

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

1-5863

REGISTRATION NO. _____ TIME 1988

ROBERT J. CORBER
(202) 429-8108

OCT 11 1988 9 00 AM

INTERSTATE COMMERCE COMMISSION

October 11, 1988

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

OCT 11 9 30 AM '88
MOTOR OPERATING UNIT
ICC OFFICE OF
THE SECRETARY

Dear Ms. McGee:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. §11303 are the original and one copy of the documents hereinafter described. They relate to the railroad equipment identified below.

1. Lease Agreement dated as of April 16, 1987 between Brae Transportation, Inc., as lessor and Herron Rail Services, as lessee.

The equipment subject to this agreement consists of 5 railcars bearing the marks BRAX 2018, 2043, 2050, 2078 and 2082.

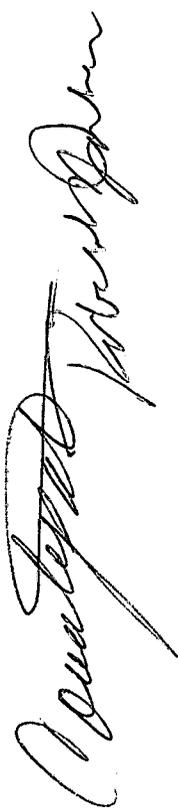
The names and addresses of the parties to the documents are as follows:

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

Lessee: Herron Rail Services
2016 North Village
Tampa, Florida 33612

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.

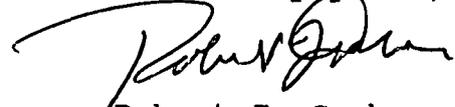
A short summary of each document to appear in the index follows:



Ms. Noreta McGee
October 11, 1988
Page 2

1. Lease Agreement dated as of April 16, 1987 between Brae Transportation, Inc. and Herron Rail Services, covering railcars marked BRAX 2018, 2043, 2050, 2078 and 2082.

Very truly yours,



Robert J. Corber
Attorney for Brae
Transportation, Inc.

Enclosures as stated

Interstate Commerce Commission
Washington, D.C. 20423

10/11/88

OFFICE OF THE SECRETARY

Robert J. Corber
Attorney
Steptoe & Johnson
330 Connecticut Avenue N.W.
Washington, D.C. 20036

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/11/88 at 9:35am, and assigned re-cordation number(s). 10844-HH, 15858, 15858-A, B&C, 15859, 15860, 15860-A, 15861 & 15861-A, 15862, 15863, 15864

Sincerely yours,

Neville R. McEwen

Secretary

Enclosure(s)

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

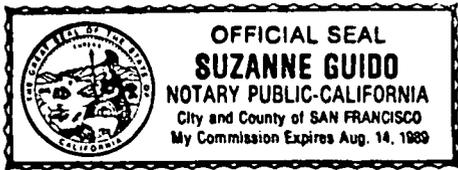
1 5863
RECORDED NO. FILED
SS.
OCT 11 1988 -9 35 AM

COPY

INTERSTATE COMMERCE COMMISSION

I, Suzanne Guido, a Notary Public in and for the State of California, duly commissioned and sworn, do certify that on this 29th day of August, in the year 1988, I carefully compared the annexed copy of the Lease Agreement, dated as of April 16, 1987, between BRAE Transportation, Inc. and Herron Rail Services with the original thereof, and that the same is a full, true and correct copy of said original lease agreement.

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



[seal]

Suzanne Guido
Notary Public

My commission expires: 8/14/89

LEASE AGREEMENT

RECORDED NO. 5863

OCT 11 1988 - 9 06 AM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT dated as of April 16, 1987, between BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, CA 94111, ("BRAE"), and HERRON RAIL SERVICES, 2016 North Village, Tampa, Florida 33612 ("LESSEE").

1. **SCOPE.** BRAE agrees to lease to LESSEE, and LESSEE agrees to lease from BRAE, railroad equipment of the types and description set forth in the equipment schedule or schedules ("Schedules") executed by BRAE and LESSEE concurrently herewith. 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 for a period of twenty one (21) months from the Effective Date of the last of the Cars accepted by LESSEE hereunder, however, LESSEE may terminate this Agreement upon 30 days notice to BRAE after an initial nine month period.

3. **DELIVERY AND ACCEPTANCE.**

A. BRAE shall deliver each Car at BRAE's cost to LESSEE on the Florida East Coast tracks at Ft. Pierce, Florida. BRAE's obligation as to such delivery shall be subject to all delays resulting from causes beyond its control. LESSEE agrees to use the Cars exclusively in its own service, except as hereinafter provided. LESSEE agrees that if any of the Cars are used outside of the continental United States, LESSEE shall reimburse BRAE for any customs duties, taxes or other expenses resulting from such use.

B. All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic pursuant to the Office and Field Manuals of the Interchange Rules or any successor documents ("Interchange Rules") adopted by the Association of American Railroads ("AAR") and shall otherwise comply with the description and specifications contained in the Schedule on which such Cars are listed. Hereinafter, Interchange Rules shall mean all codes, rules, interpretations, laws or orders governing hire, service, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the AAR and any other organization, association, agency or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders. LESSEE shall be solely responsible for determining that the Cars are in proper condition for loading and shipment. LESSEE may have its authorized representative inspect each Car at the delivery point and approve or reject it as to condition. From and after the date of such inspection and approval, any Car so inspected and approved shall be conclusively deemed to be approved for all purposes and to meet all requirements of this Agreement. The date on which LESSEE inspects and approves each Car hereunder is referred to as the "Effective Date" with respect to such Car.

4. **MARKINGS.**

A. BRAE shall cause each Car to be marked clearly and conspicuously to show the interests of BRAE, 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 BRAE'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 BRAE'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 the reporting marks and such other information as required by the Interchange Rules and with letters not to exceed the minimum height required by the Interchange Rules.

5. LEASE RENTAL: ALLOWANCES.

A. The monthly fixed rent with respect to each Car shall be \$340. Fixed rent shall commence to accrue for each Car on the date such Car arrives at the delivery point set forth in Section 3A and shall continue to accrue throughout the term of this Agreement, unless such Car is destroyed as described in Section 7. Such rent shall be paid in advance on the first day of each month (except the first rent payment which shall be made on the first day of the month following the month in which the Effective Date occurs), prorating, however, any period which is less than a full month.

B. Any mileage allowances or other compensation payable by railroads for use of the Cars ("Allowances") shall be collected by BRAE. LESSEE shall report to BRAE, upon BRAE's request, 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.

C. Insofar as applicable laws and regulations permit, LESSEE (unless an event of default specified in Section 15 shall have occurred and be continuing) shall be entitled to all Allowances collected by BRAE from railroads.

6. MAINTENANCE.

A. LESSEE shall cause the Cars to be maintained in good order and repair, and in satisfactory condition for interchange in accordance with the Interchange Rules of the Association of American Railroads (the "Interchange Rules"). BRAE shall be responsible for all costs incurred with respect to the maintenance of the Cars with the exception of any costs incurred due to the LESSEE's, or any agent of LESSEE's, negligence in the handling, loading and operation of the Cars.

B. BRAE shall be responsible for payment of all Federal, State or Local property, sales, use or other taxes, duties, impositions, assessments or charges (collectively, the "Impositions") (including any Federal, State or Local income taxes) levied or imposed upon, measured by or exacted because of the use or leasing of the Cars to LESSEE, and will, at all times during the term hereof, keep the Cars and each part thereof, free and clear of all taxes, assessments, or other charges which might in any way affect or impair the title of Lessor to, or its interest in, the Cars or result in a lien thereon.

7. DESTRUCTION OF CARS. In the event any Car is totally damaged or destroyed, the rent with respect to such Car shall terminate upon receipt by BRAE of notification thereof. Responsibility for loss, destruction, or damage to the Cars (including parts and appurtenances) shall be fixed by the then prevailing Interchange Rules. The Interchange Rules shall, in respect of all matters to which the Interchange Rules relate, establish the rights, obligations and liabilities of BRAE, LESSEE, and any railroad subscribing thereto and moving the Cars over its lines. In the event that any Car is lost, damaged, or destroyed while in LESSEE's possession, or on any private track, or on the tracks of a railroad that does not subscribe to the Interchange 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 or irreparable damage to any Car, at BRAE's option, LESSEE shall promptly pay to BRAE the value of such Car in accordance with the Interchange Rules. BRAE 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.

8. INDEMNITIES.

A. Except as otherwise provided in Section 6, LESSEE agrees to indemnify and hold harmless BRAE 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. BRAE 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 BRAE against, and to hold BRAE 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.

9. DISCLAIMER OF WARRANTIES BY LESSOR: WARRANTY RIGHTS.

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

BRAE shall negotiate with the appropriate parties on all matters pertaining to warranty rights which BRAE may possess with respect to the Cars. For so long as this Lease is in effect and LESSEE is not in default hereunder, BRAE agrees to cooperate and consult with LESSEE in the enforcement of such rights; provided, however, that if LESSEE wishes to enforce or further pursue a claim and BRAE does not, LESSEE will reimburse BRAE for any out-of-pocket costs (including, but not limited to, travel and legal fees and expenses) reasonably incurred by BRAE in such cooperation.

10. TAXES.

A. BRAE shall be responsible for and shall pay all property taxes levied upon the Cars and file all property tax reports relating thereto. LESSEE agrees to assume responsibility for and to pay any applicable state sales, use or similar taxes resulting from the lease or use of the Cars.

B. BRAE shall not be responsible for the payment of any tax, tariff, duty, customs, switching, track storage, detention, demurrage or other charge made by any governmental agency, railroad or other person in respect of any Car, except as provided in Section 11A. LESSEE agrees to pay or reimburse BRAE promptly for any such tax, tariff, demurrage or other charges.

11. ASSIGNMENT: SUBORDINATION. 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.

It is understood and agreed that BRAE may assign this Agreement with respect to some or all of the Cars listed on any Schedule hereto to any trust of which BRAE or one of its wholly-owned subsidiaries is a beneficiary, to any corporate joint venture of which BRAE or one of its wholly-owned subsidiaries is a stockholder or to any other owner of such Cars (each hereinafter a "Lease Assignee"), provided that BRAE or one of its wholly-owned subsidiaries enters into a management agreement with such Lease Assignee with respect to the Cars. Upon delivery of a notice of assignment to LESSEE, the term "BRAE" as used herein shall mean such Lease Assignee, and BRAE shall be relieved of all of its obligations and liabilities under this Agreement relating to such Cars. LESSEE agrees to give its consent and to acknowledge, upon receipt of notice of assignment, such assignment of this Agreement by BRAE. BRAE warrants that any Lease Assignee of the Cars will subject such Cars to all the terms and conditions of this Agreement.

LESSEE's rights hereunder 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 the 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 paid directly to such party and/or that Cars be returned to such party. LESSEE also agrees to acknowledge, upon receipt, any security assignment of this Agreement by BRAE, or by any Lease Assignee, to any owner or secured party under any financing agreement entered into by BRAE or such Lease Assignee in connection with the Cars leased hereunder. LESSEE hereby agrees that any such security assignment may be with respect to all or part of the Cars on any Schedule hereto. Any such security assignment of this Agreement by BRAE or any Lease Assignee to any owner or secured party shall not subject that owner or secured party to any of BRAE's or such Lease Assignee's obligations hereunder. Those obligations shall remain enforceable by LESSEE solely against BRAE or such Lease Assignee, as the case may be.

12. COMPLIANCE WITH REGULATIONS. At the time of delivery of the Cars by BRAE to LESSEE, the Cars will conform to the applicable specifications, and to the standards recommended by the Interchange Rules for railroad equipment of the character of the Cars. LESSEE shall, at its own expense, comply with all governmental laws, regulations and requirements, with the Interchange 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, including all necessary OT-5 approvals, for use of the Cars and shall bear all risk of failure to obtain such permission, approval and consent, or of cancellation thereof. BRAE shall take all actions reasonably requested by LESSEE in order to assist LESSEE in obtaining such permissions, approvals or consents.

13. **INSPECTIONS.** LESSEE will make the Cars available to BRAE or any secured party of BRAE at any reasonable time on request for maintenance inspection and for regular maintenance in accordance with BRAE's maintenance responsibility. BRAE will be responsible for all costs of transporting the Cars to maintenance facilities, except in instances where the handling railroad has such responsibility under the Interchange Rules, or this Agreement is terminated in which case LESSEE shall be responsible for the cost of transporting pursuant to Section 15 herein.

14. **DEFAULT.** The happening of any of the following events shall be considered an event of default ("Event of Default") hereunder:

(i) Nonpayment of any installment of rent hereunder within ten (10) days after the receipt of written or telegraphic notice of such nonpayment from BRAE; or

(ii) Failure of the LESSEE to comply with, or perform, any of the other terms and conditions of this Agreement within thirty (30) days after receipt of written notice from the BRAE demanding compliance therewith and performance thereof.

Upon the happening of an Event of Default, BRAE at its election may either (a) terminate this Agreement immediately and repossess the Cars, or (b) withdraw the Cars from the service of LESSEE and deliver the same, or any thereof, to others upon such terms as BRAE may see fit. If BRAE shall elect to proceed in accordance with clause (b) above and if BRAE during the balance of the term of this Agreement shall fail to collect for the use of the Cars, a sum at least equal to all unpaid rentals hereunder to the stated date of termination hereof plus an amount equal to all expenses of withdrawing the Cars from the service of LESSEE and collecting the earnings thereof, LESSEE agrees to pay from time to time upon demand by BRAE the amount of any such deficiency. It is expressly understood that BRAE at its option may terminate this Agreement in the event that a petition in bankruptcy or a petition for a trustee or receiver be filed by or against LESSEE or in the event that LESSEE shall make an assignment for creditors. 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 BRAE'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 BRAE 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.

15. **TERMINATION.** Lessee party may terminate this Agreement upon 30 days written notice to the other party after the expiration of nine months from the Effective Date.

16. **RETURN OF CARS.** Upon termination of this Agreement with respect to a Car, LESSEE agrees to return the Car to BRAE at LESSEE's expense, at the final unloading point or at a location or locations to be determined by BRAE, but in no event further than the Green Mountain Railroad, 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 while in the service of LESSEE. If any Car is not returned to BRAE free from such accumulations or deposits, LESSEE shall reimburse BRAE for any

expense incurred in cleaning such Car. In the event that any Car is not redelivered to BRAE 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 BRAE; provided, however, that the fixed rent for such Car after the expiration date shall be \$480 per month.

17. LATE RENT PAYMENT. LESSEE will, on demand, pay to BRAE interest at the lower of 15% per annum or the maximum rate permitted by applicable law on any payment of rent not paid when due for any period during which the same shall be overdue.

18. ESCROW ACCOUNT. LESSEE shall maintain in an account with FREEDON SAVINGS an escrow fund in an amount equal to 60 DAYS to cover anticipated lease rental requirements, including without limitation any deficit arising or payable after any termination of this Agreement.

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

20. 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 Agreement as of the date first above written.

BRAE TRANSPORTATION, INC.

By Donald B. Littlefield
Printed Name DONALD B. LITTLEFIELD
Title VICE PRESIDENT

HERRON RAIL SERVICES

By James R. Herron
Printed Name JAMES R. HERRON
Title PRESIDENT

EQUIPMENT SCHEDULE NO. 1

BRAE TRANSPORTATION, INC. ("BRAE"), hereby leases the following Cars to HERRON RAIL SERVICES ("LESSEE") on the terms and conditions contained in the Lease Agreement dated as of April 16, 1987.

<u>Number of Cars</u>	<u>AAR Mech. Design</u>	<u>Description</u>	<u>Numbers</u>
5	LO	Covered Hoppers, 100 Ton 3500 Cubic Feet	BRAX [to follow]

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

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

BRAE TRANSPORTATION, INC.

By Donald B. Littlefield

Printed Name DONALD B. LITTLEFIELD

Title VICE PRESIDENT

HERRON RAIL SERVICES

By James R. Herron

Printed Name JAMES R. HERRON

Title PRESIDENT

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH) ss.

On this 10th day of April _____, 1987, before me personally appeared JAMES R. HERRON, to me personally known, who being by me duly sworn, did depose and say that such person is PRESIDENT of HERRON RAIL SERVICES, and that the foregoing Lease Agreement, and Equipment Schedule No. 1 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]

Michael White
Notary Public

Notary Public, State Of Florida At Large
My Commission Expires May 28, 1988
Member of the National Notary Public Association

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

On this 30th day of April _____, 1987, before me personally appeared DONALD B. LITTLEFIELD, to me personally known, who being by me duly sworn says that such person is PRESIDENT - RAIL DIVISION of BRAE TRANSPORTATION, INC., and that the foregoing Lease Agreement, and Equipment Schedule No. 1 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.

OFFICIAL SEAL
LEANN LLOYD
NOTARY PUBLIC - CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
My Commission expires July 24, 1987
[seal]

Debra Lloyd
Notary Public