

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

ROBERT J. CORBER
(202) 429-8108

December 16, 1988

8-351A100
No. DEC 16 1988
Date
Fee \$ 13.00
ICC Washington, D.C.

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

DEC 16 1988 10:45 AM
6082
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. Lease Agreement dated as of October 5, 1986 between Brae Transportation, Inc., lessor, and Soo Line Railroad Company, lessee.

The equipment subject to this document consists of 100 rail cars bearing marks SOO 121200 - 121299, inclusive.

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

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

Lessee: Soo Line Railroad Company
Soo Line Railroad Building
P.O. Box 530
Minneapolis, MN 55440

DEC 16 10 58 AM '88
10700 Spear Street
San Francisco, CA 94105

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

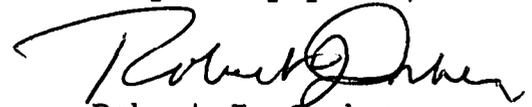
A short summary of the document to appear in the index follows:

Countersigned by Robert J. Corber

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

1. Lease Agreement dated as of October 5, 1986 between Brae Transportation, Inc., and Soo Line Railroad Company covering railcars marked SOO 121200 - 121299, inclusive.

Very truly yours,



Robert J. Corber
Attorney for Brae
Transportation, Inc.

Enclosures as stated

INTERSTATE COMMERCE COMMISSION
COPY
DEC 4 6 1988 10:15 AM
1 6082
RECORDATION NO. 1425

LEASE OF RAILROAD EQUIPMENT

THIS AGREEMENT, made as of this fifth day of October, 1986, between BRAE Transportation Inc, a Delaware corporation ("Lessor"), and the Soo Line Railroad Company ("Lessee"); The parties wish to enter into this Agreement with respect to the lease of certain railroad equipment subject to the following terms and conditions.

NOW, THEREFORE, the parties mutually agree as follows:

I. LEASE OF EQUIPMENT. Lessor agrees to furnish and lease to Lessee and Lessee agrees to lease from Lessor upon the terms and conditions set forth herein a number of items of equipment of the type and description set forth in Schedule(s) hereto and by this reference made a part hereof. The scheduled items of equipment are hereinafter called collectively "Cars" and each individual item of equipment is hereinafter called a "Car".

It is understood by the parties that Lessor shall at all times be and remain the owner of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with Lessor's ownership and that it will take such action and execute such documents as may be necessary to preserve the Lessor's rights in accordance with this understanding.

II. TERM. The term of the Lease with respect to any Car shall be the term specified in the Schedule(s) to this Agreement, unless sooner terminated or extended in accordance with the provisions of this Agreement. This Agreement shall become effective as to any Car or Cars immediately upon Acceptance and Delivery in accordance with Section III hereof.

III. DELIVERY AND ACCEPTANCE. Prior to delivery of the Cars, Lessee will have the opportunity, at its own expense and risk, to inspect the Cars. If upon such inspection Lessee rejects any Car as not being in good operating condition or as not being in compliance with all applicable requirements of the AAR or Federal Railway Administration ("FRA"), Lessee will provide Lessor with written notice of the deficiencies requiring correction.

At no expense to Lessee, Lessor shall deliver Cars to Lessee's railroad tracks as soon as possible following the execution of this Agreement, provided however, that Lessor shall provide Lessee with not less than five days telephonic or telex notice of the time and place of delivery of any Cars. Within five days of delivery to Lessee's railroad tracks, Lessee shall inspect any Car not previously inspected by Lessee and shall notify Lessor of any deficiencies requiring correction.

Following receipt of notice from Lessee that any Car requires repair in order to place such Car in satisfactory operating condition or in compliance with all such applicable requirements of the AAR or FRA, Lessor shall have the right, but not the obligation, to take whatever steps it deems appropriate to correct the defects, or to

designate a substitute Car or Cars. Such repaired or substituted Car shall thereupon be inspected by Lessee, and if such Car then meets such standards it shall be deemed acceptable to Lessee.

If within five days of delivery of any Car to Lessee pursuant to this section, Lessee shall not have rejected such Car, such Car shall become subject to all the terms and conditions of this Agreement. Any Car repaired or substituted following delivery to Lessee's railroad tracks shall become subject to all terms and conditions of the Agreement following satisfactory completion of the repairs or such substituton.

IV. RAILROAD MARKINGS AND RECORD KEEPING. Upon delivery and acceptance of any Car, and prior to any loaded use of such Car by Lessee, Lessee shall cause such Car to be remarked at its expense with the railroad reporting marks of Lessee. Lessor and Lessee agree that any Car may also be marked with the name of Lessor or any secured party under a financing agreement affecting such Car, and that such markings will be maintained by Lessee throughout the term of this Agreement. Lessee shall not otherwise apply markings to any Car without Lessor's prior consent. All such markings shall comply with applicable regulations.

At no cost to Lessor, Lessee shall cause to be prepared and filed all documents relating to the registration, maintenance, and operation of the Cars, including but not limited to: (i) AAR documents; (ii) registration in the UMLER and Official Railway Equipment Register; and (iii) other such reports as may be required by the ICC and/or other regulatory agencies.

Lessee shall perform all record keeping functions relating to the use and operation of the Cars by Lessee and other railroads in accordance with the Interchange Rules and AAR railroad interchange agreements, such as car hire reconciliation. All record-keeping performed by Lessee hereunder and a record of all payments, charges, maintenance, and correspondence related to the Cars shall be maintained in a form suitable for inspection during reasonable business hours by Lessor from time to time. Lessee shall supply Lessor with monthly reports regarding the use of the Cars by Lessee and by other railroads as Lessor may reasonably request.

V. RENTAL.

VI. REPAIR AND MAINTENANCE. Except where responsibility is placed on others or as otherwise provided herein, Lessor, at its expense agrees to maintain the Cars in good condition and repair according to the applicable rules of the AAR and FRA. 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 Lessor. Lessee shall be liable to Lessor for any cleaning, servicing, or repairs not noted at time of interchange. Lessee shall promptly report to Lessor any damage or other condition of any Car which Lessee considers will make such Car unsuitable for use.

To the extent provided above, Lessor, at its sole expense shall make or cause to be made such inspections of, and perform such maintenance, repairs, alterations, modifications or replacement of parts as may be necessary to keep the Cars in good operating condition throughout the term of this Lease. Upon request of Lessor, and at Lessor's sole expense, Lessee shall, if able, perform

any necessary maintenance and repairs to Cars on Lessee's railroad tracks, in accordance with the Interchange Rules, and at rates not in excess of the lower of either of those rates published by the AAR for labor and materials, or the lowest rate charged by Lessee to any non-affiliated third party. Lessee may make running repairs in accordance with the Interchange Rules and standards, at Lessor's expense, to facilitate continued immediate use of a Car, provided, however, that any major repairs shall not be performed without prior approval from Lessor. Lessee shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Lessor's prior written consent. If Lessee makes or causes to be made an alteration, improvement or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration and any costs reasonably incurred by Lessor to restore any Car to its condition prior to such Lessee-caused change. Title to any such alteration, improvement, or addition shall be and remain with Lessor.

VII. POSSESSION AND USE. 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 secured party under any financing agreement entered into by Lessor in connection with the acquisition or ownership of some or all of the Cars; i.e., upon notice to Lessee from any such secured party that an event of default has occurred and is continuing under such financing agreement, such secured party may require that all rent be paid directly to such secured party and/or that the Cars be immediately returned to such secured party.

Lessee agrees that to the extent it has physical possession and control of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which they may be located and in compliance with all lawful acts, regulations, rules, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rules, regulations, or orders in any reasonable manner at the expense of the contesting party.

Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim (other than a lien on the leasehold interest of Lessee which may exist by virtue of the First and General Mortgages of Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, each dated as of January 1, 1944, and the First and General Mortgages of Wisconsin Central Railroad Company, each dated as of January 1, 1954, which mortgages were assumed by Lessee under Supplemental Indentures dated as of January 1, 1961) 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 to duly discharge any

such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time during the term hereof.

Lessee agrees that it shall not during the term of this Agreement use or fail to use the Cars in any manner within the meaning of Sections 48(a)4 or 48(a)5 of the Internal Revenue Code of 1954, as amended, as to disqualify said Cars from tax benefits otherwise available to Lessor. Lessee further agrees to operate the Cars predominantly within the 48 contiguous states of the United States.

VIII. INDEMNIFICATION AND INSURANCE From the date of Acceptance of each Car under Section III hereof until the termination of this Agreement with respect to each such Car, the possession, use, and operation of such Car shall be at the sole risk and expense of the Lessee. Lessee shall indemnify and save harmless the Lessor from and against all liability, cost and expense arising during the term of this Agreement with respect to each Car from: (a) any and all loss or damage of or to the Cars, other than resulting from (i) Lessor's failure to perform repair and maintenance in accordance with Article VI hereof, or (ii) usual wear and tear; and (b) any claim, cause of action, damages or liability (including reasonable attorney fees and expenses in connection therewith) which the Lessor may incur in any manner by reason of its leasehold obligations, which may arise in any manner out of, or as a result of, the use or operation of any Car by Lessee. In consideration of Lessee's obligation to indemnify Lessor pursuant to this section, Lessor agrees to assign to Lessee any rights Lessor may have against any third party in connection with any matter so indemnified.

During the term of this Agreement, Lessee shall be responsible for the Cars while in Lessee's possession and control, in the same manner that Lessee is responsible for foreign lines' railroad equipment under AAR Interchange Rules for similar equipment not owned or controlled by Lessee. At its own expense, Lessee shall, at all times while this Agreement is in effect, insure or self-insure the Cars against property damage and public liability claims in the same manner it insures other items of freight equipment owned or controlled by Lessee. Lessee shall furnish Lessor with reasonable evidence of such insurance.

IX. LOSS OR DESTRUCTION OF CARS . The time, methods and amounts of payments for and determinations that a Car is lost, destroyed or damaged beyond repair shall be handled in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations - Freight. A Car which is so determined to be lost, destroyed, or damaged beyond repair shall be removed from the rental calculations of this Agreement on the date Lessee requests a depreciated value statement from Lessor.

Lessee will at all times be responsible to Lessor for the collection from third parties and remittance to Lessor of all amounts for which such third parties may be liable to Lessee, directly or indirectly, by reason of the loss, destruction, or damage beyond repair of any Car while such Car is on the railroad tracks of the third party.

Lessee shall forward to Lessor any such amounts received from third parties immediately upon receipt.

X. TAXES . Lessee will be responsible for, and will promptly pay all property taxes legally levied upon the Cars during the term of this Agreement; provided however, that Lessee need not pay any such tax while it is contesting the validity thereof in good faith and by appropriate proceedings at its sole expense, and provided further that the nonpayment thereof does not in the reasonable opinion of Lessor and Lessee adversely affect the interests of Lessor in the Cars or in this Agreement. Lessee further agrees to file all property tax reports and returns relating to the Cars which it is legally permitted to file, and to comply with all state and local laws requiring the filing of ad valorem tax returns.

Lessee will be responsible for, and shall indemnify and hold harmless the Lessor from, any sales and/or use taxes or similar taxes, tariffs, duties, customs, switching, demurrage or other charges made or imposed by any governmental agency, railroad, or other party in respect of any of the Cars during the term of this Agreement.

XI. TERMINATION . At the expiration of this Agreement as to any Car which has not been lost or destroyed, Lessee will surrender possession of such Car to Lessor by delivering such Car to Lessor at an interchange point on Lessee's railroad tracks designated by Lessor. The Cars shall be returned free of refuse, clean, and suitable for the purpose originally intended, with all outlet gates in normal working order, meeting all federal safety rules and regulations, and meeting all requirements for interchange service for cars of comparable age prescribed in the field manual of the AAR Interchange Rules, then current edition, or successor publication. Upon such delivery, Lessor and Lessee shall conduct a joint inspection of the Cars, and any disputes shall be settled by a third party jointly selected by Lessor and Lessee. For any Car not returned in the condition required hereby, Lessee shall be liable to Lessor for any and all cleaning, repair or servicing costs required to place such Car in such proper condition. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the placing thereon at Lessee's expense of such markings as may be designated by Lessor.

Upon expiration or termination of this Agreement, Lessee agrees to provide storage of the Cars at its expense, upon the prior written request of Lessor, for any or all of the Cars for a period of ninety (90) days from the date of such expiration or termination. Nothing in this paragraph shall give Lessee the right to retain possession of any Car after expiration of this Agreement. Lessee shall not be liable for any losses sustained by Lessor in respect of such stored Car by reason of pilferage, vandalism, damage or destruction resulting from acts of third persons or any cause other than the sole active negligence of Lessee.

XII. INSPECTION . Lessor shall have the right at any time during normal business hours and upon reasonable notice to enter the

premises of Lessee for the purpose of inspecting the Cars and records relating to the Cars to insure Lessee's compliance with its obligations hereunder. Lessee agrees to use its best efforts to arrange for such inspections by Lessor of any Cars which may be located on property not owned by Lessee. Any such inspections shall be at the sole expense and risk of Lessor.

Lessee shall immediately notify Lessor of any accident involving personal injury connected with the malfunctioning or operation of the Cars, including in such report the time, place, and nature of the accident, and other information pertinent to Lessor's investigation of the accident. Lessee shall also notify Lessor in writing within five (5) days after any tax lien or other judicial process shall attach to any Car.

XIII. DEFAULT . The occurrence of any of the following events shall be an Event of Default:

- (i) The nonpayment by Lessee of any sum required to be paid by Lessee within ten (10) days after such payment is due and unpaid;
- (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after receipt of written notice from Lessor of such breach;
- (iii) Any act of insolvency or bankruptcy of 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 if such actions would materially affect the interests of Lessor hereunder;
- (vi) Any action by Lessee to discontinue rail service on any portion of its rail properties if such action could significantly affect utilization of the Cars;
- (vii) Any representation or warranty made by Lessee herein shall prove to have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after written notice of such default has been received.

Upon the occurrence of any such Event of Default, Lessor may, at its option and to the extent permitted by law (including applicable sections of the Federal Bankruptcy Code):

- (i) Terminate this Agreement; proceed by any lawful means to recover damages for a breach hereof (unless the Event of Default shall have arisen pursuant to Section XIII(vi) above); 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 Lessor may lawfully enter upon any premises where the Cars are located and take possession of them and henceforth hold, possess, and enjoy the same free from any right of the Lessee, provided that Lessor 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 Lessor 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 attorneys' fees, incurred by Lessor in connection with the exercise of its remedies pursuant to this section.

XIV. 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 Lessor, which consent shall not be unreasonably withheld, assign this Agreement or any of its rights hereunder to any party, and any purported assignment in violation hereof shall be void. It is understood and agreed that Lessor may assign this Agreement with respect to some or all of the Cars listed on any Schedules hereto. Upon delivery of a notice of such assignment to Lessee, the term "Lessor" as used herein shall mean such Lease Assignee, and Lessor 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 Lessor. Lessor warrants that any Lease Assignee of the Cars will subject such Cars to all the terms and conditions of this Lease.

B. 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 hereby created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as lessee.

C. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power, or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any further exercise thereof or the exercise of any other right, power,

or remedy.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

E. 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 other party as set forth below.

F. This Agreement represents the entire agreement, and shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below to be effective as of the date first above written.

BRAC TRANSPORTATION INC

By: Donald B. Littlefield

Its: President - RAC Division

Attn: President - RAC Division

Suite 300, FOUR EMBARCADEO CENTER
SAN FRANCISCO, CA 94111

Date: 1/3/87

SOO LINE RAILROAD COMPANY:

By: Emil J. [Signature]

Its: Executive VP Operations

Attn: General Manager-Equipment
Soo Line Building
PO Box 530
Minneapolis, MN 55440

Date: 1/9/87

SCHEDULE NO. 1

To Lease of Railroad Equipment dated as of October 5, 1986 between BRAE Transportation Inc. ("Lessor") and The Soo Line Railroad Company ("Lessee").

I. EQUIPMENT: 100, 4000-cu.ft., 100-ton capacity open top hoppers, riveted construction, equipped with rotary couplers, built 1981

Car Numbers: DC 6000 through 6099

II. LEASE TERM shall be five years from the Rental Start Date.

III. LEASE RENTAL: For purposes of this Schedule No. 1, "Payments" shall consist of (i) all per diem and mileage compensation received from other railroads for the off-line use of the Cars, and (ii) time and mileage compensation for loaded, on-line use calculated at On-line Rates. Lease Rental shall be an amount equal to the sum of: (i) 100% of all Payments up to \$300.00 per Car per month, (ii) 25% of all Payments from \$300 per Car per month to \$500 per Car per month, (iii) 10% of all Payments in excess of \$500 per Car per month, and (iv) \$0.03 per mile for empty and loaded mileage up to 1000 miles per Car per month and \$0.01 per mile for empty and loaded mileage in excess of 1000 miles per Car per month.

IV. ON-LINE RATES shall be \$0.70 per hour and \$0.075 per mile.

V. BASE RENTAL shall be \$275.00 per Car per month.

VI. REGULATORY CHANGES: If the ICC or any successor governmental agency, or any other regulatory body or any court shall at any time have in effect any order or take any other action, the effect of which (1) causes the Cars to incur storage charges or empty mileage charges while on other railroads or (2) otherwise reduces the Lease Rental to an amount less than \$300.00 per Car per month, Lessor shall have the right to terminate this Agreement; provided, however, that Lessee shall have the right to retain the use of the Cars by paying an amount equal to the difference between \$300.00 per Car per month and the Lease Rental within ten days of notice of Lessor's intention to so terminate.

VII. RENTAL START DATE: For purposes of the Agreement, Lease Rental shall commence to accrue from the earlier of: (i) the first loaded use by Lessee of any Car or Cars, or (ii) _____, 1986 (the "Rental Start Date").

BRAE TRANSPORTATION INC.

By:

Donald B. Littlefield

Its:

President - Rail Division

Date:

4/12/87

SOO LINE RAILROAD COMPANY

By:

Carl J. Linnick

Its:

Executive VP Operations

Date:

1/9/87