

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

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DEC 16 1988

26.00

ROBERT J. CORBER
(202) 429-8108

INTERSTATE COMMERCE COMMISSION
December 16, 1988

DEC 16 1988 10-40 AM
1 6079

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

RECORDATION NO. Filed 1425

INTERSTATE COMMERCE COMMISSION

DEC 16 1988 10-40 AM
1 6079-A
RECORDATION NO. Filed 1425

DEC 16 10 37 AM '88

Dear Ms. McGee:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. §11303 are the original and three (3) copies of the documents hereinafter described. They relate to the railroad equipment identified below.

1. Lease Agreement dated as of July 1, 1985 between Brae Transportation, Inc., lessor, and Indiana Harbor Belt Railroad Company, lessee.

2. Lease Amendment No. 1 dated as of November 18, 1988 between Brae Transportation, Inc., and Indiana Harbor Belt Railroad Company.

The equipment subject to these documents consists of 189 gondola cars bearing the marks as stated in the documents.

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: Indiana Harbor Belt Railroad
Company
2721 161st St.
Hammond, Indiana 46325

A fee of \$26.00 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:

Robert J. Corber

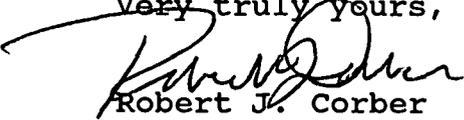
Ms. Noreta McGee
December 16, 1988
Page 2

1. Lease Agreement dated as of July 1, 1985 between Brae Transportation, Inc. and Indiana Harbor Belt Railroad Company covering gondola cars marked as stated in the document.

2. Amendment No. 1 dated November 18, 1988 between Brae Transportation, Inc., and Indiana Harbor Belt Railroad Company covering gondola cars marked as stated in the document.

Since these documents are also related to the Equipment Trust Agreement between BRAE Corporation and The Connecticut Bank and Trust Company, recorded under Recordation No. 11498, it is requested that these documents be cross-indexed under that Recordation Number.

Very truly yours,



Robert J. Corber
Attorney for
BRAE Corporation

Enclosures as stated

Interstate Commerce Commission

Washington, D.C. 20423

12/16/88

OFFICE OF THE SECRETARY

Robert J. Cober
1330 Connecticut Ave. 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 12/16/88 at 10:45AM, and assigned recordation number(s).

16079 & 16079-A, 16080 & 16080-A, 16081, 16082, 16083, 16085, 16086, 16087, 16088, 16089, 13188-A, 16038-A, 16037-A & 16038-A

Narta L. McEea

Secretary

Enclosure(s)

BRAE TRANSPORTATION, INC.

DEC 16 1988 10-40 AM

RECORDATION NO. 1

60
Filed 12
COPY

LEASE AGREEMENT

LEASE AGREEMENT, dated as of July 1, 1985, between BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 ("BRAE"), as lessor, and INDIANA HARBOR BELT RAILROAD COMPANY, 2712 - 161st Street, Hammond, Indiana 46323 ("Lessee"), as lessee.

1. Scope of Agreement

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."

2. Term

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 on July 1, 1985, and shall continue until two (2) years have expired from the actual date of this Agreement. The Agreement will be automatically extended for an additional two (2) year term unless Lessee notifies BRAE in writing six (6) months prior to the initial Lease Agreement expiration that Lessee does not elect to extend this Agreement for the additional two (2) year term.

3. Supply Provisions

A. BRAE has at any time the right, upon 60 days written notice, to replace any or all of the Cars with new, used or rebuilt Cars of the same general class and type.

4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that the Cars will be lettered with the railroad markings of 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.

B. 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 the Interchange Rules and AAR railroad interchange agreements, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Lessee shall select. Lessee and BRAE agree that BRAE shall continue to provide such record keeping functions until the expiration or earlier termination of this 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 Lessee from time to time during BRAE's regular business hours. Lessee shall supply BRAE with reports on a weekly basis, including the AAR Train II and Car Hire Exchange Tapes, regarding the use of the Cars by Lessee off its railroad line and Lessee's obligations under this Agreement 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 Lease Term, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall, pursuant to the 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. Lessee shall also secure from interchanging lines any documentation prescribed by the Interchange Rules for damaged Cars and promptly mail such documentation to BRAE. Lessee shall promptly report to BRAE any damage or other condition of any Car which Lessee considers will make such Car unsuitable for use.

B. Except as provided in Section 5A hereof, BRAE, at its sole expense, shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. 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, in accordance with the Interchange Rules, 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.

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 the Interchange Rules for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequence 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.

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.

6. Lease Rental

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

Lessee shall receive all payments from other railroad companies for their use or handling of the Cars, including but not limited to mileage charges and hourly car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments"). Lessee will forward to BRAE on a weekly basis all correspondence received pertaining to Payments earned by the Cars, including car hire payment statements and car hire summaries. BRAE will estimate monthly Payments earned by the Cars based upon the prior six months reporting, and commencing July 1985 and continuing each month until the expiration or earlier termination of this Agreement, BRAE will draft from Lessee fifty (50) percent of the estimated Payments on the fifteenth day of the reporting month. A second draft will be made from Lessee on the twenty-second day of the reporting month for twenty (20) percent of the estimated Payments, and the balance will be drafted from Lessee on the last day of the reporting month. BRAE will receive rental payments from the Lessee through such draft system in the amount of \$350.00 per Car per reporting month for each Car subject to this Agreement. Lessee will pay the balance due BRAE on the last day of each reporting month (60 days subsequent to the service month) should the estimated Payments received under the draft system as set forth herein be less than \$350.00 per Car, regardless of the amount of actual Payments received by the Lessee or any outstanding Payments due to the Lessee. All payments earned by the Cars in excess of \$350.00 per car per reporting month will be retained by Lessee.

B. In the event damage beyond repair or destruction of a Car has been reported in accordance with the 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 payments ceased. Any amounts received by Lessee as a result of such damage to the car will be promptly paid over to BRAE. Any lease rental payments to BRAE by Lessee for a damaged or destroyed Car will be prorated on a daily basis for the active portion of the last service month until the date the car hire payments ceased.

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. 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 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 immediately be returned to such 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 twenty (20) 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 subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

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 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 attorney's fees, incurred by BRAE in connection with the exercise of its remedies pursuant to this Section 8B.

9. Termination

At the expiration or earlier termination of this Agreement as to any Car, Lessee will surrender possession of such Car to BRAE free of refuse, and in good repair,

condition and working order, by delivering the same to BRAE at such place reasonably convenient to Lessee and mutually agreed upon by BRAE and Lessee. For any Car not returned in the condition required hereby, Lessee shall be liable to BRAE for any and all cleaning, repair or servicing costs required to place such Car in such proper condition. 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 Section 8 hereof, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to move any such Car to BRAE's subsequent lessee and to place thereon the markings and name or other insignia of BRAE's subsequent lessee.

10. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises of Lessee 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 agrees to use its best efforts to arrange for such inspections by BRAE of any cars which may be located on property not owned by Lessee. 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.

11. 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. 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 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 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 Lease.

Lessee also agrees to acknowledge, upon receipt, any security assignment of this Agreement by BRAE, or by any Lease Assignee, to an owner or secured party under any financing agreement or lease entered into by BRAE or such Lease Assignee 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 on any Schedule hereto. Any assignment of this Agreement by BRAE or any Lease Assignee to an 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.

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. BRAE is expressly authorized to insert the appropriate railcar reporting markings and Car description on the Schedule(s) at such time as notice is delivered to BRAE by Lessee as to the correct reporting marks and physical description to be utilized.

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. 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.

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

BRAE TRANSPORTATION, INC.

By *Lawrence W. Briscoe*
Printed Name LAWRENCE W. BRISCOE
Title PRESIDENT

INDIANA HARBOR BELT
RAILROAD COMPANY

By *A.B. Cravens*
Printed Name A.B. CRAVENS
Title Gen Manager.

EQUIPMENT SCHEDULE 1

BRAE TRANSPORTATION, INC. ("BRAE") hereby leases the following railcars to Indiana Harbor Belt Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of July 1, 1985 (the "Lease").

1.	<u>Number of Cars</u>	<u>Description</u>	<u>Designation</u>	<u>Car Numbers</u>
	189	Gondola Railcars	GB	(to follow)

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

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

BRAE TRANSPORTATION, INC.

By *Lawrence W. Briscoe*

Printed Name LAWRENCE W. BRISCOE

Title PRESIDENT

INDIANA HARBOR BELT RAILROAD COMPANY

By *A. B. Craews*

Printed Name A. B. CRAEWS

Title Gen. Manager

APPROVED AS TO FORM

A. M. Kelly
GENERAL MANAGER

STATE OF INDIANA)
) SS
COUNTY OF LAKE)

On this 17th day of July, 1985, before me personally appeared A.B. Cravens, to me personally known, who being by me duly sworn says that such person is General Manager of Indiana Harbor Belt Railroad Company, 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.

Diane R. Pender (seal)
Notary Public Diane R. Pender

Commission expires September 19, 1986
Resident of Lake County, Indiana

STATE OF CALIFORNIA)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

On this 5th day of September, 1985, before me personally appeared LAWRENCE W BRISCOE, to me personally known, who being by me duly sworn says that such person is PRESIDENT 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.

Leann Lloyd (seal)
Notary Public

