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RECORDATION NO. FILED 1988
NOV 17 1988-9 20 AM
INTERSTATE COMMERCE COMMISSION

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November 17, 1988

8-322A030
No. NOV 17 1988
Date
Fee $ 39.00
ICC Washington, D. C.

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

1 6036
RECORDATION NO. FILED 1988
NOV 17 1988-9 20 AM
INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

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

1. Lease Agreement dated as of June 13, 1986 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee.

2. Amendment No. 1 dated as of October 15, 1987 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee.

3. Equipment Schedule No. 3 dated as of October 11, 1988 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee.

The equipment subject to these documents consists of 440 covered hopper cars bearing the marks of KYLE as stated in the Equipment Schedule No. 3.

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: Kyle Railroad Company
3rd & Railroad Avenue
Phillipsburg, Kansas 67661

Please file and record the documents and index them under the names set forth above. Since the documents relate to

the same transaction, it is requested that all be assigned the same recordation number with consecutive letter designation for each document after the first listed above.

A fee of $39.00 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:

1. Lease Agreement dated as of June 13, 1986 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee, covering covered hopper cars marked as shown in equipment schedule.

2. Amendment No. 1 dated as of October 15, 1987 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee, covering covered hopper cars marked as shown in equipment schedule.

3. Equipment Schedule No. 3, dated as of October 11, 1988 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee, covering covered hopper cars marked as shown in document.

Very truly yours,

Robert J. Corber
Attorney for Brae
Transportation, Inc.

Enclosures as stated

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

I, Suzanne Guido, a Notary Public in and for the State of California, duly commissioned and sworn, do certify that on this 21 day October, in the year 1988, I carefully compared the annexed copy of the lease agreement with the original thereof, and that the same is a full, true and correct copy of said original lease agreement.

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

OFFICIAL SEAL
SUZANNE GUIDO
NOTARY PUBLIC-CALIFORNIA
City and County of SAN FRANCISCO
My Commission Expires Aug. 14, 1989

[seal]

Suzanne Guido
Notary Public

My commission expires: 8.14.89

1 6036

NOV 17 1986 5 00 AM

INTERSTATE COMMERCE COMMISSION

BRAE TRANSPORTATION, INC.

LEASE AGREEMENT

LEASE AGREEMENT ("Agreement"), dated as of June 13, 1986 between BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 ("BRAE"), as lessor, and Kyle Railroad Company, 3rd & Railroad Avenue, Phillipsburg, Kansas, ("Lessee"), as lessee.

1. Scope of Agreement

A. 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."

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

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 when such Car has been delivered, as provided in Section 3A hereof, and shall continue until September 1, 1991 (the "Lease Term"), provided however, that BRAE or Lessee may terminate this Agreement effective as of August 31 of each year commencing August 31, 1987, as to all, but not less than all, of the Cars by written notice delivered to the other not less than 60 days prior to such date of termination. BRAE shall exercise its best, good faith efforts to deliver the Cars listed on Schedule 1 in the amounts and prior to the dates shown on such Schedule 1.

3. Supply Provisions

A. BRAE will cause the Cars to be delivered to Lessee by causing them to be diverted to Lessee's railroad tracks. Each of the Cars shall be deemed to be delivered to Lessee upon its arrival at Lessee's tracks. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after execution and delivery of this Agreement as is consistent with mutual convenience and economy. Due to the nature of the railroad operations in the

United States, BRAE can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Hereinafter, Interchange Rules shall mean all codes, rules, interpretations, laws or orders governing hire, service, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the AAR and any other organization, association, agency or governmental authority, including the ICC and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

B. So long as Lessee shall have on lease any Cars, Lessee shall not lease nor commit to lease any freight cars to load grain which it does not lease as of the date hereof without the prior written consent of BRAE, such consent not to be unreasonably withheld; provided however, that subsequent to the date hereof, Lessee may, without the prior written consent of BRAE, lease freight cars ("New Cars") to load grain if for each calendar month or part thereof in which the New Cars are under lease, (i) Utilization, on a calendar month basis, is at least 60%, or (ii) Lessee's right to receive revenue sharing payments pursuant to Section 6B, if any, is reduced by an amount equal to the difference between the Payments actually received by BRAE in respect of said calendar month and the amount of Payments BRAE would have received if Utilization in said calendar month had been 60%; and provided further, that if, in any month, the amount that Lessee is entitled to receive as revenue sharing pursuant to Section 6B is less than the amount by which said revenue sharing is to be reduced, the difference shall be carried forward and deducted from future revenue sharing payments, if any, to be made to Lessee pursuant to Section 6B. Except for the 300 cars presently leased from BRAE and the 100 cars presently leased from Pullman Leasing Company, Lessee shall load, or order the loading of, all Cars on its tracks, as is reasonably practicable without incurring excess empty mileage or excess switching charges, prior to loading, or ordering the loading of, (i) any substantially similar freight cars of other railroads interchanged onto Lessee's tracks; (ii) any substantially similar freight cars placed in assigned service on Lessee's tracks subsequent to the date hereof; or (iii) any substantially similar freight cars purchased or leased by Lessee subsequent to the date hereof; provided however, that this shall in no event prevent or prohibit Lessee from fulfilling its common carrier obligations to provide transportation and services upon reasonable request therefor to shippers on its railroad tracks; provided further, that the foregoing priority loading obligation shall not apply during the period commencing on the date hereof and ending at midnight, San Francisco time, on December 31, 1986 to those Cars ("Late Delivered Cars"), if any, not delivered on or before the delivery dates set forth on Schedule 1; and provided further, that at all times prior to January 1, 1987, Lessee shall use its best, good faith efforts to load the Late Delivered Cars, as often as Lessee

loads all substantially similar freight cars then available to Lessee for loading. Lessee further agrees to instruct its management and advise the covered hopper shippers in writing of this priority loading in accordance with such provision. Lessee shall maintain records in accordance with the Interchange Rules with respect to loadings and shipments and furnish such records upon reasonable request by BRAE to verify that it is priority loading the Cars as herein provided.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties hereto. Such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by BRAE and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery of any Car to Lessee shall be subject to availability, manufacturer's delivery schedules, and the availability of financing on terms satisfactory to BRAE.

D. 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, provided however, that the average hourly per diem rate of the Cars and all other cars leased to Lessee by BRAE as of the date hereof does not exceed 75 cents. Any Cars replaced will be marked with Lessee's markings at BRAE's expense.

4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that promptly upon delivery of each Car to Lessee, Lessee shall mark such Car at BRAE's expense, such expense not to exceed the amount per Car set forth on Schedule A, with the railroad markings of Lessee as required by Interchange Rules. 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. All such names, insignia and other information shall comply with all applicable regulations. All such markings shall be at BRAE's cost and expense. At termination or expiration of the Lease, the remarking of the Cars shall be at Lessee's cost and expense.

B. At no cost to Lessee, BRAE shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but shall not be limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2 or for rescission from such relief; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies. Lessee agrees to take such action, including but not

limited to, the execution and delivery of appropriate AAR documents as are required to designate some or all of the Cars as exempted from AAR Car Service Rules 1 and 2 or as may be required to rescind such designation. Any such application for or rescission from such relief shall be made only on the mutual agreement of the parties.

C. 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; provided however, that BRAE shall not be responsible for any fee assessed by such publication for the listing or registration of Lessee itself, as distinguished from the registration of additional equipment to Lessee. BRAE shall, on behalf of Lessee, perform recordkeeping 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 BRAE shall select. Lessee and BRAE agree that BRAE shall continue to provide such record keeping functions in accordance with prior agreements thereto until such time as BRAE gives Lessee written notice of discontinuance and Lessee approves such discontinuance.

D. 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. BRAE will furnish at the reasonable request of Lessee verification of the Utilization (as defined in Section 6A(iii) hereof) of all Cars. Lessee shall supply BRAE with such reports, including daily telephone reports of the status of Cars on lessee's tracks and monthly reports of Lessee's loading activity, regarding the use of the Cars by Lessee on 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, inform BRAE's maintenance department of such damage or reports of damage, and promptly mail any documentation to BRAE. BRAE will have full control of disposition of damaged Cars and of Cars in need of any maintenance work. Lessee shall be liable to BRAE for any cleaning, servicing, or repairs required which would be the responsibility of another

carrier in accordance with AAR Interchange Rules, but not noted at the time of interchange. 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. Upon request of BRAE, and at BRAE's sole expense, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks, as may be reasonably requested by BRAE. Rates for labor and materials shall be negotiated between Lessee and BRAE, but in no event shall such rates exceed those published by the AAR for labor and materials. 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 and standards at rates for labor and materials negotiated between Lessee and BRAE, but in no event shall such rates exceed those published by the AAR for labor and materials. Lessee shall make such running repairs 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. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration and any costs reasonably incurred by BRAE to restore any Car to its condition prior to such Lessee change. Title to any such alteration, improvement or addition shall be and remain with BRAE (or its assignee).

C. Lessee shall maintain bodily injury and property damage liability insurance on the Cars, such insurance to have minimum coverage of at least $1,000,000 per occurrence. BRAE shall maintain insurance protecting against damage to the Cars and shall also maintain bodily injury and property damage liability insurance on the Cars with minimum coverage of $1,000,000 per occurrence. Lessee shall furnish to BRAE concurrently with the execution hereof, and thereafter at intervals of not more than 12 calendar months, a certificate of insurance with respect to such insurance signed by an independent insurance broker and showing BRAE as an additional named insured on such policy.

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 accruing to Lessee. BRAE and Lessee will comply with all state and local laws requiring the

filing of ad valorem tax returns on the Cars. Lessee will send to BRAE, within five business days after receipt by Lessee from the taxing authorities, any notice of assessment of a tax which BRAE is obligated to pay pursuant hereto. BRAE shall review all applicable tax returns prior to filing.

6. Lease Rental

A. For purposes hereof, the following terms shall have the indicated meanings:

(i) Payments - the term "Payments" shall mean all revenue earned by Lessee from other railroad companies for their use or handling of the Cars, including, but not limited to, mileage charges and hourly car hire payments.

(ii) Car Hour - the term "Car Hour" shall mean one hour during which one Car is on lease hereunder.

(iii) Utilization - the term "Utilization" shall mean, with respect to any period, a fraction, the numerator of which is (x) the aggregate number of Car Hours during which any Payments were earned, and the denominator of which is (y) the aggregate number of Car Hours during such period.

(iv) Base Rental - the term "Base Rental" shall mean, with respect to any period, an amount which is equal to the total Payments earned during such period multiplied by a fraction, the numerator of which shall be 40 percent, and the denominator of which is the actual Utilization for each such period.

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

(i) If Utilization is equal to or less than 40 percent, BRAE shall retain all Payments earned by the Cars;

(ii) If Utilization exceeds 40 percent, BRAE shall retain an amount equal to the Base Rental, plus an amount equal to 50% of all Payments in excess of Base Rental.

(iii) Utilization calculations shall be made on a monthly basis. All sums due hereunder from BRAE shall be paid within 30 days after the end of each calendar month in which such revenue amounts are finally determined in accordance with AAR rules and regulations.

C. BRAE shall be liable for all payments, if any, made to other railroads, to deliver the Cars to Lessee pursuant to Section 3A. If, subsequent to the initial delivery, BRAE pays other railroads to move any or all of the Cars during each of the periods commencing on November 15 of any calendar year and terminating the following May 15, Lessee's right to receive revenue

sharing payments (during any such November 15 to May 15 period) pursuant to Section 6B, if any, shall be reduced by an amount equal to the aggregate of such payments made by BRAE to such railroads. BRAE shall consult with Lessee at least monthly regarding anticipated movement of the Cars and shall make such Car movements to the extent reasonably practicable consistent with the Car supply needs of Lessee.

D. 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 will be promptly paid over to BRAE. BRAE may replace destroyed Cars with cars of same or similar types.

E. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 40%, BRAE may, at its option and upon not less than ten (10) days prior written notice to lessee, terminate this Agreement as to, and request return of, such Cars as BRAE shall determine; provided however, that for those calendar quarters falling during the period commencing on the date hereof and ending at midnight, San Francisco time, on December 31, 1986, (i) the parties shall not include in the calculations of Utilization for such calendar quarters the Car Hours or Payments relating to the Late Delivered Cars, and (ii) BRAE hereby waives its right to terminate this Agreement pursuant to this Section 6E due to such Late Delivered Cars failure to achieve a specified Utilization during such calendar quarters. BRAE shall not be responsible for any tax losses or recaptures incurred by Lessee resulting from BRAE's exercise of its termination rights pursuant hereto.

F. If any Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B hereof, BRAE may terminate the lease with respect to such Car(s) unless Lessee shall have remitted to BRAE an amount equal to the Payments BRAE would have earned if such Cars were in the physical possession and use of another railroad for the entire period. BRAE shall not be responsible for any tax losses or recaptures incurred by Lessee resulting from BRAE's exercise of its termination rights pursuant hereto.

G. 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, the effect of which would be to cause the Cars to incur storage charges while on other railroads, or empty mileage charges while on other railroads, then, as of the effective date of such order, Lessee shall be responsible for paying any and all such

charges and fees due other railroads for storage of the Cars or for empty mileage charges due other railroads with respect to the Cars, provided however, Lessee shall have the option to terminate this Agreement if any such order is placed in effect.

H. 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, the effect of which would (1) cause the Cars to cease earning Payments or (2) reduce the amount of car hire revenue or mileage revenue which the Cars are able to earn as of the date of this Agreement, BRAE shall appoint Lessee as its exclusive agent for the purpose of negotiating car hire rates covering the Cars with other railroads. Notwithstanding the foregoing, BRAE shall have absolute authority in its sole discretion to enter into or refuse to enter into any agreement setting such rates with any other railroad with respect to the Cars.

I. Lessee will not grant or allow any per diem reclaim with respect to any Car without BRAE's prior written consent.

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. Lessee agrees that to the extent it has physical possession and can control use 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 the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting 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 notice of default in payment has been delivered to Lessee.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after notice of such default has been delivered to Lessee.

(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.

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

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

B. Upon the occurrence of any such Event of Default, BRAE may, at its option:

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and terminate Lessee's right of possession and use of the Cars, whereupon all rights 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 attorneys' 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, normal wear and tear excepted, by delivering the same to BRAE at a junction point with a connecting carrier which BRAE shall designate. 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 to the extent provided by the AAR interchange rules and provided further that such cleaning, repair or servicing is the obligation of Lessee in accordance with Paragraph 5. A Car shall be no longer subject to this Agreement upon, at Lessee's expense, the removal of Lessee's railroad markings from such Car and the placing thereon of such markings as may be designated by BRAE, either at the option of BRAE, (1) by Lessee upon return of such Car to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car; provided however, that BRAE may make reasonable selection of a private contractor for the removal of Lessee's markings and application of new markings in lieu of removal and application by Lessee or such railroad line, at Lessee's expense. In any event, if BRAE designates a party other than Lessee to remove markings and re-mark the cars, Lessee's total obligation shall be at the applicable AAR rate. If such Car is not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. In the event it is not possible to load such Car or Cars, Lessee agrees to move such Car or Cars free of charge to such Class One Railroad interchange point(s) on its line as BRAE may designate. 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, or if BRAE agrees to the transfer of

such Car to any railroad, as lessee or sublessee, which is an affiliate of Lessee, prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to move any Car to BRAE's subsequent lessee and to place thereon the markings and the name or other insignia of BRAE's subsequent lessee. In the event that Utilization is less than 40% and BRAE elects pursuant to Section 6E to terminate this Lease as to all or a portion of the Cars, Lessee shall be responsible for delivering such terminated Cars to a connecting carrier designated by BRAE and to place on such terminated Cars the markings and name or other insignia of BRAE's subsequent lessee.

10. Indemnities

BRAE will defend, indemnify and hold Lessee harmless from and against (1) any and all claims based upon loss or damage to the Cars, unless occurring while Lessee has physical possession of the Cars and (2) any other type of claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (unless occurring through the fault of Lessee), including without limitation claims with respect to the construction, purchase, delivery to Lessee's railroad line, ownership, leasing, return, use, maintenance, repair, replacement, operation or condition of the Cars, and claims caused by defects in the manufacture or workmanship of the Cars or any component thereof, or any material incorporated therein, which defects could not have been discovered upon reasonable inspection by Lessee.

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated, has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement, and has permanent operating authority as common carrier by rail.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Lessee to perform its obligations under this Agreement.

(v) There is no act or other matter represented by the Lessee in written or other form and delivered to BRAE which is false or incorrect in any material respect as of the date made.

12. 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. At the request of BRAE, Lessee shall furnish to BRAE a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements submitted to the ICC.

13. 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 trust of which BRAE or one of its wholly-owned subsidiaries is a beneficiary, to any corporate joint venture of which BRAE or one of its wholly-owned subsidiaries is a stockholder, or to any other owner of such Cars (each hereinafter a "Lease Assignee"), provided that BRAE or one of its wholly-owned subsidiaries enters into a management agreement with such Lease Assignee with respect to the Cars. Upon delivery of a notice of assignment to Lessee, the term "BRAE" as used herein shall mean such Lease Assignee, and BRAE shall be relieved of all of its obligations and liabilities under this Agreement relating to such Cars. Lessee agrees to give its consent and to acknowledge,

upon receipt of notice of assignment, such assignment of this Agreement by BRAE. BRAE warrants that any Lease Assignee of the Cars will subject such Cars to all the terms and conditions of this 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. 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 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.

G. If, at any time during the term of this Agreement, Lessee is unable, in good faith, to obtain the liability insurance that it is required by Section 5C to maintain without paying an annual premium in excess of $250,000, Lessee may, upon 30 days notice to BRAE, terminate this Agreement. If, at any time during the term of this Agreement, BRAE is unable, in good faith, to obtain the liability insurance that it is required by Section 5C to maintain without paying an annual premium in excess of $250,000, BRAE may, upon 30 days notice to Lessee, terminate this Agreement.

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

BRAE TRANSPORTATION, INC.

By _____
Printed Name FEROZE A WAHEED
Title VICE PRESIDENT

KYLE RAILROAD COMPANY

By _____
Printed Name Rick Card
Title Vice President-Op

Schedule A

Type of Marking Required	Maximum Cost
Reporting Mark only	$25.00
Reporting Mark plus 1 digit	$37.50
Reporting Mark plus number	$60.00

EQUIPMENT SCHEDULE 1

BRAE TRANSPORTATION, INC. ("BRAE") hereby leases the following railcars to KYLE RAILROAD COMPANY ("Lessee"), pursuant to that certain Lease Agreement dated as of June 13, 1986 (the "Agreement").

Number of Cars	Description	Designation	Car Numbers
1,000	4600 to 4750 cu. ft. Covered Hopper Cars, 100 ton capacity	LO	[to follow]

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

3. BRAE shall use its best, good faith effort to deliver the following Cars by the following dates:

Aggregate Number of Cars Delivered	Delivery Date
375 Cars	June 30, 1986
670 Cars	July 15, 1986
1000 Cars	July 31, 1986

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

BRAE TRANSPORTATION, INC.

By _____
Printed Name FEROZE A. WAHEED
Title VICE PRESIDENT

KYLE RAILROAD COMPANY

By _____
Printed Name Rick Cecil
Title Vice President-Op

STATE OF Kansas)
) ss.
COUNTY OF Phillips)

On this 2 day of July, 1986, before me personally appeared Rick Cecil, to me personally known, who being by me duly sworn says that such person is Vice President, Operations of Kyle Railroad Company, and that the foregoing Lease Agreement, and Equipment Schedule(s) No. A, 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.

Mary Beth Barta (seal)
Notary Public

NOTARY PUBLIC - State of Kansas
MARY BETH BARTA
My Appt. Exp. 9-17-88

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

On this 8th day of ~~June~~ July, 1986, before me personally appeared FEROZE A. WAHEED, to me personally known, who being by me duly sworn says that such person is VICE PRESIDENT of BRAE Transportation, Inc., and that the foregoing Lease Agreement, and Equipment Schedule(s) No. A-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.

Notary Public (seal)