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INTERSTATE COMMERCE COMMISSION

December 16, 1988

DEC 16 1988 10:40 AM
1 6080
RECORDATION NO. _____ Filed 1425

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

NS-351A100

DEC 16 1988

26.00

DEC 16 1988 10:40 AM
1 6080-A
RECORDATION NO. _____ Filed 1425

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 document hereinafter described. The Document relates to the railroad equipment identified below.

1. Railroad Equipment Lease dated as of May 21, 1981 between Pullman Leasing Company, lessor, and Brae Transportation, Inc., lessee.

2. Supplement No. 1 to Schedule A dated as of December 9, 1988 between Pullman Leasing Company, lessor, and Brae Transportation, Inc., lessee.

The equipment subject to this document consists of 96 open top hopper railcars bearing the marks SOO 121200 - 121222, 121223 - 121256, 121258 - 121294, 121296, 121298, and 121299, inclusive.

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

Lessor: Pullman Leasing Company
200 South Michigan Ave.
Chicago, Illinois 60604

Lessee: Brae Transportation, Inc.
One Hundred Sixty Spear Street
San Francisco, CA 94105

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 the document to appear in the index follows:

*Counterfiled -
Katherine*

Ms. Noreta R. McGee
December 16, 1988
Page Two

1. Railroad Equipment Lease dated as of
May 21, 1981 between Pullman Leasing Company and Brae
Transportation, Inc., covering 96 open top hopper railcars
bearing the marks SOO 121200 - 121222, 121223 - 121256, 121258 -
121294, 121296, 121298, and 121299, inclusive.

Very truly yours,



Robert J. Corber
Attorney for Brae
Transportation, Inc.

Enclosures as stated

COPY

INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

DEC 16 1988 10-40 AM

RECORDATION NO. 1 6080
FEB 14 25

LEASE NO. BRAECA01W

This Lease, dated as of May 21, 1981, is by and between Pullman Leasing Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware with an office in Chicago, Illinois (hereinafter called "Lessor"), and BRAE Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware with an office in San Francisco, California (hereinafter referred to as "Lessee").

In consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the railroad equipment described in the schedule set forth in Exhibit A attached hereto (hereinafter collectively referred to as the "Cars" and separately as a "Car") to Lessee upon the following terms and conditions:

SECTION 1. INSPECTION, DELIVERY AND ACCEPTANCE OF CARS

During construction, the Cars shall be subject to inspection and approval by an inspector or other authorized representative of Lessee and Lessor will grant to such inspector or other authorized representative reasonable access to its plant. After each Car has been built at Lessor's Butler, Pennsylvania plant, Lessor will tender such Car to Lessee for inspection and acceptance. After such tender, Lessee will cause an inspector or other authorized representative of Lessee to inspect the same and, if such Car is found to conform to the specifications and to all applicable Department of Transportation and Interstate Commerce Commission requirements and specifications and all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the Cars as of the date of this Lease and to be in good order and condition and to be marked in accordance with Section 4 hereof, to accept delivery of such Car and execute and deliver to Lessor a Certificate of Acceptance in the form attached hereto as Exhibit B (hereinafter called the Certificate of Acceptance); whereupon such Car shall be deemed to have been accepted by Lessee and shall be subject thereafter to all of the terms and conditions of this Lease. After such inspection and acceptance by Lessee, Lessor, at its sole cost and expense, will cause each Car to be delivered to Lessee at a point in Detroit, Michigan which is mutually agreed upon by Lessor and Lessee. Lessor will use its best efforts to cause all of the Cars to be delivered to Lessee prior to September 1, 1981; provided however, that Lessor shall not be liable to Lessee for any failure or delay in making delivery of the Cars due to any cause or causes beyond Lessor's reasonable control.

SECTION 2. RENTAL

Lessee agrees to pay to Lessor (i) a daily rental of _____ for each Car inspected and accepted by Lessee during the period commencing on the tenth (10th) day after acceptance of the last Car by Lessee in accordance with Section 1 hereof and ending on the last day of the calendar month during which the last Car is so accepted by Lessee;

(ii) a monthly rental of _____ for each Car during the portion of the original term of this Lease, as defined in Section 3 hereof, commencing on the first day of the calendar month immediately following the calendar month during which the last Car is accepted by Lessee. Payment of the rental accrued under clause (i) of this Section 2 shall be made on or before the first day of the calendar month immediately following the calendar month during which the last Car is accepted by Lessee. The rental accrued under clause (ii) of this Section 2 shall be paid monthly in arrears commencing on the first day of the second calendar month following the month during which the last Car is accepted by Lessee.

The rental specified in this Section 2 has been arrived at by making the assumption that this Lease will continue in full force and effect for each Car during the entire period of the original term of this Lease, as defined in Section 3 hereof, and that Lessor will receive in full the tax benefit of the investment tax credit provided on the date of this Lease by the Federal Internal Revenue Code. If, as a result of Lessee's acts or failures to act, misrepresentations or breaches of warranty, Lessor fails to receive the full benefit of such investment tax credit with respect to any Car or Cars Lessee shall pay to Lessor, on demand, such additional amount of money as is required to provide Lessor with the same after tax benefit as the investment tax credit benefit that Lessor does not receive.

SECTION 3. TERM OF LEASE

The original term of this Lease as to each Car shall begin on the date of inspection and acceptance of such Car by Lessee and, subject to the provisions of Section 14 hereof, shall terminate . . . after the first day of the calendar month immediately following the calendar month during which the last Car is accepted by Lessee.

Provided that this Lease has not been terminated earlier and that Lessee is not in default hereunder, Lessee is hereby granted the option to extend the term of this Lease for an additional . . . by giving written notice to Lessor not less than ninety (90) days prior to the end of the original term of this Lease of Lessee's intention to so extend the term. If Lessee elects to exercise such option, (i) the terms and conditions hereinafter set forth shall apply to the Cars during the extended term, (ii) the phrase ("term of this Lease") as used herein shall thereafter include the extended term, and (iii) the monthly rental payable for each Car during the extended term shall be the "Fair Market Rental" for the Cars on the commencement date of such extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If after _____ from the giving of notice by Lessee of Lessee's election to extend the term of this Lease, Lessor and Lessee are unable to agree upon a determination of the Fair Market Rental, such

rental shall be determined in accordance with the foregoing definition by the following procedure: If either Lessor or Lessee shall have given written notice to the other party requesting determination of such rental by this appraisal procedure, Lessor and Lessee shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within ten (10) business days after such notice is given, Lessor or Lessee may apply to make such appointment, to the American Arbitration Association, and both parties shall be bound by the appointment so made. Any appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Cars within sixty (60) days after his appointment. The determination of Fair Market Rental of the appraiser appointed pursuant to this paragraph shall be final. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date of this Lease, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and Lessor and Lessee hereby consent and agree not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

SECTION 4. IDENTIFICATION MARKS

Lessor will cause each of the Cars to be numbered with one of the car numbers set forth in Exhibit A attached hereto prior to delivery to Lessee. Lessee, at its sole cost and expense, will cause each of the Cars to be kept numbered with such identification number and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of such car such appropriate words as may be designated by Lessor with such appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such Car and its rights under this Lease. Lessee will replace promptly any of such words that may be removed, defaced or destroyed. Lessee will not change the number of any Car without giving Lessor prior notice of such change.

Except as provided above, Lessee will not allow the name of any person, association or corporation to be placed on the cars as a designation that might be interpreted as a claim of ownership. Lessor will cause the Cars to be marked with a logo designated by Lessee for convenience of identification of the right of Lessee or of any sublessee permitted by this Lease to use the Cars under this Lease.

SECTION 5. TAXES

Lessee agrees that, during the term of this Lease, in addition to the rentals herein provided, it will promptly pay all taxes, assessments and other governmental charges, including but not limited to sales or use taxes, levied or assessed upon the Cars or the interest of Lessee in all or any of the Cars or upon the use or operation thereof or the earnings arising therefrom and will promptly pay or reimburse Lessor for all taxes, assessments and other governmental charges levied or assessed against Lessor on account of its ownership of such Cars or on account of the use or operation thereof or on account of the earnings arising

therefrom (exclusive, however, of income or gross receipt taxes on the rentals herein provided except any such tax on rentals which is in substitution for, or relieves Lessee from, the payment of taxes which it would otherwise be obligated to pay or reimburse as hereinbefore provided), including but not limited to any sales or use taxes payable on account of the ownership of the Cars by Lessor or on account of the leasing of the Cars hereunder; but Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the reasonable judgment of Lessor, the rights or interests of Lessor will be materially endangered thereby. In the event that any tax reports and/or returns are required to be made covering all or any of the Cars, Lessee shall make such reports and/or returns in such manner as shall be reasonably satisfactory to Lessor and shall immediately furnish Lessor with copies thereof.

SECTION 6. TARIFF, DUTY, CUSTOMS AND OTHER CHARGES

Lessor will not be responsible for the payment of any tariff, duty, customs, switching, demurrage or other charges made by any governmental, railroad or other agency in respect of any of the Cars except as specifically provided herein, and Lessee agrees to reimburse Lessor for any such charges that Lessor is hereafter required to pay.

SECTION 7. PAYMENT FOR LOST, DESTROYED OR IRREPARABLY DAMAGED CARS

In the event that any of the Cars shall be lost, destroyed or irreparably damaged from any cause whatsoever during the term of this Lease, Lessee shall promptly and fully inform Lessor thereof. Rental for any of the Cars that are so lost, destroyed or damaged shall cease to accrue on the date that such loss, damage or destruction occurs.

Responsibility for any such loss or destruction of, or damage to, any of the Cars or parts thereof or appurtenances thereto furnished under this Lease shall be as fixed by the then prevailing Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars for the Interchange of Traffic, promulgated by the Association of American Railroads, and said Code of Rules shall establish the rights, obligations and liabilities of Lessor, Lessee, and any railroad subscribing to such Code of Rules and moving the Cars over its lines in respect of all matters to which said Code of Rules relate. In the event that any Car is lost, damaged or destroyed while on the tracks of Lessee, any private track, or on the track of a railroad that does not subscribe to such Code of Rules, or in the event that any Car is damaged or destroyed by any commodity which may be transported or stored in or on such Car, such repairs, renewals or replacements as may be necessary to replace the Car or to place it in good order and repair shall be at the sole cost and expense of Lessee.* Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested, but without affecting their respective obligations under this paragraph, to establish proper claims against parties responsible for loss or destruction of or damage to the Cars.

* ,provided, however, that any such replacement costs shall be determined in accordance with such Code of Rules.

Lessee shall bear the risk of and, except as hereinabove provided in this Section 7, shall not be released from its obligations hereunder in the event any Car shall be damaged after delivery to and acceptance thereof by Lessee hereunder.

In the event that during the term of this Lease the use of any Car shall be requisitioned or any Car shall be taken by any governmental authority under the power of eminent domain or otherwise, on any basis not involving the taking of title to such Car, such requisition or taking shall not terminate this Lease, and each and every obligation of Lessee with respect thereto shall remain in full force and effect. So long as Lessee shall not be in default under this Lease, Lessor shall pay to the Lessee all sums received by Lessor from such governmental authority as compensation for requisition or taking of title or possession of such Car in respect of any period.

Lessor shall have the right but shall not be obligated to substitute, for any Car which shall be lost, destroyed or irreparably damaged, another Car of similar age, type, capacity and condition. If Lessor shall elect to so substitute another Car, such Car shall be subject to all of the terms and conditions hereof, including but not limited to the payment of rental therefor in accordance with Section 2 hereof, automatically on delivery thereof to Lessee by Lessor.

SECTION 8. ANNUAL REPORTS

Upon the written request of Lessor, but not more often than once in any twelve month period, Lessee will furnish to the Lessor an accurate statement, as at the preceding December 31, (a) showing the description and numbers of the Cars then leased hereunder, the amount, description and numbers of all Cars that may have been lost, destroyed or irreparably damaged since the date as of which the previous statement was furnished (or since the date of delivery of the Cars, in the case of the first such statement), and such other information regarding the condition and state of repair of the Cars as Lessor may reasonably request, and (b) stating that, in the case of any Cars repainted or re-stencilled by Lessee during the period covered by such statement, the markings required by Section 4 hereof shall have been preserved or replaced.

Lessor and/or its assignee shall have the right, at its sole cost and expense, by its authorized representatives, to inspect the Cars and Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor and/or its assignee the existence and proper maintenance thereof during the term of this Lease.

SECTION 9. MAINTENANCE, COMPLIANCE WITH LAWS AND RULES, AND INDEMNIFICATION

Lessee agrees that during the term of this Lease, at its own cost and expense, it will maintain and keep each Car that is subject to this Lease in good order and repair, normal wear and tear excepted, unless or until it shall be lost, destroyed or irreparably damaged in accordance with Section 7 hereof. If Lessor shall receive any payment based on the provisions of the Code of Rules as a result of damage to any Car, excluding, however, any payment received by Lessor as a result of

irreparable damage to any of the Cars, Lessor shall promptly thereafter send to Lessee Lessor's check payable to the order of Lessee in an amount equal to such payment to be used by Lessee, together with such additional funds of Lessee as may be required, to fully and completely repair such damage.

Lessee agrees to comply with all Governmental laws, regulations, requirements and rules (including the rules of the Interstate Commerce Commission) with respect to the use, maintenance and operation of each Car subject to this Lease. In case any equipment or appliance on any such Car shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Car in order to comply with such laws, regulations, requirements and rules Lessee agrees to make such changes, additions and replacements, at its expense; and Lessee further agrees to maintain such Car in full compliance with such laws, regulations, requirements and rules so long as it is subject to terms and conditions of this Lease. Lessor agrees to furnish to Lessee a complete set of drawings and engineering data required by Lessee to maintain the Cars in accordance with this Section 9.

Any parts installed or replacements made by Lessee upon any Car shall be considered accessions to such Car and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.

Except as provided in Section 10 hereof, Lessee agrees to indemnify and save harmless Lessor against any charge or claim made against Lessor, and against any expense or liability (including but not limited to counsel fees and expenses) which Lessor may incur in any manner by reason of its ownership of (other than matters relating to Lessor's title to such Cars, Lessor's tax treatment with respect to the Cars, to its corporate existence, or latent defects in workmanship or materials not disclosed by a reasonable inspection), or which may arise in any manner out of, in connection with, or as a result of the existence, use or operation of each Car during the term of this Lease, and to indemnify and save harmless Lessor against any claim or suit on account of any occurrence in connection with the operation of such Car resulting in damage to property, including but not limited to commodities loaded or shipped in the Cars, or injury to any person or persons.

Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, to file on behalf of Lessor) any and all reports required to be filed by Lessor with any Federal, State or other regulatory authority by reason of the ownership by Lessor of the Cars or the leasing of the Cars to Lessee or to file same on Lessor's behalf.

SECTION 10. PATENT INDEMNITIES

Lessor agrees to indemnify, protect and hold Lessee harmless from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Lessee or any sublessee or user of the Cars because of the use in or about the construction or operation of the

Cars of any design, article or material infringing or claimed to infringe on any United States patent or other right. Lessee shall give notice to Lessor of any claim known to Lessee from which liability may be charged against Lessor hereunder.

SECTION 11. LESSOR'S WARRANTY OF MATERIAL AND WORKMANSHIP

Lessor warrants that at the time of delivery to Lessee the Cars will be free from defects in material and workmanship under normal use and service; Lessor's obligation under this Section 11 is limited to making good at a plant of Pullman Standard, a division of The M.W. Kellogg Company, formerly known as Pullman Incorporated, any part or parts of any Car which shall, within one year after the delivery of such Car to Lessee, be returned to Lessor's plant or delivered to another plant or repair shop approved by Lessor with transportation charges prepaid and which Lessor's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of Lessor is expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on the part of Lessor, except for its obligations under Section 1 and Section 10 hereof, and Lessor neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Cars, except as aforesaid.

Lessor agrees that Lessee as well as Lessor and The M.W. Kellogg Company, to the extent permitted by law, may make and prosecute claims against vendors of articles, materials, systems, formulae and processes purchased by The M.W. Kellogg Company for incorporation into the Cars for the breach of any warranty by the vendors with respect to such items. Lessor, The M.W. Kellogg Company and Lessee each shall notify the others prior to the assertion of any claim by them against any such vendors. If Lessor and The M.W. Kellogg Company determine that they have no interest in any such claim asserted by Lessee, Lessor and The M.W. Kellogg Company agree to assign to Lessee, solely for the purpose of making and prosecuting any such claim, all of the rights which Lessor and The M.W. Kellogg Company have against such vendor for the breach of warranty or other representation respecting the items manufactured by such vendor. Lessor and The M.W. Kellogg Company agree to assist Lessee in the making and prosecuting of any such claim and Lessee agrees to reimburse Lessor and The M.W. Kellogg Company for any costs and expenses incurred by them or either of them in connection therewith.

SECTION 12. POSSESSION AND USE

Except as otherwise provided in Section 16 hereof, Lessee, so long as it shall not be in default under this Lease, shall be entitled to the possession of the Cars and the use thereof in the United States of America (or any State thereof, except Alaska and Hawaii, or the District of Columbia) and/or in international service between the United States of America (or any State thereof, except Alaska and Hawaii, or the District of Columbia) and Canada and/or Mexico upon the lines of railroads owned or operated by it either alone or jointly with another and whether under lease or otherwise, and upon lines of railroads owned or operated by any railroad company controlled by, or under common control with, Lessee, or over which Lessee has trackage rights, and the Cars may be used also upon connecting and other railroads and car

ferries in the usual interchange of traffic but only upon the terms and conditions of this Lease. Lessee may sublease all or any number of the Cars for use in the United States of America (or any State thereof, except Alaska and Hawaii, or the District of Columbia) and/or in international service between the United States of America (or any State thereof, except Alaska and Hawaii, or the District of Columbia) and Canada and/or Mexico without securing the consent of Lessor. Any such subleasing of the Cars shall in no way relieve Lessee from any of its obligations to Lessor under this Lease. Notwithstanding the foregoing provisions of this Section 12, none of the Cars shall be used predominantly outside of the United States of America within the meaning of Section 48 (a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall Lessee sublease the Cars to or permit their use by any person in whose hands such Cars would not qualify as "section 38 property" within the meaning of such Code.

SECTION 13. RETURN OF CARS UPON EXPIRATION OF TERM

Lessee, at its cost and expense, shall redeliver each Car and each part thereof to Lessor on the date on which the term of this Lease expires with respect to such Car at the place to which Lessor has prepaid freight in accordance with Section 1 hereof or at such other point or points as may be mutually agreed upon by Lessor and Lessee in good order and running condition, normal wear and tear excepted, unless such Car shall have been theretofore lost, destroyed or irreparably damaged. Lessee, at its option, may redeliver any Car to Lessor during the thirty (30) calendar day period immediately preceding the date on which the term of this Lease with respect to such Car expires. If Lessee shall elect to so redeliver any Car, the rental on such Car shall cease on the date on which such Car is so redelivered to Lessor. Except as otherwise provided in this Section 13, in the event that any Car is not redelivered to Lessor on or before the date on which the term of this Lease with respect to such Car expires, all of the obligations of Lessee under this Lease with respect to such Car shall remain in full force and effect until such Car is redelivered to Lessor, provided, however, that the daily rental for each such Car during such period shall be one and one-half times the pro rata daily rental rate specified in Section 2 hereof for a maximum period of one (1) year after such termination date unless Lessor and Lessee shall otherwise agree in writing prior to the date on which the term of this Lease with respect to such Car expires. If Lessee, for any reason, shall fail to redeliver any of such Cars during such one (1) year period, Lessee shall pay to Lessor, on the date that such one (1) year period expires, a sum equal to the then depreciated value of such Car or Cars using the American Association of Railroads schedule of depreciation.

SECTION 14. DEFAULT

If, during the term of this Lease, one or more of the following events (herein sometimes called Events of Default) shall occur:

- A. Default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue for 10 days;

- B. Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Cars, or any thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Cars within 30 days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession;
- C. Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for 30 days after written notice from Lessor to Lessee specifying the default and demanding the same to be remedied; or
- D. Any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of Lessee hereunder), and all the obligations of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for Lessee or for the property of Lessee in connection with any such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, Lessor, at its option may

- (a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or
- (b) By notice in writing to Lessee terminate this Lease, whereupon all right of Lessee to the use of the Cars shall absolutely cease and determine as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Cars for any purpose whatever; but Lessor shall nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for each Car for any number of days less than a full rental payment period by multiplying the pro rata daily rental specified in Section 2 hereof by the number of such days) and also to recover forth-

with from Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Car, which represents the excess of the present worth, at the time of such termination, of all rentals for such Car which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Car over the then present worth of the then fair rental value of such Car for such period computed by discounting to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Car during such period, such present worth to be computed in each case on the basis of a per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental. If Lessor exercises the rights granted to it in this paragraph (b), Lessor agrees to use its best efforts to lease such cars to others after taking possession of the cars and to credit such net rental against its damages calculated above.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make the rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf in connection with the lease of the Cars.

The failure of Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 15. RETURN OF CARS UPON DEFAULT

If Lessor shall terminate this Lease pursuant to Section 14 hereof, Lessee shall forthwith deliver possession of all Cars then covered by this Lease to Lessor. For the purpose of delivering possession of any Car or Cars to Lessor as above required, the Lessee shall at its own expense and risk (except as hereinafter stated)

- A. Forthwith place such Cars upon such storage tracks as Lessor may designate or, in the absence of such designation, as Lessee may select,
- B. Permit Lessor to store such Cars on such tracks for a period not exceeding two months at the risk of Lessor, and

- C. Transport the same, at any time within _____ period designated by Lessor, to any place on the lines of Lessee, if Lessee is a railroad, otherwise to any place on the lines of any railroad designated by Lessor for shipment to Lessor.

The redelivery, storage and transporting of the Cars as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to redeliver, store and transport the Cars. Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 15, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Car to Lessor, to demand and take possession of such Car in the name and on behalf of Lessee from whosoever shall be at the time in possession of such Car.

SECTION 16. ASSIGNMENTS

Lessee will not sell, assign, transfer or otherwise dispose of its rights under this Lease or, except as provided in Section 12 hereof, transfer the right to possession of any Car without first obtaining the written consent of Lessor.

All or any of the rights, benefits and advantages of Lessor under this Lease, including the right to receive the payments herein provided to be made by Lessee, may be assigned by Lessor and reassigned by any assignee at any time or from time to time. No such assignment shall relieve Lessee of any of its obligations hereunder.

Upon any such assignment, either the assignor or the assignee shall give written notice to Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee. From and after the receipt by Lessee of the notification of any such assignment, all payments thereafter to be made by Lessee hereunder shall, to the extent so assigned, be made to or for the account of the assignee in such manner as it may direct.

In the event of any such assignment by Lessor, this Lease and all of Lessee's rights under this Lease and all of the rights of any person, firm or corporation who claims or who may hereafter claim any rights under this Lease under or through Lessee are hereby made subject and subordinate to the rights of any assignee, trustee, or other holder of the legal title to the Cars under any conditional sale agreements, agreements and assignments and/or equipment trust agreements covering the Cars or any of them heretofore or hereafter created and entered into by Lessor, its successors or assigns, in the event of the occurrence of an event of default by Lessor under such agreement. Any sublease of the Cars or any of them permitted by this Lease that is entered into by Lessee, its successor assigns, shall contain language which expressly makes such sublease subject to the subordination contained in this Section 16.

Lessee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Lease or of all or any of the rights of Lessor hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by Lessor as hereinbefore provided the rights of such assignee to the entire unpaid rental or to such part thereof as may be assigned as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Lessor in respect of the Cars or in respect of any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Lessee by Lessor. Any and all such obligations howsoever arising, shall be and remain enforceable by Lessee against and only against Lessor.

In the event of any such transfer or assignment, or successive transfers or assignments by Lessor, of title to the Cars and of Lessor's rights hereunder in respect thereof, Lessee will, at Lessor's expense, whenever requested by such transferee or assignee, change or cause the change of the markings to be maintained on each side of each Car so as to indicate the title of such transferee or assignee to the Cars, such markings to bear such words or legend as shall be specified by such transferee or assignee.

Nothing in this Section 16 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Cars or possession of the Cars to any corporation (which shall have assumed the obligations hereunder of Lessee) into which it shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

If this Lease shall have been assigned by Lessor and the assignee shall not make payment to Lessor with respect to the Cars as provided in the instrument making such assignment, Lessor will promptly notify Lessee of such event and if such payment shall not have been previously made by the assignee, Lessee, will, not later than ninety (90) days after the date such payment was due, pay or cause to be paid to Lessor the rental then due for such Cars in accordance with Section 2 hereof.

SECTION 17. PURCHASE OPTION

Provided that this Lease has not been terminated earlier and that Lessee is not in default hereunder, Lessee may, by giving written notice to Lessor not less than ninety (90) days prior to the end of the original term of this Lease or any extended term of this Lease, elect to purchase all (but not less than all) of the Cars then covered by this Lease on the date of the expiration of the original term, or such extended term, as the case may be, of this Lease at the "Fair Market Value" of such Cars.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the price which would be obtained in an arm's-length transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed seller under no compulsion to sell and, in such determination, cost of removal from the location of

current use shall not be a deduction from such value. If after twenty (20) days from the giving of notice by Lessee of Lessee's election to purchase the Cars Lessor and Lessee are unable to agree upon a determination of Fair Market Value, such value shall be determined in accordance with the foregoing definition by the following procedure: If either Lessor or Lessee shall have given written notice to the other party requesting determination of such value by this appraisal procedure, Lessor and Lessee shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within ten (10) business days after such notice is given, Lessor or Lessee may apply to make such appointment, to the American Arbitration Association, and both parties shall be bound by the appointment so made. Any appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Cars within sixty (60) days after his appointment. The determination of Fair Market Value of the appraiser appointed pursuant to this paragraph shall be final. The appraiser proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date of this Lease, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and Lessor and Lessee hereby consent and agree not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

SECTION 18. RECORDING

At the request of Lessor, Lessee will, without expense to Lessor, cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. Lessee will, at its expense, from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of proper protection, to the satisfaction of counsel for Lessor, of its title to the Cars, or for the purpose of carrying out the intention of this Lease; and Lessee will promptly furnish or cause to be furnished to Lessor certificates or other evidences of such filing, registration or recording.

SECTION 19. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder shall result in the obligation on the part of Lessee to pay also an amount equal to interest at a rate above the best rate on loans to substantial and responsible commercial borrowers in effect from time to time at Mellon Bank, N.A. on overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

SECTION 20. NOTICES

Any notice or demand required or permitted to be given by Lessor or Lessee to the other party shall be deemed to have been given when in

writing duly addressed as hereinafter provided and deposited as Certified or Registered Mail, return receipt requested, in the official governmental mail with adequate postage prepaid:

If to the Lessor: Pullman Leasing Company
200 South Michigan Avenue
Chicago, Illinois 60604

If to the Lessee: BRAE Corporation
Suite 3100
Four Embarcadero Center
San Francisco, California 94111

or addressed to such other address as Lessor and/or Lessee may hereafter furnish in writing from time to time. Any notice hereunder to any assignee of Lessor or of Lessee shall be deemed to be properly given if delivered or mailed in the foregoing manner to such assignee at such address as may have been furnished in writing to Lessor or Lessee, as the case may be, by such assignee.

SECTION 21. SEVERABILITY

Any provision of this Lease 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 unenforceable such provision in any other jurisdiction.

SECTION 22. EXECUTION IN COUNTERPARTS

This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument which shall be sufficiently evidenced by any such original counterpart. Although this Lease is dated as of the date shown in the first paragraph hereof, for convenience, the actual date or dates of execution thereof by the Lessor and Lessee hereto is, or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 23. SECTION HEADINGS

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

SECTION 24. LAW GOVERNING

This Lease shall be construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred 49 U.S.C. 11303 if this Lease is recorded in accordance with Section 18 hereof.

SECTION 25. EFFECT AND MODIFICATION

This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the Cars and supersedes all other agreements, oral or written, with respect to the Cars. No variation of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and Lessee.

IN WITNESS WHEREOF, Lessor and Lessee, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

ATTEST:

William C. Edridge
Assistant Secretary

PULLMAN LEASING COMPANY

By Hugh W. Dorte - OK
President WOE

ATTEST:

Robert E. Fawell
Assistant Secretary

BRAE CORPORATION

By James M. J. J. J.

EXHIBIT A

<u>DESCRIPTION OF CARS</u>	<u>QUANTITY</u>	<u>CAR NUMBERS</u>
4,000 cubic foot capacity triple open hopper cars built in accordance with General Specification No. 4065, dated April 23, 1981, as amended by Addendum No. 1 thereto dated June 25, 1981, of the Pullman Standard Division of The M.W. Kellogg Company.	100	DC 6000 thru 6099, both inclusive

EXHIBIT B

CERTIFICATE OF ACCEPTANCE

The undersigned, being the duly authorized representative of BRAE Corporation (hereinafter referred to as "Lessee") hereby certifies that the following railroad equipment:

100 - 4,000 cubic foot capacity triple open hopper cars numbered
DC 6000 - 6099, both inclusive

has been delivered in good order and running condition by Pullman Leasing Company (hereinafter referred to as "Lessor"), was inspected and found to be clean, and was accepted by the undersigned on
at Butler, Pennsylvania on behalf of Lessee, in accordance with
the provisions of the Lease of Railroad Equipment dated as of the 21st day of May, 1981 between Lessor and Lessee.

Dated this day of , 19 .

Duly Authorized Representative of
BRAE Corporation