, Shipper shall, at its expense, cause the Cars to be redelivered to BRAE at such location within 1,000 miles of the Loading Point as BRAE reasonably may designate. Shipper shall reimburse BRAE for the cost of cleaning any Car which, upon its return to BRAE at such termination, requires cleaning.

14. Effective Date.

This document shall become binding when it has been signed by BRAE and Shipper, the Lease has been signed by BRAE and Shipper and the confirmation referred to in Section 3 has been obtained by Shipper and delivered to BRAE.

15. Notices.

All written communications to BRAE shall be directed to it at the following address: Brae Corporation, Three Embarcadero Center, San Francisco, California 94111, Attention: Director of Operations. All written communications to Shipper shall be directed to it at the following address:

Attention:

16. Force Majeure.

Shipper shall have the right to cancel this Agreement without penalty with respect to some or all of the Cars in the event that Shipper's operations are substantially and materially impaired by reason of war, insurrection, natural disaster or by other Acts of God. Shipper may exercise this right upon delivery of written notice to BRAE and only with respect to all of the Cars or fifty Car increments.

17. Miscellaneous.

This Agreement, the Schedule and the Exhibit contain the entire agreement of the parties with respect to the Cars, and no modifications or amendments shall be effective unless in writing and signed by both parties. This Agreement shall be governed by the laws of the State of California. Any waiver of any terms and conditions of this Agreement shall apply only to the instance for which given and shall not operate as a waiver of any of the terms and conditions hereof with respect to any other or future acts or omissions.

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

SHIPPER:

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

BRAE CORPORATION

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is \_\_\_\_\_ of \_\_\_\_\_, and that the foregoing Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

[seal]

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA \_\_\_\_\_ )  
CITY AND COUNTY OF SAN FRANCISCO)

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is \_\_\_\_\_ of BRAE CORPORATION, and that the foregoing Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

[seal]

\_\_\_\_\_  
Notary Public

EXHIBIT I

to

SHIPPER AGREEMENT

SHIPPER FULL SERVICE LEASE AGREEMENT

LEASE AGREEMENT, dated as of \_\_\_\_\_, 19\_\_\_\_,  
between BRAE CORPORATION, a Delaware corporation ("Lessor"),  
and \_\_\_\_\_  
a \_\_\_\_\_ corporation ("Lessee").

RECITAL

Lessor and Lessee have entered into a Shipper Agreement dated as of the date hereof (the "Shipper Agreement") with respect to the railroad cars (the "Cars") shown on the Equipment Schedule (the "Schedule") attached to this Lease. The Shipper Agreement provides that, upon the occurrence of certain events, this Lease shall without further act become effective with respect to the Cars affected by those events.

THE PARTIES AGREE AS FOLLOWS:

1. Lease

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the Cars in the events, upon the terms and subject to the conditions set forth herein. Cars which become subject to this Lease are referred to herein as "Leased Cars".

2. Term

The term of the Lease with respect to each Leased Car shall commence upon the Effective Date and shall terminate when the term of this Lease combined with the period for which the Shipper Agreement was in effect with respect every Car, shall equal at least five years.

3. Delivery and Acceptance

A Car shall be deemed to have been delivered to and accepted by Lessee and to become a Leased Car immediately

upon the occurrence with respect to such Car of the events specified in Section 6B or 12D of the Shipper Agreement (the "Effective Date").

#### 4. Markings

A. As promptly after the Effective Date as practicable Lessee shall, at its expense, cause each Leased Car to be marked clearly and conspicuously to show the interest of Lessor or any secured party or any assignee of either thereof in such Leased Car. Any such secured party or assignee may from time to time, at its expense, require new or changed markings to be placed on the Leased Cars disclosing its interest in the Leased Cars. If any of such markings shall be removed, defaced or destroyed, Lessee shall cause it to be restored or replaced immediately at Lessor's expense.

B. Other than as required by Section 4A, Lessee shall not place, or permit to be placed, upon the Leased Cars any lettering or marking of any kind without Lessor's prior written consent, except that for the purpose of evidencing the operation of the Leased Cars in Lessee's service, Lessee may board, placard or stencil the Leased Cars with the reporting marks and such other information as required by the rules of the Association of American Railroads ("AAR").

#### 5. Fixed Rent

The monthly fixed rent with respect to each Leased Car is specified in Paragraph 1 of the Schedule. Fixed rent shall commence to accrue for each Leased Car on the Effective Date and shall continue to accrue throughout the term of this Lease, unless such Leased Car is removed from service without replacement as provided in Section 9E or destroyed as described in Section 10. The first fixed rent payment for each Leased Car shall be made on the last day of the month in which the Effective Date occurs and shall be in an amount equal to one-thirtieth of the monthly fixed rent, multiplied by the number of days from the Effective Date through and including the last day of such month. Subsequent payments of fixed rent shall be made in advance on or before the first day of each succeeding month during the term of this Lease. The last payment of fixed rent shall be in an amount equal to one-thirtieth of the monthly fixed rent, multiplied by the number of days from the first day of the final month through and including the termination date of this Lease.

## 6. Additional Rent

A. On or before April 1 of each year, Lessor shall determine the total number of miles that each Leased Car has traveled (loaded and empty) during (i) the preceding calendar year ("Full Year") or (ii) in the case of any calendar year in which the Effective Date (unless it is January 1) or the termination date (unless it is December 31) occurs, that portion of the year during which such Leased Car is leased pursuant to this Lease ("Partial Year").

B. For each Leased Car traveling more miles during any Full Year or Partial Year than the number of miles set forth in Paragraph 2 of the Schedule, Lessee will pay to Lessor as additional rent the applicable amount set forth in Paragraph 2 of the Schedule. The determination of the total number of miles traveled by each Leased Car during any Full Year or Partial Year shall be made by multiplying by two the total number of miles that such Leased Car traveled while loaded, unless Lessor has in its possession information sufficient to ascertain more precisely the total mileage traveled by such Leased Car.

C. Lessee shall report regularly to Lessor movements of the Leased Cars, giving the date, destination and routing of the Leased Car and loading and unloading information, together with other information regarding the Leased Cars which Lessee may receive from railroads or other sources.

## 7. Allowances

A. Any mileage allowances or other compensation payable by railroads for use of the Leased Cars ("Allowances") shall be collected by Lessor.

B. Insofar as applicable laws and regulations permit, Lessee (unless an Event of Default specified in Section 20 shall have occurred and be continuing) shall be entitled to all Allowances collected by Lessor from railroads as a credit against fixed rent and additional rent, but in no event shall such credit exceed the total of fixed rent and additional rent payable by Lessee during the term of this Lease.

## 8. Use of Cars

A. Lessee agrees, to the extent possible, to use the Leased Cars so that mileage under load will equal or exceed mileage empty on each railroad over which the Leased Cars move. In the event that empty mileage should exceed loaded mileage on any railroad and Lessor should be notified by such railroad to equalize mileage or to pay for such excess, Lessee shall equalize

such excess empty mileage within the time limit established by the railroad or pay Lessor for such excess at the rate established by the applicable tariff.

B. Lessee shall use the Leased Cars predominantly within the continental United States of America. Lessee agrees that, if any of the Leased Cars are used outside the continental United States of America, Lessee shall reimburse Lessor for any customs, duties, taxes or other expenses resulting from such use.

#### 9. Maintenance

A. Lessee will preserve the Leased Cars in good condition and will not alter the physical structure of any Leased Car without the prior written consent of Lessor. Lessee agrees to give Lessor prompt written notice of the need to repair or perform maintenance upon any Leased Car.

B. Except as otherwise provided in this Section 9, Lessor shall, at its expense, maintain the Leased Cars in good condition and repair in accordance with the Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic ("Code of Rules") and the rules and regulations of the Federal Railway Administration. All manufacturers' warranties with respect to the Leased Cars shall inure to the benefit of Lessor.

C. Lessor's obligation to maintain the Leased Cars under Section 9B shall not extend to mandatory changes in the design of any Leased Car, its components, configurations or safety appliances or other changes required by legislation or regulations effective after the Effective Date. In the event of such a change, Lessor may but need not terminate this Agreement with respect to those Leased Cars to which it is applicable. Lessor's maintenance obligation shall not extend to repair or maintenance required as a result of, or attributable to: (i) defects in the manufacture or workmanship of any Leased Car or any component thereof or any material incorporated therein by the manufacturer thereof or by any person other than the Lessor, its agents or representatives; (ii) damage caused by Lessee, its agents or representatives or any third party (other than a railroad), or while any Leased Car is in Lessee's possession; (iii) damage caused to any Leased Car by any corrosive or abrasive substance loaded therein or used in connection therewith; (iv) damage caused to any Leased Car by open flames, vibrators, sledges or other similar devices during loading or unloading; (v) excessive or unbalanced loading; and (vi) special interior linings, interior loading devices and removable parts.

D. Lessor shall forward to Lessee any bills for repairs made to the Leased Cars by railroads because of damage caused in any of the circumstances set forth in Section 9C, and Lessee shall promptly pay such bills. In the case of damage to the Leased Cars which is the responsibility of a railroad under the Code of Rules, Lessor shall perform the necessary repairs and shall prepare and submit such documents and take such other actions as are necessary to recover the cost of such repairs in accordance with the Code of Rules. Lessor shall be entitled to any costs so recovered.

E. If any Leased Car is (i) unavailable for use as a result of less than complete destruction or failure of Lessor properly to maintain and repair such Leased Car for any reason not specifically excepted in Section 9C and (ii) reported by Lessee to Lessor as in need of repair, fixed rent for such Leased Car shall abate from the seventh day after the date when such Leased Car is so reported until it is repaired and returned to service or replaced by another railcar. Lessor may, at its option, terminate this Lease as to any such Leased Car and, in that event, such Leased Car need not be repaired or replaced. Lessor shall have the right, but shall not be obligated, to substitute for any Leased Car which shall be damaged or destroyed another railcar of a similar type, capacity and condition.

#### 10. Destruction of Cars

Responsibility for loss, destruction, or damage to the Leased Cars shall be as fixed by the then prevailing Code of Rules. The Code of Rules shall establish the rights, obligations and liabilities of Lessor, Lessee and any railroad subscribing thereto and moving the Leased Cars over its lines in respect of all matters to which the Code of Rules relates. In the event that any Leased Car is lost, damaged or destroyed while on the tracks of Lessee, any private track or on the tracks of a railroad that does not subscribe to the Code of Rules, or in the event that any Leased Car is damaged by any commodity transported or stored in it, such repairs, renewals or replacements as may be necessary to replace such Leased Car to replace it in good order and repair shall be at the expense of Lessee, provided that in the event of destruction of or irreparable damage to any Leased Car, Lessee shall promptly pay to Lessor, at Lessor's option, the value of such Leased Car in accordance with the Code of Rules. Lessor and Lessee agree to cooperate with and to assist each other in any manner reasonably necessary to establish proper claims against third parties responsible for loss, destruction or damage to the Leased Cars.

## 11. Indemnities

A. Except as otherwise provided in Section 10, Lessee agrees to indemnify and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (whether as a result of damage to the Leased Cars or injury to third parties or their property) and any expense in connection therewith (including legal fees), arising out of the use or operation of the Leased Cars during the term of this Lease.

B. Lessor shall not be liable for any loss of or damage to any commodities loaded or shipped in the Leased Cars. Lessee agrees to assume responsibility for, to indemnify Lessor against and to hold Lessor harmless from, any claim in respect of such loss or damage and to assume responsibility for any damage caused to any Leased Car by such commodities.

## 12. Insurance

A. Lessee shall maintain (or cause to be maintained) during the term of this Agreement policies of property damage and public liability insurance (or programs of self insurance) on the Leased Cars in such form and amount and covering such risks and with such deductibles as are reasonably satisfactory to Lessor.

B. Lessee covenants that it will not do any act or voluntarily permit any act to be done whereby any insurance on the Leased Cars (whether maintained by Lessee or Lessor) shall or may be suspended, impaired or defeated. In the event that any Leased Car shall be lost, destroyed, or irreparably damaged from any cause whatsoever during the term of this Agreement, Lessor and Lessee shall proceed diligently and cooperate fully with each other in the recovery of any and all proceeds of insurance applicable thereto.

## 13. Disclaimer of Warranties

EXCEPT AS PROVIDED IN SECTION 9, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE CARS. LESSOR SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS ARISING IN STRICT LIABILITY.

14. Investment Credit

Lessee recognizes that Lessor will utilize the investment credit afforded in respect of the Cars by Sections 38 and 46 through 50 of the Internal Revenue Code. Lessee agrees that it will not commit any act, or fail to take any act, as a result of which Lessor shall lose the benefit of all or any portion of such investment credit.

15. Taxes

A. Lessor shall be responsible for and shall pay all property taxes levied upon the Leased Cars and file all property tax reports and returns relating thereto.

B. Lessor shall not be responsible for the payment of any tax, tariff, duty, customs, switching, demurrage or other charge made by any governmental agency, railroad or other person in respect of any Leased Car, except as provided in Section 15A. Lessee agrees to pay or reimburse Lessor promptly for any such tax, tariff, demurrage or other charges.

16. Assignment; Subordination; Title

A. Lessor's rights hereunder may be assigned, mortgaged or otherwise transferred, either in whole or in part, and Lessor may assign, mortgage or otherwise transfer title to any Leased Car with or without notice to Lessee.

B. This Lease and all of Lessee's rights under this Lease, and all rights of any person who claims right under this Lease through Lessee are subject and subordinate to the terms, covenants and conditions of all chattel mortgages, conditional sales agreements, assignments, equipment trust agreements, finance leases or other security documents covering the Cars or any of them heretofore or hereafter created and entered into by Lessor and to all of the rights of any such chattel mortgagee, assignee, trustee, owner or other holder of interest in the Cars. In the event of any such assignment, mortgage or transfer, Lessee agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's interest in and to the Cars and this Lease, and to confirm the subordination provisions contained in this Section 16B.

C. Lessee acknowledges and agrees that by execution of this Lease it does not obtain and by payment and performance hereunder it will not obtain, title to any Car or any interest therein, except solely as lessee hereunder. Lessee shall keep the Leased Cars free from all encumbrances, liens and security

interests of all kinds (other than those granted by Lessor), which could adversely affect Lessor's title thereto.

D. Without limiting the generality of Sections 16A and B, Lessor may assign this Lease as it relates to specified Cars to the owner of such Cars, provided that Lessor assigns the Shipper Agreement as it relates to such Cars to their owner and Lessor or one of its affiliates enters into a management agreement with such owner relating to its Cars. Upon delivery to Lessee of a notice signed by Lessor regarding such assignment and the effectiveness of the related management agreement, (i) the term "Lessor" when used herein shall mean with respect to the Cars covered by such management agreement, the owner of such Cars, (ii) Lessor shall be relieved of all of its obligations and liabilities under this Lease relating to such Cars and (iii) Lessee with respect to such Cars shall look solely to the owner of such Cars for the performance of Lessor's obligations hereunder. Lessee agrees that any such assignment may relate to one, some or all of the Cars subject to this Agreement.

#### 17. Sublease

Lessee shall not transfer, sublease, or assign this Lease or any Car (by operation of law or otherwise), without the prior written consent of Lessor. Lessee agrees (i) that no sublease shall permit any substantial use of the Leased Cars outside of the continental United States of America, (ii) that no sublessee shall be a tax exempt organization or governmental unit and (iii) that all subleases shall be expressly subordinate as provided in Section 16B. No sublease shall in any way relieve Lessee from its obligations to Lessor under this Lease.

#### 18. Compliance with Regulations

A. On the Effective Date the Leased Cars will conform to the applicable specifications, to all governmental laws and regulations and to all standards recommended by the AAR for railroad equipment of the same type as the Leased Cars. Except as provided in Section 18B, Lessee shall, at its own expense, comply with all governmental laws and regulations and with the Code of Rules with respect to the use, maintenance, and operation of the Leased Cars. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for use of the Leased Cars and shall bear all risk of failure to obtain such permissions, approvals and consents and of cancellation thereof. Lessor shall take all actions reasonably requested by Lessee in order to assist Lessee in obtaining such permissions, approvals, or consents.

B. In case any equipment or appliance on any Leased Car shall be required to be changed or replaced in order to comply with applicable laws or regulations or the Code of Rules, Lessor agrees to cause such changes or replacements to be made at its expense, subject to Section 9C.

C. Any part or parts installed or replacements made upon any Leased Car by Lessor or Lessee shall be considered accessions to such Leased Car, and title thereto shall immediately vest in Lessor without further act.

#### 19. Inspections

Lessee will make the Leased Cars available to Lessor or any secured party or any assignee of either thereof at any reasonable time on request for maintenance inspection and for regular maintenance in accordance with Lessor's maintenance responsibility. Lessee will be responsible for all costs of transporting the Leased Cars to maintenance facilities.

#### 20. Events of Default

A. The occurrence of any of the following shall constitute an Event of Default:

(i) the failure by Lessee to make any payment of fixed rent or additional rent or other amount required to be paid by Lessee under this Lease within five days after the date such payment is due;

(ii) the breach by Lessee of any agreement or covenant contained in this Lease, which is not cured within ten days after notice thereof from Lessor to Lessee;

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

(iv) any attempt by Lessee, without Lessor's consent, to assign, sublease or transfer this Lease or any interest in or the right to use or possession of the Cars.

B. Upon the occurrence of any Event of Default, Lessor may, at its option:

(i) proceed by appropriate court action at law or in equity to enforce specific performance by Lessee of this Lease and/or to recover damages for breach hereof; or

(ii) terminate this Lease, whereupon all rights of Lessee to the use of the Cars shall absolutely cease and terminate as though this Lease had never been made, and all fixed rent not theretofore due and payable with respect to the Leased Cars shall forthwith become due and payable.

Upon the occurrence of an Event of Default, Lessor may exercise its remedies with respect to some or all of the Leased Cars. Lessee shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Leased Car. The remedies provided in this Lease in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies existing at law or in equity. To the extent permitted of law, now or hereafter in effect, which might limit or modify the remedies herein provided.

#### 21. Return of Leased Cars

Upon termination of this Lease with respect to any Leased Car unless the Shipper Agreement is concurrently becoming effective pursuant to Section 6D thereof with respect to each Leased Car, Lessee, at its expense, shall return such Leased Car to Lessor at any location reasonably specified by Lessor within 1000 miles of the point at which Lessor originally delivered such Leased Car to Lessee under the Shipper Agreement. Such Leased Car shall be (i) empty and free from residue, (ii) in such condition as will permit Lessor immediately to sell or relet it without repair (other than repairs that Lessor is required to make pursuant to Section 9) and (iii) in compliance with all applicable laws and regulations. Lessee shall reimburse Lessor on demand for the cost of cleaning any returned Leased Car. In the event that any Leased Car is not redelivered to Lessor on or before the termination date of this Lease, all of the obligations of Lessee under this Lease with respect to such Leased Car shall remain in full force and effect until such Leased Car is redelivered to Lessor; provided, however, that the fixed rent for such Leased Car after the termination date shall be 150% the fixed rent for such Leased Car specified in the Schedule.

#### 22. Miscellaneous

A. Each party agrees to execute the documents contemplated by this Lease and such other documents as may reasonably be required in connection with this Lease.

B. This Lease shall be governed by the laws of the State of California.

C. No failure or delay by Lessor to exercise its rights or remedies hereunder shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor.

D. Headings to the sections of this Lease are for the convenience of reference only and do not form a part of this Lease and shall not in any way affect the interpretation hereof.

E. No explanation or information by either of the parties shall alter or affect the meaning or interpretation of this Lease and no modification or amendment to this Lease shall be valid unless in writing and executed by both parties.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or 72 hours after deposit in the United States mail, postage prepaid certified or registered addressed to the other party at the following address: if to Lessor: Brae Corporation, Three Embarcadero Center, San Francisco, California 94111, Attention: Director of Operations; or if to Lessee:

Attention:

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

LESSOR:

BRAE CORPORATION

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

LESSEE:

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

EQUIPMENT SCHEDULE No. \_\_\_\_\_

1. Fixed Rent

The monthly fixed rent for each Leased Car shall equal % of the manufacturer's quoted invoice price (plus any delivery charges, sales tax and inspection fees not included therein) for such Leased Car.

2. Additional Rent

The additional rent for each Leased Car for a Full Year shall equal two cents (\$.02) multiplied by the number of miles which such Leased Car has travelled in excess of 25,000 miles during such Full Year, prorated for Partial Years.

The additional rent for each Leased Car for each Partial Year shall be calculated by (i) dividing the total number of days during which such Leased Car was provided by Lessor to Lessee during such Partial Year (the "Total Car Days") into the total number of miles that such Leased Car travelled during such Partial Year, and (2) subtracting therefrom the figure 68.49. If the resulting figure ("Excess Average Daily Mileage") is positive, then additional rent shall be payable for such Partial Year and shall equal the following:

(Excess Average Daily Mileage) x (Total Car Days) x (\$.02)

All computations pursuant to this Paragraph 3 shall include days and miles during which the Leased Cars were subject to either this Lease or the Agreement.

**EQUIPMENT SCHEDULE No.**

BRAE CORPORATION hereby leases the following Cars to \_\_\_\_\_  
 pursuant to that certain Lease Agreement dated as of \_\_\_\_\_, 197\_\_\_\_.

A.A.R. Mech. Design	Description	Numbers	Length	Dimensions Inside Width      Height			Doors Width	No. of Cars

**BRAE CORPORATION**

**BY:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

\_\_\_\_\_  
Notary Public

[seal]

STATE OF CALIFORNIA )  
CITY AND COUNTY OF SAN FRANCISCO)

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

\_\_\_\_\_  
Notary Public

[seal]

LEASE AGREEMENT, dated as of \_\_\_\_\_, 19\_\_\_\_,  
between BRAE CORPORATION, a Delaware corporation ("BRAE"),  
and \_\_\_\_\_  
a \_\_\_\_\_ corporation ("Lessee").

## 1. Scope of Agreement

A. BRAE agrees to lease to Lessee and Lessee agrees to lease from BRAE the items of railroad equipment ("Cars") set forth in the Schedule(s) attached hereto. "Schedules" include the Schedule or Schedules executed herewith and any additional Schedules, each of which when executed by both parties shall become a part of this Agreement.

B. Subject to the provisions of Section 12A hereof, BRAE shall at all times be and remain the lessor of the Cars; Lessee shall not take any action or file any document inconsistent with BRAE's position as the lessor of the Cars and shall from time to time take such actions and execute such documents as may be necessary to evidence or confirm BRAE's position as the lessor of the Cars.

## 2. Term

A. This Agreement shall remain in effect until it shall have been terminated as to all Cars as provided herein. The lease pursuant to this Agreement with respect to each Car shall commence upon the acceptance of such Car by BRAE from the manufacturer and shall continue until five years have expired from the actual date of delivery to the shipper's loading point for the last of the Cars described on the Schedule, all as provided in Section 3A; provided, however, that in no event shall the original term of lease with respect to any Car exceed 71 months.

B. BRAE shall have the right to terminate this Agreement with respect to one or more Cars in the event that any addition, alteration, modification or improvement to any of the Cars is required by the Association of American Railroads ("AAR"), the Department of Transportation or any other regulatory agency or is otherwise required in order to comply with applicable laws, regulations or requirements affecting the use or ownership of any of the Cars or in the event of material adverse changes to the car service rules. This termination right, which shall apply only to those Cars which require such addition, alteration, modification or improvement, shall be exercisable upon 30 day's written notice to Lessee at any time within 120 days of the date any such requirement is

first announced. This termination right is in addition to any termination rights which BRAE may have under Sections 6 or 8 hereof.

### 3. Delivery

A. BRAE shall inspect each Car tendered by the manufacturer for delivery. Upon BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all applicable regulatory requirements and if this Agreement shall not have been terminated, BRAE shall accept delivery of such Car at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to and accepted by Lessee upon its acceptance by BRAE from the manufacturer. The Cars shall be moved, at no cost to Lessee, to the loading point of a shipper agreed upon by Lessee and BRAE, as soon after acceptance by BRAE as is consistent with mutual convenience and economy. The lease hereunder and Lessee's rental obligation with respect to each Car shall commence upon acceptance of such Car by BRAE from the manufacturer.

B. Lessee agrees that it shall not lease freight cars from any other party until it shall have received all of the Cars listed on all Schedules. In the event that any of the Cars should for any reason be on Lessee's tracks, Lessee shall load the Cars prior to the loading substantially similar freight cars leased from other parties, owned by Lessee or interchanged with other railroads.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties. Such additional Cars shall be identified in a Schedule and shall become subject to this Agreement upon execution of such Schedule by BRAE and Lessee. The delivery of any Car shall in all events be subject to manufacturer's delivery schedules and to the availability of financing on terms satisfactory to BRAE. If fewer than all Cars listed on any Schedule shall be delivered to the shipper's loading point, the lease term for the Cars on such Schedule shall terminate five years from the delivery date for the last of the Cars which is listed on such Schedule and actually delivered to the shipper's loading point, as provided in Section 3A.

### 4. Railroad Markings and Record Keeping

A. On or before acceptance of any Car from the manufacturer by BRAE, such Car will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Any Car may also be marked with the name of BRAE and any other information required by an owner or by a secured party under a financing agreement entered into in connection with the acquisition of such Car. All such names, insignia and other information shall comply with all applicable regulations.

B. At no cost to Lessee, BRAE shall prepare for Lessee's signature and filing, all documents relating to the registration, maintenance and record keeping functions involving the Cars, including such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") or any other regulatory agency.

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

D. A record of all payments, charges, data and correspondence related to the Cars shall be separately maintained by BRAE in a form suitable for reasonable inspection by Lessee from time to time during BRAE's regular business hours. Lessee shall supply BRAE with such reports, including telephone reports, regarding the use of the Cars by Lessee, as BRAE may reasonably request.

#### 5. Maintenance, Taxes, and Insurance

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

B. Except as provided in Section 5A, BRAE shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Lessee shall perform any necessary maintenance and repairs to Cars while on Lessee's railroad tracks as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacements of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of their lease. Lessee may make running repairs, at BRAE's expense, to facilitate continued use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to any Car without BRAE's

prior written consent. Lessee shall be liable to BRAE for any revenues lost due to such alteration, repair, improvement or addition. Title to all alterations, improvements or additions shall vest immediately in BRAE.

C. Lessee shall be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules - Freight for freight cars not owned by Lessee which are on Lessee's railroad tracks.

D. BRAE agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues earned by the Cars. BRAE shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. BRAE and Lessee will comply with all state and local laws requiring the filing of property tax returns on the Cars. BRAE shall review all applicable tax returns prior to filing.

E. Lessee shall maintain (or cause to be maintained) during the term of this Agreement policies of property damage and public liability insurance (or programs of self insurance) on the Cars in such form and amount and covering such risks and with such deductibles as are reasonably satisfactory to BRAE.

## 6. Lease Rental

A. Lessee agrees to pay the following rent to BRAE for the use of the Cars:

(i) In the event that Utilization for all Cars on an aggregate basis is equal to or less than 90% for the applicable calendar year, BRAE shall receive all car hire (per diem) payments and incentive car hire (incentive per diem) payments, if any, earned by all Cars during such calendar year. In the event that Utilization for all Cars on an aggregate basis is greater than 90% for such calendar year, BRAE shall receive an amount equal to the Base Rental for such calendar year. "Utilization" shall mean with respect to any period a fraction the numerator of which is (X) the aggregate number of Car Hours for which car hire payments are earned by the Cars during such period, and the denominator of which is (Y) the aggregate number of Car Hours during such period. "Car Hour" shall mean one hour during which one Car is on lease

hereunder, commencing on the initial delivery of such Car to the shipper's loading point. A Car shall be deemed not to be earning car hire payments during any Car Hour for which "reclaim" is assessed. "Base Rental" shall mean for any calendar year an amount equal to all car hire (per diem) payments and incentive car hire (incentive per diem) payments, if any, earned by all Cars during such calendar year, multiplied by a fraction the numerator of which is 90% and the denominator of which is the Utilization for such calendar year.

(ii) In the event that Lessee receives in any calendar year car hire payments in respect of the Cars in excess of the payments required to be made to BRAE pursuant to subsection 6A(i) in such calendar year, Lessee shall retain such excess payments.

(iii) In the event that the average daily mileage for all Cars is equal to or less than 65 miles per Car per day during the applicable calendar year, BRAE shall receive 90% of all mileage payments earned by all Cars during such calendar year (and the remaining 10% shall be retained by Lessee). In the event that the average daily mileage for all Cars exceeds 65 miles per Car per day during such calendar year, BRAE shall receive (X) 90% of all mileage payments which would have been earned by the Cars if mileage had averaged 65 miles per Car per day and (Y) all mileage payments actually earned by all Cars during such calendar year in excess of those which would have been earned if mileage had averaged 65 miles per Car per day. In either event Lessee shall retain 10% of the mileage payments earned by the Cars up to a maximum average daily mileage of 65 miles per Car per day. The provisions of this clause (iii) shall apply to all mileage payments earned by the Cars after initial delivery to the shipper's loading point.

(iv) BRAE shall receive all car hire payments and mileage charges earned by the Cars prior to their initial delivery to the shipper's loading point. BRAE shall also receive all demurrage and other payments made to Lessee in respect of the Cars by railroads. BRAE shall retain all payments made directly to BRAE in respect of the Cars by shippers.

B. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules - Freight and the appropriate amount due as a result thereof has been received by BRAE, such Car will be removed from the coverage of this Agreement as of the date that car hire payments ceased. BRAE may but need not substitute for any Car so removed from the coverage of this Agreement another railcar of a similar type, capacity, and condition.

C. The calculations required by Section 6A shall be made within five months after the end of each calendar year. However, to enable BRAE to meet its financial commitments, BRAE may, prior to such calculations, retain the payments received by it on behalf of Lessee. Since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due BRAE, BRAE shall within three months after the end of each calendar quarter, calculate on a quarterly basis rather than an annual basis the amount due it pursuant to Section 6A. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation; provided, however, that following the annual calculation, any amount paid to either party in excess of the amount required by the annual calculation shall be promptly refunded to the appropriate party.

D. If at any time during a calendar quarter, the number of hours during which the Cars have not earned car hire payments and for which "reclaim" has been assessed with respect to the Cars is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 90%, BRAE may, at its option and upon not less than ten days' prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine.

E. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than two days, BRAE may, at its option and upon not less than 24 hours' prior written notice, terminate this Agreement as to such Car and recover possession of such Car. If any Car remains on Lessee's railroad tracks for more than two consecutive days because Lessee has not given priority to the Cars as provided in Section 3B, Lessee shall be liable for and shall remit to BRAE an amount equal to the car hire and mileage payments such Car would have earned if such Car had been in the physical possession and use of another railroad and had averaged 65 miles per day for the entire period it was on Lessee's tracks.

## 7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement, provided that the Cars shall at all times be assigned in service to the shipper referred to in Section 3A or to another shipper agreed upon by BRAE and Lessee. Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that rent shall be paid directly to such party and

that Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdictions in which they may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental agency having power to regulate or supervise the use of the Cars, except that BRAE may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at BRAE's expense.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist (except as provided in Section 7A) any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule. Lessee will promptly, at its expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim which may arise.

C. Lessee agrees that the Cars shall be used predominantly within the continental United States of America.

#### 8. Default

A. The occurrence of any of the following events shall be an Event of Default:

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

(ii) The breach by Lessee of any other agreement or covenant contained in this Agreement, which is not cured within ten days after BRAE has given Lessee notice thereof;

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

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

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to any applicable provision of law; or

(vii) The merger or consolidation of Lessee into another corporation which after such merger or consolidation shall have a net worth less than that of Lessee immediately prior thereto.

B. Upon the occurrence of any Event of Default, BRAE may, at its option:

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and BRAE may enter upon any premises where the Cars may be located and take possession of them and hold, possess and enjoy them free from any right of Lessee; provided that BRAE shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to the date on which BRAE took such possession; or

(ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement.

Lessee agrees to bear the costs and expenses, including without limitation, reasonable attorneys' fees, incurred by BRAE in connection with the exercise of its remedies pursuant to this Section 8B.

C. If an Event of Default shall occur, BRAE may exercise its remedies pursuant to Section 8B with respect to some or all of the Cars.

D. Upon the occurrence of any of the following events:

(i) The failure of any Car at any time to be placed in assigned service with a shipper agreed upon by BRAE and Lessee; or

(ii) The insolvency or bankruptcy of any shipper to which Cars are assigned or the filing by or against any shipper to which Cars are assigned of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors;

BRAE may terminate this Agreement promptly upon 48 hours' notice to Lessee.

9. Termination

At the expiration or earlier termination of this Agreement with respect to any Car, Lessee will surrender possession of such Car to BRAE by delivering the same to BRAE at such place as BRAE reasonably may designate. A Car shall no longer be subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the placing thereon of other markings designated by BRAE, either, at the option of BRAE, (i) by Lessee upon return of such Car to Lessee's railroad line or (ii) by another railroad line or shipper which has physical possession of the Car at the time of or subsequent to termination of this Agreement as to such Car. If any Car is not on the railroad line of Lessee upon termination, the cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line transporting such Car to Lessee's railroad line or the railroad line of a subsequent Lessee shall be borne by BRAE. If such Car is on the railroad line of Lessee at such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from such Car and place thereon any other markings designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to 30 days' free storage on its railroad tracks for BRAE or the subsequent lessee of any Car. If any Car is terminated pursuant to Sections 6D, 6E or 8 prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint such Car and to place thereon the markings and name or other insignia of BRAE's subsequent lessee.

10. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement.

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

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

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

(v) No shipper to which the Cars have been or will be assigned has a facility located on Lessee's railroad line. Lessee does not and will not participate at any time in transporting any commodities of any such shipper.

(vi) Lessee has filed or caused to be filed with the ICC all tariffs and other documents and notices which may be required to be filed by it in accordance with the transactions contemplated by this Agreement.

#### 11. Inspection

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

#### 12. Miscellaneous

A. This Agreement and the Schedules shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, except that Lessee may not without the prior written consent of BRAE assign this Agreement or any of its rights hereunder or sublease the Cars to any party. Any purported assignment or sublease without such consent shall be void.

Without limiting the generality of the preceding paragraph, BRAE may assign this Agreement, as it relates to specified Cars, to the owner of such Cars, provided that BRAE or one of its affiliates enters into a management agreement with such owner relating to its Cars upon terms generally similar to those prevailing in the industry. Upon delivery to Lessee of a notice signed by BRAE regarding such an assignment and the effectiveness of the related management agreement (i) the term "BRAE" when used herein shall mean with respect to such Cars, their owner, (ii) BRAE shall be relieved of all of its obligations and liabilities under this Agreement relating to such Cars and (iii) Lessee shall with respect to such Cars look solely to their owner for the performance of BRAE's obligations hereunder. Lessee hereby agrees that any such assignment may relate to all or part of the Cars and all or part of the Cars listed on any Schedule.

B. Each party agrees to execute the documents contemplated by this Agreement and such other documents as may be required in furtherance of any agreement entered into in connection with the acquisition of the Cars or in order to confirm the owner's interest in and to the Cars, this Agreement and the schedules or to confirm the subordination provisions contained in Section 7.

C. This Agreement constitutes a lease of the Cars only. No joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee.

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

E. This Agreement shall be governed by the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or 72 hours after deposit in the United States mail, postage prepaid, certified or registered, addressed as follows:

If to BRAE:

If to Lessee:

Brae Corporation  
Three Embarcadero Center  
San Francisco, CA 94111  
Attention: Director of  
Operations

Attention:

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

LESSOR:

LESSEE:

BRAE CORPORATION

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

EQUIPMENT SCHEDULE NO. \_\_\_\_\_

BRAE CORPORATION agrees to lease the following rail-cars to \_\_\_\_\_, pursuant to the Lease Agreement dated as of \_\_\_\_\_, 19\_\_\_\_\_.

A.A.R. Mech. Design Cars	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Width	Height		

LESSOR:

BRAE CORPORATION

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

LESSEE:

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

[seal]

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )  
CITY AND COUNTY OF SAN FRANCISCO)

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

[seal]

\_\_\_\_\_  
Notary Public

MATTERS TO BE COVERED BY OPINIONS  
OF SPECIAL CANADIAN COUNSEL TO THE COMPANY

A. Documents Reviewed:

- (1) The Credit and Security Agreement.
- (2) Supplements to the date of such opinion ("Supplements").

B. Permitted Assumptions:

(1) None of the Rail-cars were located in Canada at the time of the execution of the Credit and Security Agreement nor were any of the Rail-cars covered by any Supplement located in Canada at the time of the execution of such Supplement.

(2) The chief place of business of the Company is not in Manitoba or Ontario

(3) The security interest granted to the Agent in the Rail-cars under the Credit and Security Agreement has been perfected in the jurisdiction in which the chief place of business of the Company is located.

C. Opinions:

(1) Based upon the foregoing, no recording, registration or filing is necessary in order to protect the Agent under the Credit and Security Agreement as supplemented by the Supplements against any and all subsequent purchasers or mortgagees from or under the Company or from creditors of the Company in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia.

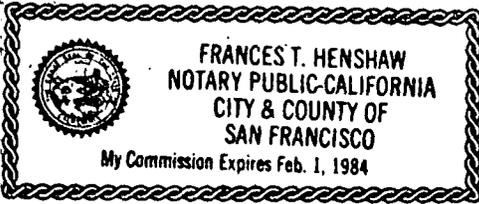
(2) Assuming that the Credit and Security Agreement and the Supplements are valid, binding and enforceable instruments in accordance with the laws of the jurisdiction which governs them, the Credit

and Security Agreement and the Supplements would be valid and binding instruments in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia, enforceable in accordance with their respective terms except as enforcement may be limited by any applicable bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and except to the extent that the availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(3) No recording, registration or filing of the Credit and Security Agreement as supplemented by the Supplements would be permitted:

(i) in the Provinces of British Columbia or Alberta unless the Company were registered to carry on business in such province; or

(ii) In the Province of Quebec because the only types of documents granting security which are allowed to be registered in Quebec are commercial pledges and trust deeds of hypothecation, mortgage and pledge, both of which must be in a form regulated by statute.



STATE OF CALIFORNIA, } ss.  
City and County of San Francisco  
I, Frances T. Henshaw, a Notary Public,  
State of California, duly commissioned and sworn, do certify that on this 1st  
day of JULY, 1980, I carefully compared the annexed copy of  
CREDIT AND SECURITY AGREEMENT among BRAE CORP. and  
MANUFACTURERS HANOVER TRUST COMPANY, ET AL, dated  
as of October 1, 1979;  
with the original thereof,  
now in the possession of Heller, Ehrman, White & McAuliffe  
of 44 Montgomery Street, S.F., State of California, and that the  
same is a full, true, and exact copy of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal  
in the City and County of San Francisco the day and year  
in this certificate first above written.

*Frances T. Henshaw*  
Frances T. Henshaw Notary Public, State of California.  
My Commission Expires FEBRUARY 1, 1984