

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

ROBERT J. CORBER  
(202) 429-8108

October 11, 1988

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Room 2215  
Washington, D.C. 20423

1 5859  
RECORDATION NO. FROM 2928

OCT 11 1988

INTERSTATE COMMERCE COMMISSION

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OCT 11 9 29 AM '88  
MOTOR OPERATIONAL UNIT

Dear Ms. McGee:

Enclosed for filing and recordation pursuant to 49 U.S.C. §11303 is the original and one copy of a primary document denominated an Assignment Agreement which is in the nature of a lease or bailment of railroad cars.

The description of the document is as follows:

Assignment Agreement dated as of December 31, 1987 by and between Brae Transportation, Inc., as bailor, and Missouri-Kansas-Texas Railroad Company, as bailee.

The equipment subject to this document consists of 80 railroad cars bearing the marks LRWN 260225, 260226, 260228-260230, 260231-260233,, 260236-260246, 260248-260250, 260253-260257, 260260-260279, 260282-260288, 260291-260312, 26315-260318, and 260321-260324.

The names and addresses of the parties to the document are as follows:

Bailor: Brae Transportation, Inc.  
One Hundred Sixty Spear St.  
San Francisco, CA 94105

Bailee: Missouri-Kansas-Texas Railroad  
Company  
506 West Chestnut St.  
Denison, Texas 75020

A fee of \$13.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the person presenting this letter.

A short summary of the document to appear in the index as as follows:

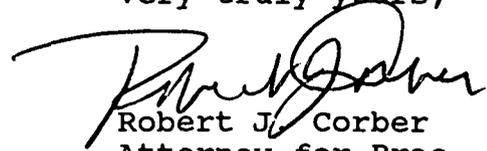
Assignment Agreement, in the nature of bailment, dated as of December 31, 1987, between Brae Transportation, Inc. and

*Handwritten notes and signatures on the left margin, including a large signature and the number '9'.*

Ms. Noreta McGee  
October 11, 1988  
Page 2

Missouri-Kansas-Texas Railroad Company, covering railcars as designated in the document.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Corber", written in a cursive style.

Robert J. Corber  
Attorney for Brae  
Transportation, Inc.

Enclosures as stated

15859  
OCT 11 1988 - 9 25 AM  
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AGREEMENT

COPY

ASSIGNMENT AGREEMENT ("Agreement"), dated as of December 31, 1987, between BRAE TRANSPORTATION, INC., 160 Spear Street, Suite 1600, San Francisco, California 94105 ("BRAE"), as assignor, and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, 506 West Chestnut Street, Denison, Texas 75020 ("ASSIGNEE"), as assignee.

RECITALS

WHEREAS, BRAE desires to arrange for 80 covered hopper railcars (the "Cars") to be placed in an assignment pool on the ASSIGNEE tracks and ASSIGNEE desires to have BRAE arrange such assignment.

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

AGREEMENTS

1. Obligations of Parties Prior to Delivery. Prior to delivering the Cars to ASSIGNEE, BRAE will advise ASSIGNEE of the identifying marks borne by the Cars. The Cars will be listed and described by BRAE on the Equipment Schedule attached hereto.

2. Delivery of Cars. BRAE shall use best efforts to deliver all 80 of the Cars, at BRAE's expense, to ASSIGNEE on the ASSIGNEE tracks as soon as possible after execution of this Agreement.

3. Cars to be Free on Line. The Cars will be free of all car hire charges while on the ASSIGNEE tracks, and while on the tracks of the Oklahoma, Kansas and Texas Railroad Company ("OKKT").

4. Replacement of Cars. BRAE has at any time the right, upon seven (7) days written notice, to replace any or all of the Cars, including destroyed Cars, with new, used or rebuilt like cars. The cost of remarking any such replacement cars or replaced Cars will be borne by BRAE.

5. Term. The term of this Agreement with respect to each Car shall commence upon the delivery of such Car pursuant to the terms of this Agreement and shall continue unless otherwise terminated by any other provision hereof, until September 30, 1988; provided however, that if any lease to which the Cars are subject shall terminate at any time, this Agreement shall also automatically terminate at such time. ASSIGNEE hereby waives any right it may have under the Car Service Rules to terminate this Agreement prior to the expiration of its term.

6. Compensation.

A. The monthly fixed rent with respect to each Car shall be \$390, prorated, however, for any period which is less than a full month. Fixed rent shall commence to accrue for each Car on the date such Car is delivered in accordance with Section 2 hereof and shall continue to accrue throughout the term of this Agreement, unless such Car is destroyed as described in Section 6B below. Such rent shall be paid fifteen (15) days after the end of the month in which it is earned. ASSIGNEE shall be entitled to 100% of the per diem and mileage payments ("Payments") collected by BRAE from other railroads for their use and handling of the Cars. Payments shall be remitted to ASSIGNEE within thirty (30) days after the end of the month in which they are collected.

B. In the event damage beyond repair or destruction of a Car has been reported in accordance with the AAR Interchange Rules 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 earnings ceased. Any amounts received by ASSIGNEE as a result of such damage will be promptly paid over to BRAE.

C. BRAE shall perform all record-keeping functions related to the use of the Cars by ASSIGNEE and other railroads in accordance with the Association of American Railroads ("AAR") Interchange Rules and AAR Code of Car Service and Code of Car Hire Rules-Freight. Correspondence from railroads using such Cars shall be addressed to BRAE at such address as BRAE shall select. ASSIGNEE and BRAE agree that BRAE shall continue to provide such record-keeping functions until the expiration or earlier termination of the Agreement. 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 ASSIGNEE from time to time during BRAE's regular business hours.

7. Marking of Cars. BRAE and ASSIGNEE agree that BRAE at its sole expense, shall perform any and all remarking of the Cars deemed necessary by BRAE, including marking said Cars with LRWN reporting marks as shown on the Equipment Schedule.

8. Maintenance, Taxes and Insurance. BRAE shall be responsible for the maintenance of the Cars not otherwise the responsibility of ASSIGNEE under the AAR Interchange Rules in effect on the date of this Agreement. ASSIGNEE shall be responsible for the cost of repairs due to damage caused by corrosive and/or abrasive materials, damage to hopper outlets caused by misuse, and/or damage caused by use of open flames, vibrators, sledges or other devices during loading or unloading. ASSIGNEE shall be responsible for all property and ad valorem taxes. ASSIGNEE shall maintain bodily injury and property damage liability insurance with minimum coverage of \$1,000,000 per occurrence on the Cars, or maintain an equivalent self-insurance program. In the event ASSIGNEE elects to carry insurance, ASSIGNEE shall furnish to BRAE concurrently with the execution of this Agreement, and thereafter at intervals of not more than 12 calendar months, certificates of insurance evidencing bodily injury and property damage insurance, signed by an independent insurance broker with 30 days written notice of cancellation to BRAE. All insurance certificates shall name BRAE as an additional named insured. BRAE shall maintain insurance protecting against damage to the Cars, and BRAE shall also maintain contingent bodily injury and property damage liability insurance on the Cars in the minimum coverage per occurrence of \$1,000,000.

9. Responsibilities of ASSIGNEE. ASSIGNEE shall, pursuant to the AAR Interchange Rules, inspect all Cars interchanged to it to insure that such Cars do not contain refuse, and are in good repair, condition and working order. ASSIGNEE shall be liable to BRAE for any cleaning, servicing, or repairs attributed to handling lines' responsibility which are required but not noted at the time of interchange to ASSIGNEE. ASSIGNEE shall be responsible for the Cars while they are on the ASSIGNEE tracks in accordance with the AAR Interchange Rules. ASSIGNEE shall also promptly report to BRAE any damage or other condition of any Car which ASSIGNEE considers will make such Car unsuitable for use. Further, ASSIGNEE agrees that BRAE will be responsible for designating the repair facility for any damaged Cars which are subject to defect cards, and for work classified as owner's responsibility, and that BRAE shall have full control over the performance and acceptance of such repair work. ASSIGNEE agrees to transport, at no charge to BRAE, damaged Cars to designated shops on ASSIGNEE's tracks or to designated interchange for shops not on ASSIGNEE's tracks. ASSIGNEE shall be entitled to an abatement of rent with respect to a damaged Car(s), with the exception of damage caused as a result of ASSIGNEE's negligence. Such abatement shall commence 1) as of the date such Car(s) is delivered to a repair facility, if such facility is located

on ASSIGNEE's railroad lines or 2) as of the date such Car is interchanged to another railroad, if such repair facility is located off ASSIGNEE's railroad lines. Such abatement shall continue until such Car(s) is released from a repair facility, if such facility is located on ASSIGNEE's railroad lines, or until the Car is received by ASSIGNEE at interchange, if the repair facility is located on the lines of another railroad.

**10. Default.**

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

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

(ii) The breach by ASSIGNEE of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter. BRAE may, upon the request of ASSIGNEE, extend the ten (10) day notice period in the event of a breach pursuant to Section 10A(ii) hereunder.

(iii) Any act of insolvency or bankruptcy by ASSIGNEE, or the filing by ASSIGNEE 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 ASSIGNEE that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of ASSIGNEE, 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 subjection of any of ASSIGNEE's property to any levy, seizure, assignment, application or sale for or by any creditor or government agency.

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

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

(viii) Any representation or warranty made by ASSIGNEE herein or any other document delivered to BRAE by ASSIGNEE related to this Agreement shall prove to have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after written notice to ASSIGNEE of such default has been received.

**B. Upon the occurrence of any such 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 ASSIGNEE's right of possession and use of the Cars, whereupon all right and interest of ASSIGNEE 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 ASSIGNEE, provided that BRAE shall nevertheless have the right to recover from ASSIGNEE 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 ASSIGNEE of this Agreement. ASSIGNEE 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 10B.

11. **Inspection.** BRAE shall at any time during normal business hours have the right to enter the premises of ASSIGNEE for the purposes of examining the Cars to ensure ASSIGNEE's compliance with its obligations hereunder. ASSIGNEE agrees to use its best efforts to arrange for such inspections by BRAE of any Cars which may be located on property not owned or controlled by ASSIGNEE.

12. **Return of Cars.** Upon the expiration or earlier termination of this Agreement with respect to any Car, ASSIGNEE agrees to return such Car to BRAE at any such reasonably convenient interchange point of ASSIGNEE as BRAE shall designate, at ASSIGNEE's sole expense, in the same or as good condition as received, ordinary wear and tear excepted, free from all charges and liens except those which may result from an act or omission of BRAE, and free from all accumulations or deposits from commodities transported in or on the Cars. If any Car is not returned to BRAE in the condition required hereby, ASSIGNEE shall be liable to BRAE for any and all cleaning, repair or servicing costs required to place such Car in proper condition, including the cost to transport such Car to a repair facility, as required. In the event that any Car is not redelivered to BRAE on or before the date this Agreement expires or terminates with respect to such Car, all of the obligations of ASSIGNEE under this Agreement with respect to such Car shall remain in full force and effect until such Car is redelivered to BRAE; provided, however, that after the expiration or termination date with respect to such Car, BRAE shall be entitled to retain 100% of all per diem payments and 100% of all mileage payments earned by such Car, and, in addition, BRAE shall be entitled to all car hire payments accrued by such Car while on OKKT's and ASSIGNEE's railroad tracks.

13. **Reports.** ASSIGNEE shall supply BRAE with such reports regarding the loading and on-line use of the Cars as BRAE may reasonably request.

14. **Counterparts.** This Agreement may be executed in one or more separate counterparts by the parties hereto. Any counterparts executed by BRAE and ASSIGNEE shall constitute a single agreement.

15. **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.

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

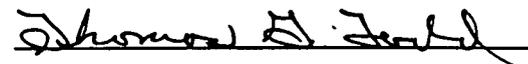
**BRAE TRANSPORTATION, INC.**

By 

Printed Name DONALD D. LITTLEFIELD

Title PRESIDENT - RAIL DIVISION

**MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY**

By 

Printed Name T. G. Todd

Title Vice President-Operations

EQUIPMENT SCHEDULE NO. 1

BRAE Transportation, Inc. ("BRAE"), hereby assigns the following railcars to Missouri-Kansas-Texas Railroad Company, ("ASSIGNEE") pursuant to that certain Assignment Agreement dated as of December 31, 1987:

<u>Number of Cars</u>	<u>Description</u>	<u>A.A.R. Designation</u>	<u>Car Number(s)</u>
80	4750 Cubic feet, 100-ton Covered Hoppers	LO	LRWN 8000-8019 8021-8057 10191-10194 260201 260203 260205-260209 260212 260214 260217 260221 260223 260227 260231 260247 260251 260258 260259 260290

BRAE and ASSIGNEE hereby incorporate by reference all of the terms, conditions and provisions of the Assignment Agreement in this Schedule.

IN WITNESS WHEREOF, the parties have executed this Schedule as of the 31<sup>st</sup> day of December, 1987.

BRAE TRANSPORTATION, INC.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By 

By 

Printed Name DONALD B. LITTLEFIELD

Printed Name Thomas G. Todd

Date January 4, 1988

Date December 21, 1987