

# Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building  
1815 H Street, N.W.  
Washington, D.C. 20006

Writer's Direct Dial Number

202-857-6290

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Madam:

Enclosed are the original and two counterparts of each of the following documents, dated as of the date specified below, relating to certain railroad rolling stock as listed below, made between the following parties:

<u>Document</u>	<u>Party</u>	<u>Name and Address</u>
Loan and Security Agreement together with Supplement No. 1 attached thereto, dated July 31, 1979	Owner	Hillman Coal & Coke Company 1900 Grant Bldg. Pittsburgh, Pa. 15219 Attn: Secretary
	Lender	Manufacturers Leasing Corp. 30 Rockefeller Plaza New York, New York 10020 Attn: V.P. Credit Dept.- Eastern U.S.
Lease Agreement of March 6, 1979 and Assignment of Lease attached thereto, dated April 23, 1979	Lessor and Assignor	Brae Corp. 3 Embarcadero Center San Francisco, Calif. 94111
	Lessee	Moscow, Camden & San Augustine Railroad Camden, Texas 75934
	Assignee	Hillman Coal & Coke Company 1900 Grant Bldg. Pittsburgh, Pa. 15219 Attn: Secretary
Management Agreement dated April 23, 1979 with Consent and Agreement to Assignment attached thereto dated as of July 31, 1979	Manager and Party consenting to Assignment	Brae Corp. 3 Embarcadero Center San Francisco, Calif. 94111

*Counterpart*

*Scott B. White*

10800  
RECORDATION NO. 10799  
September 7, 1979  
Cable: ARFOX  
Telephone: (202) 857-6000  
Telecopier: (202) 857-6340  
Telex: WU892672  
ITT 440266  
INTERSTATE COMMERCE COMMISSION  
9-250A093  
No. SEP 7 1979  
Date SEP 7 1979  
Fee \$ 150.00  
RECORDATION NO. 10801  
ICC Washington, D.C.  
SEP - 7 1979 - 8 42 PM  
INTERSTATE COMMERCE COMMISSION

Secretary  
Interstate Commerce Commission  
September 7, 1979  
Page Two

<u>Document</u>	<u>Party</u>	<u>Name and Address</u>
	Owner and Assignor	Hillman Coal & Coke Company 1900 Grant Bldg. Pittsburgh, Pa. 15219 Attn: Secretary
	Assignee and Lender	Manufacturers Leasing Corp. 30 Rockefeller Plaza New York, New York 10020 Attn: V.P. Credit Dept.- Eastern U.S.

Equipment covered by  
the above mentioned  
documents

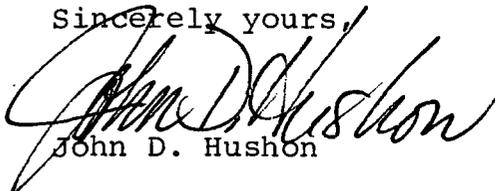
Fifty (50) Steel Fifty Foot,  
Seventy Ton Boxcars, Height,  
Plate C, with AAR Mechanical  
Designation XM. (MCSA 6075-6124)

I respectfully request that the original of these documents be recorded under the provisions of 49 U.S.C. §11303.

I would also appreciate your stamping the additional copies of the above documents and returning them to me at the above address.

The undersigned certifies that he is acting as counsel for Hillman Coal & Coke Company and that he has knowledge of the matters set forth in the above-described documents.

Sincerely yours,



John D. Hushon

Enclosures

9/7/79

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

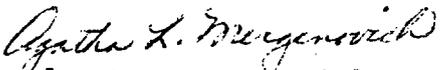
**OFFICE OF THE SECRETARY**

John D. Hushon  
Arent, Fox, Kinter, Plotkin & Kahn  
Federal Bar Building  
1815 H Street, N.W.  
Washington D.C. 20006

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/7/79 at 3:40pm, and assigned re-  
recording number(s). 10799 10800 10801

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

RECORDATION NO. 10801

SEP - 7 1979 - 3 40 PM April 23, 1979

MANAGEMENT AGREEMENT COMMERCE COMMISSION

THIS AGREEMENT made by and between Brae Corporation ("Brae"), a Delaware corporation, and Hillman Coal & Coke Company ("Hillman"), a Delaware corporation, as owner ("Owner").

WHEREAS, Owner has, pursuant to two boxcar purchase agreements (the "Purchase Agreements") agreed to purchase 250 railroad cars (the "Cars") identified in Exhibit A attached hereto; and

WHEREAS, Brae engages in the business of managing railcars for railcar owners, and Owner desires to retain Brae as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein; and

WHEREAS, the Cars, upon acceptance by the lessee, will be subject to a Lease Agreement dated March 6, 1979 as amended April 23, 1979 (the "Lease") between Brae and Moscow, Camden and San Augustine Railroad (the "Railroad"); and

WHEREAS, Brae has assigned to Hillman all of its rights and obligations under the Lease, and such assignment has been acknowledged and approved by the Railroad; and

WHEREAS, Owner may choose to finance a portion of the purchase price of the Cars from the proceeds of a borrowing from an institution under a loan agreement (the "Loan Agreement").

*Counterpart*

*Scott B. White*

NOW THEREFORE, in consideration of the mutual promises made herein, Owner and Brae, intending to be legally bound, hereby agree as follows:

1. Engagement of Brae

Owner hereby engages Brae as agent of Owner to manage the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and disburse funds to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and Brae accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

2. Term

The term of this Agreement and the agency created hereby shall commence as of the date of this Agreement, and shall continue, with respect to each Car, for fifteen years from the Delivery Date of the last Car subject to this Agreement or the earlier termination of the Lease with respect to such Car, for any reason; provided, however, that notwithstanding any termination of this Agreement, Brae and Owner shall continue to be obligated to fulfill all obligations arising out of events occurring prior to termination of this Agreement.

3. Duties of Brae

In consideration of the compensation to be paid to Brae by Owner pursuant to Section 6 hereof, and subject to the agreement of Owner to reimburse Brae pursuant to Section 5 hereof, Brae, at its own expense except as hereinafter provided, shall provide and perform the services on behalf of Owner set forth below during the term of this Agreement:

- (a) Perform, on behalf of Owner, all of Owner's obligations under the Lease; provided, however, that any of such obligations which require payments by Owner shall be performed by Brae subject to reimbursement by Owner as hereinafter provided.
- (b) Have its representative(s) at the site(s) of the manufacturers of the Cars at all times during the construction of the Cars to ensure that construction conforms to the specifications of the Purchase Agreements.
- (c) Have its representative(s) available at Laredo, Texas or other delivery points as specified in the Purchase Agreements, to inspect each Car as it is delivered and accepted in order to assure that each Car meets the manufacturers' specifications and to ensure that each Car meets all AAR, ICC or Department of Transportation requirements and interchange standards and that each Car is marked in conformance with

the terms of the Lease and Loan Agreement and is acceptable under such agreements.

Notwithstanding anything to the contrary contained herein, any physical injury or damage to Brae's representative(s) or any damage or loss caused by Brae's representative(s) in connection with this paragraph (c) or paragraph (b) above shall be the responsibility of Brae.

- (d) Register the Cars and file all required initial and ongoing reports with the AAR, ICC or Department of Transportation or any other regulatory authority having jurisdiction over the Cars or the Lease in order to ensure that the Cars will at all times be entitled to generate the maximum possible revenue subject to the provisions of the Lease.
- (e) Immediately upon execution of this Agreement, or as soon thereafter as reasonably practicable, commence to manage and operate the Cars, as hereinafter provided, and continue, during the term of this Agreement, to manage and operate the Cars, at all times in conformance with all applicable rules and regulations of the AAR, ICC, Department of Transportation, or any other regulatory authority having jurisdiction over the Cars.
- (f) Collect all rental payments, mileage allowances and any other revenue due to the Owner with respect to the Cars, identifying itself as agent for that purpose, and account for and remit all sums due to Owner as hereinafter provided.

- (g) Use its best efforts to arrange to have the Cars maintained, at Owner's expense, in good condition and to arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 5 or any repair in excess of \$500 per Car shall be made without the consent of Owner, which consent will be deemed to have been granted if Owner shall not have objected thereto in writing within 30 days after notice to Owner thereof and of the estimated cost thereof.

Promptly upon request by Brae, the Owner will reimburse Brae for all costs, expenses, fees and charges incurred in connection with repairing, maintaining and servicing the Cars, unless any such repairs, maintenance or servicing was (or were) occasioned by the negligence or willful misconduct of Brae or any of Brae's agents or employees.

- (h) Place in Owner's name, subject to Owner's prior approval (which approval will not be unreasonably withheld) and at Owner's expense, such insurance as may be reasonably available to protect the interest of the Owner in the Cars including, without limitation,

insurance against (i) personal liability, including property damage and personal injury, (ii) loss of or damage to the Cars, and (iii) loss of revenues with respect to the Cars. Such insurance shall name Owner, Lender and Brae as co-insureds.

- (i) Pay on behalf of Owner all charges, assessments, or levies imposed upon or against the Cars (other than charges, assessments, or levies payable by the Railroad under the Lease) of whatever kind or nature and, in Brae's discretion, defend against any such charges and seek revision or appeal from any assessment or charge deemed improper, all such actions to be in the name of Owner. If, in order to pursue such actions, Brae deems it necessary to retain the services of outside counsel, the expense of such counsel shall be borne by Owner, provided that Brae has secured prior approval from Owner.
- (j) Monitor and record movement of the Cars.
- (k) Maintain complete and accurate records relating to the Cars for a period of five (5) years in the same form and to the same extent as Brae customarily maintains records of its own cars, and make such records available for inspection by Owner or any of Owner's representatives during reasonable business hours.
- (l) Cause the Cars, at the expense of Owner, to be painted such colors and with such designs designated by the Railroad under the terms of the Lease and place reporting marks or such other marks, legends, or placards

on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the AAR.

- (m) Cause the Cars to be moved at Owner's expense from Laredo, Texas or other delivery points, to their required destination points at the lowest possible transportation cost to Owner, consistent with the operating needs of the Railroad. If possible, Brae will cause all Cars to be loaded at locations convenient to their respective delivery points and moved as revenue earning equipment to their destinations.
- (n) Upon the termination of the Lease with respect to each Car at expiration or otherwise, Brae will arrange, at Owner's expense (except to the extent such expenses are to be paid by Railroad under the Lease), for the transportation, gathering, storage and remarking of the Cars to the extent required. With respect to termination of the Lease with respect to any Cars other than by expiration of the Lease, Brae will attempt to secure alternative leases or other uses for the Cars which will maximize the economic return to Owner.
- (o) Use its best efforts to collect all sums due Owner, including, without limitation, insurance benefits or railroad indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of this Agreement and to remit all sums due Owner

as hereinafter provided. If, in order to collect sums due Owner, Brae deems it necessary to retain the services of outside counsel, the expense of such counsel shall be borne by Owner, provided that Brae has secured prior approval from Owner.

- (p) Use its best efforts to see that the Cars are not assigned to service outside the United States of America and that at no time are more than ten percent (10%) of the Cars outside the United States of America and that no Car is outside the United States of America more than fifty percent (50%) of the days in any calendar year, in all cases subject to the rights of the Railroad under the Lease.
- (q) In the event that Owner is a party to any legal action arising out of its ownership of the Cars, Brae will advise Owner with respect to such action and will defend against such action at Owner's expense.

#### 4. Owner's Revenue

All revenue received by Brae in connection with the Cars from whatever source and for whatever reason including, but not limited to, per diem, incentive per diem, mileage, penalties, demurrage, indemnity payments and insurance proceeds shall, within two business days after receipt thereof by Brae, be remitted to the Owner and deposited into a bank account to be established by the Owner. It is understood and agreed that Brae shall not offset any amounts which it claims to be due

from Owner or other payments it is obligated to make on behalf of Owner pursuant to this Agreement against any remittances required to be made to the Owner in accordance with the provisions of this paragraph.

5. Expenses

Brae shall be entitled to reimbursement for all disbursements that it has properly made in accordance with the provisions of this Agreement for maintenance, insurance impositions and incentive fees payable to the Railroad under the Lease or other payments made by Brae subject to reimbursement as provided in Section 3 above. In addition, any payments made by Brae with the written authorization of the Owner for special improvements which may be required by the AAR, ICC or other regulatory authority or for liability claims for damage or loss assessed against the Owner shall be reimbursed. All reimbursements payable to Brae by the Owner shall be made from a "working capital account" funded by Owner and administered by Brae. Owner will maintain positive balances in the account and will make deposits within 10 days of receipt of notice from Brae that anticipated expenditures from the account will deplete the balance. All other expenses incurred by Brae in connection with the performance of its obligations to the Owner under this Agreement shall be for the account of Brae and shall not be subject to reimbursement.

6. Compensation

As additional compensation for its services hereunder, Brae shall be paid by Owner a fee of \$30 per Car per month, payable in arrears, commencing, with respect to each Car, on the date that such Car first earns per diem revenue and continuing as long as such Car is subject to this Agreement; provided,

however, that on January 1 of each year commencing 1981, the \$30 per Car monthly fee shall be adjusted by multiplying such \$30 fee by a fraction, the numerator of which is the gross revenue which a boxcar with an XM or then equivalent designation, an original cost of \$40,000 and a delivery date of July 1, 1979 would earn in one year assuming 100% "off-line" utilization and an average distance traveled of 65 miles per day based upon prevailing ICC rates as of the date of determination, and the denominator of which is the gross revenue which a boxcar with an XM or then equivalent designation, an original cost of \$40,000 and (i) for the years 1981 - 1984, a delivery date of July 1, 1979, (ii) for the years 1985 - 1989, a delivery date of July 1, 1974, and (iii) for the years 1990 and thereafter, a delivery date of July 1, 1969, would earn in 1980 assuming 100% "off-line" utilization and an average distance traveled of 65 miles per day based upon ICC rates prevailing in 1980.

#### 7. Reports

Brae shall, within 15 days of the last day of each month during the term of this Agreement, submit to the Owner a report of the activity of the Cars for such preceding month. This report will summarize for each Car for the month (i) amounts earned; (ii) amounts received and deposited to Owner's account; (iii) amounts outstanding with respect to prior months with explanations for overdue amounts; (iv) maintenance expenditures; (v) incentive fees paid to the Railroad; (vi) other expenditures; and (vii) casualty occurrences.

Brae shall, within 30 days of the end of each calendar year during the term of this Agreement, submit a statement to the Owner signed by an executive officer of Brae (i) setting

forth as of the preceding December 31 the amount, description and numbers of all Cars then subject to this Agreement, the amount, description and numbers of all Cars that have suffered a casualty occurrence or are then undergoing repairs (other than running repairs) during the preceding calendar year, and such other information regarding the condition and state of repair of the Cars as the Owner may reasonably request;

(ii) stating that, in the case of all Cars repaired or repainted during the period covered by such statement, the numbers and markings required by the Lease and Loan Agreement have been preserved or replaced; (iii) certifying that all amounts payable hereunder by Brae to Owner through the preceding December 31 have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their non-payment; (iv) stating that the Owner is in compliance with all of the provisions of the Lease and that all amounts required to be paid by the Owner under the Lease have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment; (v) stating that the Cars have been operated in compliance with all requirements of any regulatory authorities having jurisdiction over the Cars. All statements made by Brae in accordance with the provisions of the previous sentence shall be made in good faith and to the best of Brae's ability to make such statements.

Brae shall notify the Owner immediately upon becoming aware of (i) any default on the part of CNCF or other Manufacturer under the Purchase Agreements; (ii) any claim which the Owner has against CNCF or other Manufacturer in accordance with the warranty provisions of the Purchase Agreements; (iii) the occurrence of any event which would cause any Car to be taken out of service; (iv) the occurrence of any event which would be an event of default on the part of the Railroad under the Lease; (v) the occurrence of any event which would enable the Owner to terminate the Lease with respect to any Cars; (vi) the imposition of any rules or regulations by any regulatory authority having jurisdiction over the Cars which may have a material impact on the Owner's revenue or expense relative to the Cars.

The Owner shall have the right, by its agents, to inspect Brae's records with respect to the matters covered by this Agreement at such reasonable time as the Owner may request during the term of this Agreement.

8. Subordination

This Agreement and Brae's authority and rights hereunder are subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any <sup>lender</sup> ~~Lender~~ <sup>or may grant</sup> to whom Owner has granted/a security interest in the Cars. If so requested by Owner, Brae shall provide to any such lender written evidence confirming that Brae's authority and rights hereunder are so subject and subordinate to any such lien and security interest upon the Cars and revenues generated by the Cars.

*R  
SUK*

9. Default

A. The occurrence of any of the following events shall be an event of default:

- (i) The non-payment by Brae of any sum required herein to be paid by Brae within 10 days after any such payment is due.
- (ii) The breach by Brae of any other term, covenant, or condition of this Agreement, which is not cured within 30 days after written notification of breach.
- (iii) Any act of insolvency by Brae or the filing by Brae 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 Brae that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Brae unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

B. Upon the occurrence of any event of default and in addition to any other remedies provided under applicable law, Owner may, at its option, terminate this Agreement or proceed by any lawful means to enforce performance by Brae of this Agreement.

10. Indemnification

Owner shall defend (if such defense is tendered to Owner), indemnify and hold Brae harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees and reasonable cost of investigation) losses or liabilities incurred by or asserted against Brae as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars including, claims for injury to or death of persons, loss of or damage to property (including the Cars) and economic loss due to the unavailability for use of the Cars; provided, however, that Owner shall not defend, indemnify or hold Brae harmless from and against, and Brae shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from the negligence, bad faith, recklessness, or willful misconduct of Brae.

11. Conflicts of Interest

Owner expressly acknowledges that Brae and its affiliates, including without limitation Braecar, Inc. and Brae Railcar Management, Inc., may own and/or manage railcars substantially similar to those managed hereunder.

12. Notices

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United

States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to Brae: Brae Corporation  
Three Embarcadero Center  
Suite 1760  
San Francisco, California 94111  
ATTENTION: President

If to Owner: To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

13. Miscellaneous

- (a) Governing Law This Agreement shall be governed by and construed under the laws of the State of California.
- (b) Counterparts This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (c) Headings Title and heading of the Section and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.
- (d) Amendment No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

- (e) Successors and Assigns The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or Brae or transfer of any of the Owner's or Brae's rights hereunder whether by operation of law or otherwise shall be valid and effective as against Brae or Owner without the prior written consent of both Brae and Owner, which consent shall not be unreasonably withheld.
- (f) Force Majeure Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any Federal, State or local government or any agency thereof.
- (g) Waiver The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(h) Severability If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

OWNER;

HILLMAN COAL & COKE COMPANY

By Address Stan N. Hubel

2000 Grant Building

Pittsburgh, PA 15219

DATED 30 April, 1979

ACCEPTED BY:

Brae Corporation

Effective this 23 day  
of April, 1979.

Brae Corporation

[Corporate Seal]

By: Jay Alkove  
Vice President

STATE OF California )  
COUNTY OF San Francisco )

On this 5<sup>th</sup> day of September, 1979, before me personally appeared Samy A. RISSSEN, to me personally known, who being by me duly sworn says that such person is Vice President of BRAE CORPORATION, that the foregoing Management Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Mirella R. Abbo  
Notary Public

## BOX-CAR SCHEDULE

<u>Manufacturer</u>	<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Identification Numbers (Both Inclusive)</u>	<u>Delivery</u>
FMC Corporation	Steel 50 foot 70 ton Boxcars, AAR Plate C, mechanical designation XM	50	MCSA 6075- 6124	1979
Constructora Nacional de Carros de Ferrocarril, S.A.	Steel 50 foot 70 ton Boxcars AAR Plate C, mechanical designation XM	75	MCSA 6000- 6074	1979
Constructora Nacional de Carros de Ferrocarril, S.A.	Steel 50 foot 70 ton Boxcars AAR Plate B, mechanical designation XP	125	MCSA 7000- 7124	1979

