STEPTOE & JOHNSON
1250 CONNECTICUT AVENUE
WASHINGTON, D. C. 20036

ROBERT J. CORBER
(202) 862-2038

RECORDATION NO. 11361 Filed 1425
JAN 14 1980 -11 22 AM
INTERSTATE COMMERCE COMMISSION

014A048

January 14, 1980

Date JAN 14 1980
Fee $ 2,450.00
ICC Washington, D. C.

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Office of the Secretary - Room 2209
Washington, DC 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 USC § 11303 are several copies of the following documents which relate to the railroad equipment hereafter identified:

1. Railroad Lease Agreement dated as of July 17, 1979 between Brae Corporation and Warrenton Rail Road Company.

2. Assignment of Lease Agreement dated as of December 14, 1979 by Brae Corporation to Warren J. Hayford, Lawrence A. Wein, Alvin S. Lane, Peter L. Malkin, Donald J. Donahue, Selby Sullivan, Harry Kahn, William J. Poorvu, Allan P. Kirby, Jr. and Arthur Belfer (hereafter "Owners").

3. Assignment of Lease Agreement dated as of December 17, 1979 by Brae Corporation to Robert M. Bennett (hereafter "Owners").

4. Assignment of Lease Agreement dated as of December 19, 1979 by Brae Corporation to Myron Kislak (hereafter "Owners").

5. Assignment of Lease Agreement dated as of December 27, 1979 by Brae Corporation to Pauline S. Bresnick (hereafter "Owners").

6. Assignment of Lease Agreement dated as of December 31, 1979 by Brae Corporation to Preston Martin and Michael Towbes (hereafter "Owners").

7. Consent and Agreement of Lessee dated January 9, 1980 to Manufacturers Hanover Leasing Corporation and each of the Owners from the Warrenton Rail Road Company.

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8. Management Agreement dated November 29, 1979 between Brae Railcar Management, Inc. and Arthur B. Belfer.

9. Management Agreement dated December 31, 1979 between Brae Railcar Management, Inc. and Robert M. Bennett.

10. Management Agreement dated December 18, 1979 between Brae Railcar Management, Inc. and Pauline S. Bresnick.

11. Management Agreement dated December 4, 1979 between Brae Railcar Management, Inc. and Donald J. Donahue.

12. Management Agreement dated December 4, 1979 between Brae Railcar Management, Inc. and Warren J. Hayford.

13. Management Agreement dated November 30, 1979 between Brae Railcar Management, Inc. and Harry Kahn.

14. Management Agreement dated December 10, 1979 between Brae Railcar Management, Inc. and Allan P. Kirby, Jr.

15. Management Agreement dated December 7, 1979 between Brae Railcar Management, Inc. and Myron Kislak.

16. Management Agreement dated December 3, 1979 between Brae Railcar Management, Inc. and Alvin S. Lane.

17. Management Agreement dated December 3, 1979 between Brae Railcar Management, Inc. and Peter L. Malkin

18. Management Agreement dated December 26, 1979 between Brae Railcar Management, Inc. and Preston Martin.

19. Management Agreement dated December 6, 1979 between Brae Railcar Management, Inc. and William J. Poorvu.

20. Management Agreement dated December 1, 1979 between Brae Railcar Management, Inc. and Selby Sullivan.

21. Management Agreement dated December 13, 1979 between Brae Railcar Management, Inc. and Michael Towbes.

22. Management Agreement dated November 29, 1979 between Brae Railcar Management, Inc. and Lawrence A. Wien.

23. Consent of Brae Railcar Management Inc. dated January 9, 1980 from Brae Railcar Management, Inc. and to Manufacturers Hanover Leasing Corporation and the Owners.

24. Advisory Agreement dated November 29, 1979 between David A. Goldberg and Arthur B. Belfer.

25. Advisory Agreement dated December 11, 1979 between David A. Goldberg and Robert M. Bennett.

26. Advisory Agreement dated December 18, 1979 between David A. Goldberg and Pauline S. Bresnick.

27. Advisory Agreement dated December 4, 1979 between David A. Goldberg and Donald J. Donahue.

28. Advisory Agreement dated December 4, 1979 between David A. Goldberg and Warren J. Hayford.

29. Advisory Agreement dated November 30, 1979 between David A. Goldberg and Harry Kahn.

30. Advisory Agreement dated December 10, 1979 between David A. Goldberg and Allan P. Kirby, Jr.

31. Advisory Agreement dated December 7, 1979 between David A. Goldberg and Myron Kislak.

32. Advisory Agreement dated December 3, 1979 between David A. Goldberg and Alvin S. Lane

33. Advisory Agreement dated December 3, 1979 between David A. Goldberg and Peter L. Malkin.

34. Advisory Agreement dated December 26, 1979 between David A. Goldberg and Preston Martin.

35. Advisory Agreement dated December 6, 1979 between David A. Goldberg and William J. Poorvu.

36. Advisory Agreement dated December 1, 1979 between David A. Goldberg and Selby Sullivan.

37. Advisory Agreement dated December 13, 1979 between David A. Goldberg and Michael Towbes.

38. Advisory Agreement dated November 29, 1979 between David A. Goldberg and Lawrence A. Wien.

39. Consent of Advisor dated January 9, 1980 from David A. Goldberg to Manufactureres Hanover Leasing Corporation and the Owners.

40. Consent and Agreement of Shipper dated January 9, 1980, from CF Industries, Inc. to Manufacturers Hanover Leasing Corporation and the Owners.

41. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Arthur B. Belfer.

42. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Robert M. Bennett.

43. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Pauline S. Bresnick.

44. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Donald J. Donahue.

45. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Warren J. Hayford.

46. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Harry Kahn

47. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Allan F. Kirby, Jr.

48. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Myron Kislak.

49. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Alvin S. Lane.

50. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Peter L. Malkin.

51. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Preston Martin.

52. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and William J. Poorvu.

53. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Selby Sullivan.

54. Guaranty and Security Agreement dated as of Janaury 9, 1980 between Manufacturers Hanover Leasing Corporation and Michael Towbes.

55. Guaranty and Security Agreement dated as of January 9, 1980 between Manufacturers Hanover Leasing Corporation and Lawrence A. Wien.

56. Shipper Agreement dated as of September 28, 1979 between Brae Corporation and CF Industries, Inc.

57. Assignment of CF Industries, Inc. Agreement dated December 14, 1979 by Brae Corporation to ARthur Belfer, Donald J. Donahue, Harry Kahn, Allan P. Kirby, Jr., Alvin S. Lane, Peter L. Melkin, William J. Poorvu, Selby Sullivan, Warren J. Hayford and Lawrence A. Wein.

58. Assignment of CF Industries, Inc. Agreement dated as of December 17, 1979 by Brae Corporation to Robert M. Bennett.

59. Assignment of CF Industries, Inc. Agreement dated as of December 19, 1979 by Brae Corporation to Myron Kislak.

60. Assignment of ~~CF Industries,~~ Inc. Agreement dated as of December 27, 1979 by Brae Corporation to Pauline S. Bresnick.

61. Assignment of CF Industries, Inc. Agreement dated as of December 31, 1979 by Brae Corporation to Prestin Martin and Michael Towbes.

The foregoing documents relate to seventy-two (72) 100-ton, 4750 cubic feet covered hopper cars. They carry the marks of the Warrenton Rail Road Company and are identified as WAR 15125 through 15196.

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

| | |
|---|---|
| Lessor - Assignor: | Brae Corporation, Three Embarcadero Center, San Francisco, CA 94111 |
| Lessee: | Warrenton Rail Road Company, Warrenton, NC 27589 |
| Guarantor - Debtor: | Railraod Car Nominee Corporation, 60 East 42nd Street, New York, NY 10017 |
| Assignee - Lender | Manufacturers Hanover Leasing Corporation, 30 Rockefeller Plaza, New York, NY 10020 |
| Assignor - Manager: | Brae Railcar Management, Inc., Three Embarcadero Center, San Francisco, CA 94111 |
| Guarantor - Advisor: | David A. Goldberg, 777 Third Avenue, New York, NY 10017 |
| Guarantor - Lessee - Assignee: | CF Industries, Inc., Salem Lake Drive, Long Grove, IL 60047 |

Please file and record the documents previously enumerated and cross-index them under the names set forth above. Since the documents are related to the same transaction, it is requested that all be assigned the same recordation number with consecutive letter designations for all documents after the first listed above.

A check payable to the order of the Interstate Commerce Commission in the amount of $2,450.00 is enclosed to cover the filing fees and the extra fees for cross-indexing.

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

Very truly yours,

Robert J. Corber

Robert J. Corber
Attorney for Brae Corporation

mbm
Enclosures

Hayford

RECORDATION NO. 11361 Filed 1425

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INTERSTATE COMMERCE COMMISSION

PARTICIPATION IN THE ADVISORY PROGRAM HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. A PARTICIPANT MAY NOT RESELL OR OTHERWISE TRANSFER AN INTEREST IN THE CARS UNDER THE ADVISORY PROGRAM UNLESS SUCH INTEREST OR THE SUBSEQUENT OFFER AND RESALE THEREOF ARE EITHER REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ARE EXEMPT FROM SUCH REGISTRATION.

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS AGREEMENT, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE ADMINISTRATOR OF THE SECURITIES LAWS OF THE STATE HAVING JURISDICTION OVER SUCH SALE OR TRANSFER, EXCEPT AS PERMITTED IN THE APPLICABLE RULES OF SUCH ADMINISTRATOR.

# ADVISORY AGREEMENT

THIS AGREEMENT made by and between David A. Goldberg (hereinafter called the "Advisor"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has purchased the covered hopper railroad cars identified in Exhibit "A" attached hereto and incorporated herein by reference (such car or cars purchased by Owner being hereinafter referred to as the "Cars");

WHEREAS, Owner desires to retain the Advisor as consultant for the purpose of advising with respect to the management of the Cars on Owner's behalf, all on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and the Advisor intending to be legally bound, hereby agree as follows:

1. Engagement of the Advisor.

Owner hereby engages the Advisor as consultant to Owner to perform advisory services with respect to the Cars, all on the terms and conditions set forth herein, and the Advisor accepts such engagement and agrees to act as consultant to Owner and perform in accordance with the terms and conditions hereof.

2. Term.

The term of this Agreement shall commence as of the date the Cars are delivered to CF Industries, Inc. ("CF") and shall continue for a period of ten years thereafter; provided, however, that this Agreement shall terminate with respect to any Car which is withdrawn pursuant to Section 8 hereof and with respect to any Car which is lost or totally destroyed as of the date that such Car is lost or destroyed and all indebtedness secured by such Car is repaid.

3. Duties of the Advisor.

In consideration of the compensation to be paid to the Advisor by Owner pursuant to Section 5 hereof, the advisor shall provide and perform the services on behalf of the Owner set forth below during the term of this Agreement:

(a) Use his best efforts, upon termination of the Management Agreement relating to the Cars between the Owner and Brae Railcar Management, Inc. (the "Management Agreement"), to negotiate on behalf of Owner and, upon the terms and

conditions hereinafter set forth, to enter into, as agent for Owner, management agreements and/or lease agreements providing for the management and/or lease of the Cars. The Advisor shall notify the Owner of any such management agreement and/or lease agreement and the Owner shall be deemed to have consented to the entering into of the management agreement and/or lease agreement by the advisor as agent of the Owner if the Owner shall not have objected thereto in writing within 30 days after the giving of such notice by the Advisor.

(b) If requested by Owner, consult with Owner with respect to all alterations, modifications, improvements or additions to the Cars of the type referred to in Section 7(c) of the Management Agreement costing in excess of $1000 per Car.

(c) If requested by Owner, consult with Owner with respect to insurance to protect the interest of Owner in the Cars including, without limitation, insurance against (i) personal liability, including property damage and personal injury, (ii) loss of or damage to the Cars, and (iii) loss of revenues with respect to the Cars.

(d) If requested by Owner, provide Owner with advice and recommendations concerning the sale of the Cars.

(e) Perform for Owner such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the leasing and operation of the Cars.

4. Authority, and Limitations on Authority of the Advisor.

(a) It is recognized that the Advisor will consult with respect to railcars, including the Cars, purchased by investors who enter into an advisory agreement substantially identical to this Agreement. It is recognized that the Advisor will receive from owners of other cars in the advisory program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that the Advisor's services for and obligations to and rights with respect to Owner and the owners of other cars in the advisory program are several. The Advisor will not act or purport to act for or in the name of the advisory program or the owners of cars in the advisory program, including the Owner, collectively or as an entity; it being expressly understood that all actions, if any, taken on behalf of the owners of cars in the advisory program will be taken as agent for such owners, severally and individually, either naming such owners or naming the Advisor as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this agreement and the advisory program are not intended to create a partnership, joint venture or other entity among Owner, other owners

of cars in the advisory program and/or the Advisor. The Advisor shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between owners of cars in the advisory program or that such owners are acting collectively or as an entity, and the Advisor shall use his best efforts to assure that no silence or failure to act on his part creates or sustains any such suggestion or inference.

(b) The Advisor shall not have any authority to offer for sale, contract lease, or agree to sell or lease or sell or lease any Cars except with the consent (either express or, as provided in Section 3(a), implied) of Owner.

5. Compensation.

As compensation to the Advisor for the performance of the services specified hereunder, Owner agrees to pay to the advisor an initial fee of $600 per Car of which $200 will be remitted by the Advisor on behalf of Owner to Wien, Lane & Malkin if it shall act as offeree representative of Owner. In addition, the Owner agrees to pay to the Advisor during each year of the term of this Agreement (i) for each calendar quarter during the term of the Management Agreement (as such term is defined therein but without giving effect to any extensions or renewals thereof) as sum equal to $36.25 per Car payable in advance on the first day of such quarter or (ii) for each calendar quarter commencing after the term of the Management

Agreement, a sum equal to 2% of Gross Revenues for such calendar quarter payable in arrears on the last day of each such quarter. As used herein, the term "Gross Revenues" shall mean all income to Owner (unreduced by any expenses or costs) derived from the ownership, use and/or operation of the Cars including, but not limited to, per diem and mileage charges collected under leases and any payments by shippers under agreements for the use of the Cars by such shippers, but shall not include proceeds from any sale of the Cars or any payments received with respect to the loss or destruction of the Cars. In addition to the compensation provided for herein, the Owner will pay to the Advisor reasonable out-of-pocket expenses incurred by the Advisor in connection with the performance of his duties under this Agreement. The Owner hereby expressly authorizes the payment of amounts payable to the Advisor hereunder to be made by the Manager under the Management Agreement directly to the Advisor out of amounts to which the Owner would otherwise be entitled to receive pursuant to the Management Agreement.

6. Indemnification.

Owner shall defend (if such defense is tendered to Owner), indemnify and hold the Advisor and/or his affiliates (that is, any company, person or firm controlling, controlled by, or under common control with, the Advisor), harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against the Advisor and/or his affiliates

as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars, including without limitation, all those arising out of the sole active negligence of the Advisor and/or his affiliates claims for injury to or death of persons, loss of or damage to property (including the Cars) and economic loss due to the unavailability for use of the Cars; provided, however, that Owner shall not defend, indemnify or hold the Advisor and/or his affiliates harmless from and against, the Advisor and/or his affiliates shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from bad faith, recklessness, gross negligence or willful misconduct of the Advisor and/or his affiliates.

7. Subordination.

The Owner's interest in this Agreement shall be, at the written request of Owner to the Advisor, made subject to the lien and security interest in the Cars held by any lender to whom Owner has granted a security interest in the Cars, and which lender has notified the Advisor; provided, however, that all such liens and security interests are subject to any management agreement and/or lease entered into during the term of this Agreement.

8. Withdrawal in Case of Sale.

In the event that any Car is sold during the term of this Agreement (other than as a result of foreclosure or total

destruction of such Car and the repayment of all indebtedness secured by such Car) the Owner will have the right to terminate this Agreement upon notice to the Advisor and payment to the Advisor of an amount equal to the advisory fees (other than the initial advisory fee) which were payable under this Agreement with respect to the eight calendar quarters immediately preceding such sale.

9. Conflicts of Interest.

Owner expressly acknowledges that the Advisor and his affiliates may own, lease, manage and/or provide advisory services with respect to railcars substantially similar to those managed hereunder.

10. Notices.

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

| | |
|---|---|
| If to the Advisor: | David A. Goldberg<br>750 Park Avenue<br>New York, NY 10021 |
| If to Owner: | To the address set forth on the signature page to this Agreement; |

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

11. Miscellaneous.

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

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

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

(d) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid and effective as against the Advisor without the prior written consent of the Advisor.

(e) Successors and Assigns. The terms and conditions of this Agreement shall insure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against the Advisor without the prior written consent of the Advisor and; provided further that the Advisor may assign its rights and benefits under this Agreement to any person, firm or corporation affiliated with the Advisor by written notice to the Owner and may assign its rights and benefits under this

Agreement to any other person, firm or corporation with the consent of the Owner, such consent to be deemed to have been given if the Owner does not object to such assignment within 30 days after notice of the proposed assignment shall have been given to the Owner by the Advisor.

(f) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including, without limitation, acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any Federal, State or local government or any agency thereof.

(g) Other Customers of the Advisor. It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit the Advisor from providing the same or similar services to any person or organization not a party to this Agreement. In particular, the Advisor shall be entitled to manage identical cars not managed under this advisory program under a similar advisory agreement with other owners.

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

(i) Severability. If any term or provision of this Agreement or the performance thereof shall to any extent be

invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

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

DAVID A. GOLDBERG

David A. Goldberg

OWNER

Warren Hayford
(Signature)

WARREN J. HAYFORD
(Print Name)

Address 25 Dot Lane
Winnetka, Il 60093

Dated December 4, 1979

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

On this 11TH day of JANUARY, 1980, before me DIANE M. TOPKIN, a Notary Public in and for the ~~County of~~ NEW YORK, ~~State of~~ NEW YORK, ~~residing therein~~ duly commissioned and sworn, personally appeared DAVID A. GOLDBERG, known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county of NEW YORK, the day and year in this certificate first above written.

Diane M. Topkin
Notary Public in and for the County of NEW YORK, State of NEW YORK

[SEAL]

My commision expires

DIANE M. TOPKIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-4663314
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1980

STATE OF ILLINOIS )
) ss.:
COUNTY OF COOK )

On this 4TH day of DECEMBER, 1979, before me JANET L. ENGEL, a Notary Public in and for the County of COOK, State of ILLINOIS, residing therein duly commissioned and sworn, personally appeared WARREN J. HAYFORD, known to be the person described in and who executed the foregoing instrument and acknowledged to me that HE executed the same as HIS free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county of COOK, the day and year in this certificate first above written.

Janet L Engel
Notary Public in and for the County of COOK, State of ILLINOIS

[SEAL]

My commision expires 2-23-82

## EXHIBIT A

## DESCRIPTION OF CARS

| Number of Cars | Description of Cars | Identification Nos. |
|---|---|---|
| 4 | 4750 Cubic Feet Covered Hopper Railroad Cars | WAR 15125 - WAR 15128 (both inclusive) |