

9764-B  
RECORDATION NO. 9764 Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9762 Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION  
BraeLease Corporation  
Three Embarcadero Center  
San Francisco, California

RECORDATION NO. 9763 Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION

9764-A  
RECORDATION NO. 9764 Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

9764  
RECORDATION NO. 9764 Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION

October 12, 1978  
RECORDATION NO. 9763-A Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION

Dear Sir:

9765  
RECORDATION NO. 9765 Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION

Enclosed for filing and recording pursuant to Section 20c of the Interstate Commerce Act are the following documents relating to the railroad equipment described and marked in accordance with Schedule I attached hereto:

9765-B  
RECORDATION NO. 9765 Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION

(1) Equipment Lease Agreement dated October 1, 1978 between Birmingham Trust National Bank, as Owner Trustee and BraeLease Corporation (hereinafter called BraeLease Lease).

(2) Lease Agreement dated as of February 28, 1978 between BRAE Corporation and Willis B. Kyle Inc. (hereinafter called Kyle Lease) (including Riders No. 1,2 and 3 and Equipment Schedule No. 1), Amendment No. 1 thereto dated as of March 31, 1978 and Amendment No. 2 thereto dated as of April 15, 1978.\*

(3) Sublease Agreement dated as of March 28, 1978 between Willis B. Kyle Inc. and Yreka Western Railroad Company (hereinafter called Yreka Sublease) (including Riders No. 1,2 and 3 and Equipment Schedule No. 1) and an Assignment of the Sublease Agreement dated as of October 11, 1978 to BraeLease Corporation.\*

(4) Purchase Agreement dated as of September 30, 1978 between FMC Corporation and BraeLease Corporation (hereinafter called Purchase Agreement), an Assignment of the Purchase Agreement dated as of October 1, 1978 to Birmingham Trust National Bank, as Owner Trustee, and a Consent to the Assignment dated as of October 1, 1978 by FMC Corporation.

\*and an assignment of said agreement dated as of October 11, 1978, to Birmingham Trust National Bank, as Owner Trustee.

No. 9765-A  
Date OCT 13 1978  
Fee \$ 2.10  
ICC Washington, D. C.

RECORDATION NO. 9765-A Filed 1425  
OCT 13 1978 - 2 10 PM  
INTERSTATE COMMERCE COMMISSION

RECEIVED  
OCT 13 2 05 PM '78  
I.C.C.  
FEE OPERATION BR.

*Wendy...*

The names and addresses of the parties to the above transactions are as follows:

(1) BraeLease Lease

(a) Lessor: Birmingham Trust National  
Bank, as Owner Trustee  
P. O. Box 2554  
Birmingham, Alabama 35290

(b) Lessee: BraeLease Corporation  
Three Embarcadero Center  
San Francisco, California  
94111

(2) Kyle Lease

(a) Lessor: BraeLease Corporation  
Three Embarcadero Center  
San Francisco, California  
94111

(b) Lessee: Willis B. Kyle Inc.  
1350 "O" Street, Suite 301  
Fresno, California 93721

(3) Yreka Sublease

(a) Lessor-  
Assignor: Willis B. Kyle Inc.  
1350 "O" Street, Suite 301  
Fresno, California 93721

(b) Lessee: Yreka Western Railroad Company  
300 East Minor Street  
Yreka, California 96097

(c) Assignee: BraeLease Corporation  
Three Embarcadero Center  
San Francisco, California 94111

(4) Purchase Agreement

(a) Manufacturer: FMC Corporation  
Box 3616  
4700 Northwest Front Avenue  
Portland, Oregon 97208

(b) Vendee-  
Assignor: BraeLease Corporation  
Three Embarcadero Center  
San Francisco, California 94111

(c) Assignee: Birmingham Trust National Bank,  
as Owner Trustee.  
P. O. Box 2554  
Birmingham, Alabama 35290

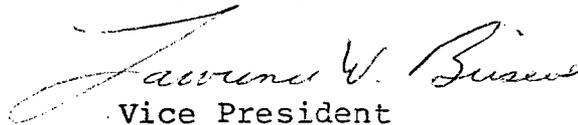
BRAE Corporation, the corporation which originally executed the Kyle Lease was merged into its wholly-owned subsidiary, BraeLease Corporation, on September 27, 1978. Pursuant to such merger, BraeLease Corporation assumed all of the rights and obligations of BRAE Corporation. Accordingly, BraeLease Corporation is now party to the Kyle Lease.

Also enclosed is our check payable to the order of the Interstate Commerce Commission in the amount of \$200, the prescribed fee for filing and recording the enclosed documents.

Please file and record the enclosed documents and cross-index them under the names of, in the case of the BraeLease Lease, the Lessor and the Lessee, in the case of the Kyle Lease, the Lessee and the Lessor (both BraeLease Corporation and its predecessor, BRAE Corporation), in the case of the Yreka Sublease, the Lessor-Assignor, the Lessee and the Assignee,\* and in the case of the Purchase Agreement, the Manufacturer, the Vendee-Assignor and the Assignee.

Return to the person presenting this letter, together with your letter confirming such filing and recordation and your fee receipt therefor, all counterparts of the enclosed documents not required for filing.

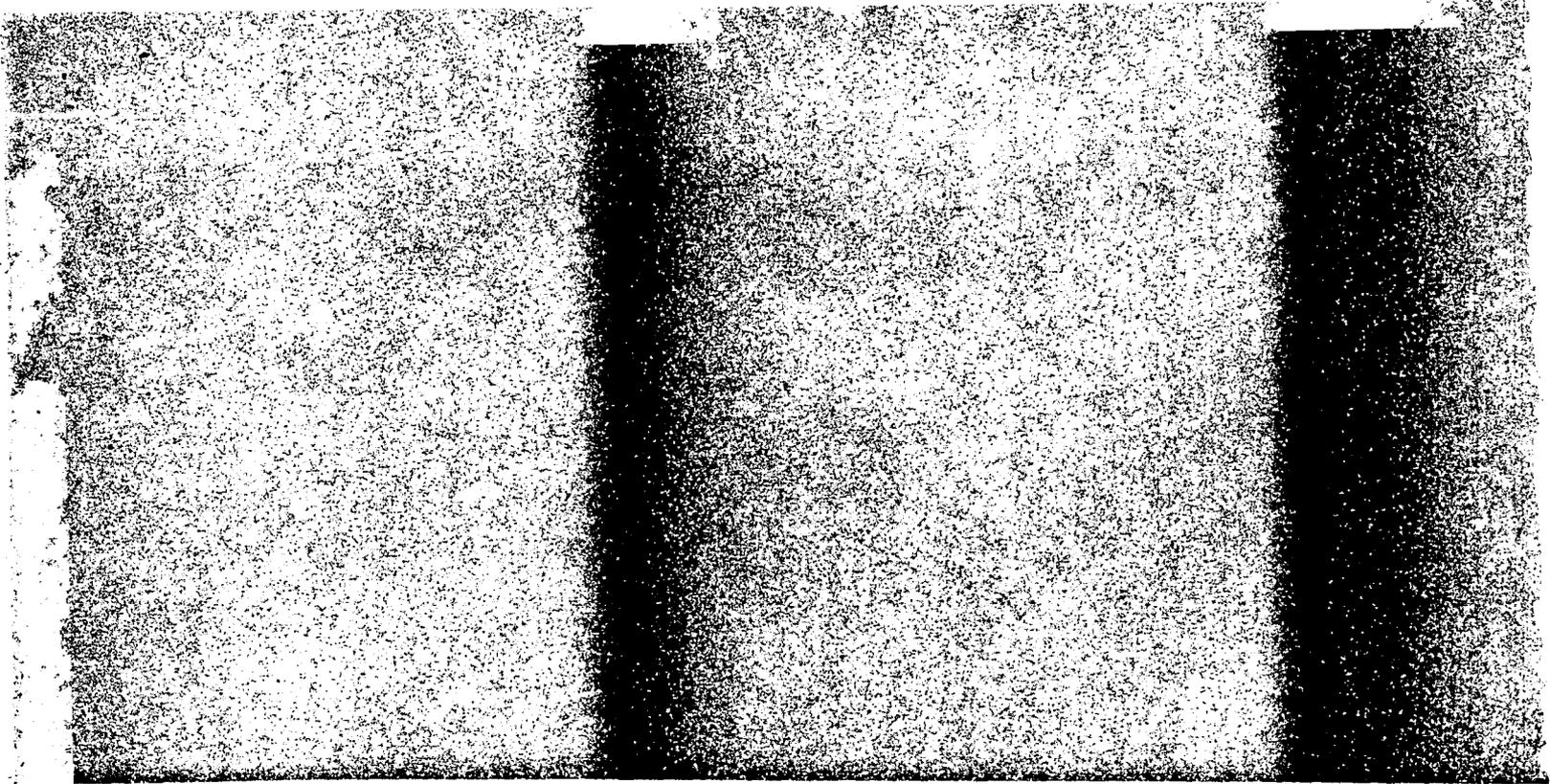
Very truly yours,

  
Vice President

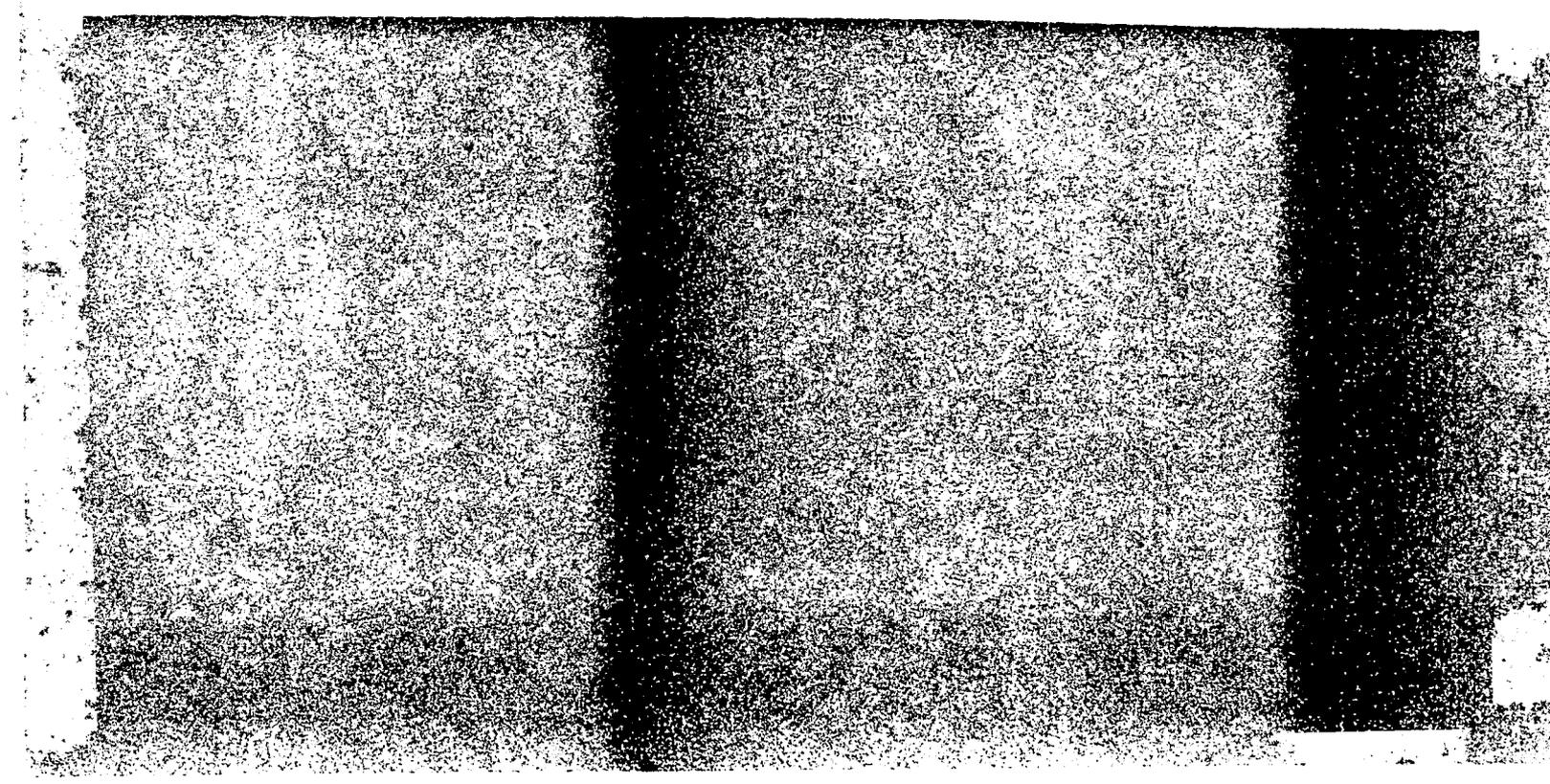
The Kyle Lease and the Yreka Sublease should also be cross-indexed under the name of Birmingham Trust National Bank, as Owner-Trustee, as Assignee.

SCHEDULE I

| <u>Quantity</u> | <u>Type</u>                                | <u>Identifying Numbers<br/>(Both Inclusive)</u> | <u>Markings</u>  |
|-----------------|--|---|--|
| 100             | 70-ton 50 '6"<br>Box Cars, AAR<br>Class XM | YW25101-YW25200                                 | "Property of and leased<br>from Birmingham Trust<br>National Bank, as<br>trustee, subject to an<br>agreement filed under<br>the Interstate Commerce<br>Act, Section 20c" |



This Lease and the rents and other sums due thereunder have been assigned to Birmingham Trust National Bank, as Owner Trustee, as security for certain obligations.



# BRAE CORPORATION

9763  
RECORDATION NO. XXXXXXXXXXXX FILED 1428

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INTERSTATE COMMERCE COMMISSION

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 28 day of February, 1978, between the BRAE CORPORATION, a California corporation, Three Embarcadero Center, San Francisco, California 94111 ("BRAE"), as Lessor, and WILLIS B. KYLE, INC., a California corporation ("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

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "initial lease term") commencing upon the date when all Cars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "extended lease term") with respect to all of the Cars described on each Schedule, provided, however, that BRAE or Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term.

### 3. Supply Provisions

A. BRAE will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to BRAE that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, BRAE will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by BRAE. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by BRAE as is consistent with mutual convenience and economy. Due to the nature of

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- (1) However, any cars found not to meet specifications agreed to by Lessee when initially received at Lessee's tracks, shall be altered at BRAE's expense.

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. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay to BRAE the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "initial loading"), BRAE agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and BRAE, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. Once Cars have been delivered to Lessee, it shall then not lease freight cars similar to the type leased hereunder from any other party until it shall have given BRAE at least one (1) month prior written notice of its desire to lease such freight cars and BRAE shall then have the opportunity to procure and lease such freight cars to Lessee subject to the terms and conditions of this Agreement, and at terms not less favorable to Lessee than those offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if BRAE does not offer lease terms equal to or better than those offered by such other parties. Lessee shall give preference to BRAE and shall load the Cars leased from BRAE prior to loading substantially similar freight cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Cars may be leased from BRAE by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, 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 manufacturer's delivery schedules, financing satisfactory to BRAE and the mutual acknowledgment of the parties that the addition of such Cars is not likely to reduce utilization of all Cars on lease to Lessee to less than 87.5 per cent in any calendar quarter. If, due to the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the term of the lease shall be deemed to have commenced on the date the final Car of the most recent group of Cars was delivered to Lessee; (2)

#### 4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

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 are not limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (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. Relief from AAR car service rules 1 & 2 shall be at the option of the Lessee.

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. BRAE shall, on behalf of Lessee, perform all record keeping functions related to the use of the Cars by Lessee and

BC-10/77 (2a) within such one month period

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(2) Provided that Lessee shall be entitled to share in payments as provided in Section 6A with respect to each Car from such Car's initial loading. Term of lease refers to the 15 year term, it being intended that the lease will be in effect upon date of first delivery.

other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE shall select.

D. All record keeping performed by BRAE hereunder and all record of 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 regular BRAE business hours. Lessee shall supply BRAE with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line 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 and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to BRAE for any repairs required for damage not noted thereon at the time of interchange. Lessee hereby transfers and assigns to BRAE for and during the lease term of each Car all of its right, title and interest in any warranty in respect to the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided above, BRAE 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, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by BRAE. 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 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. Title to any such alteration, improvement or addition shall be and remain with BRAE.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for freight cars not owned by Lessee on Lessee's railroad tracks. (See 13H)

Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish BRAE concurrently with the execution hereof and thereafter at intervals of not more than twelve calendar months with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

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 that portion of the mileage charges and/or car hire revenues received by Lessee pursuant to Section 6a (ii) hereof.

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- (3) (To be initiated by and at the expense of BRAE)
- (4) which would cause a defect card to be generated and
- (5) and can be accommodated by the railroad
- (6) at BRAE's expense determined by AAR hourly specified piece work rate,

BRAE shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. BRAE and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. BRAE shall review all applicable tax returns prior to filing.

## 6. Lease Rental

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

(i) BRAE shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are herein-after collectively referred to as "payments") if the utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than ~~8~~<sup>88.5</sup> per cent. For the purpose of this Agreement, utilization of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Cars, commencing from the initial loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars are on lease to Lessee, commencing from the initial loading (such term referred to as "utilization"). In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their initial loading.

(ii) In the event utilization exceeds ~~8~~<sup>88.5</sup> per cent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental plus an amount equal to one-half of the payments earned in excess of the BRAE Base Rental. For the purpose hereof, BRAE Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is ~~8~~<sup>88.5</sup> per cent and the denominator of which is the utilization for such calendar year. (The above determination of BRAE Base Rental insures that Lessee will, if utilization is greater than ~~8~~<sup>88.5</sup> per cent in any calendar year, receive one-half of all the payments made by other railroads for use or handling of the Cars in excess of the BRAE Base Rental.)

(iii) If BRAE pays other railroads to move Cars in accordance with Section 3A<sup>(7)</sup>, except for any payments incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse BRAE for such payments only from and out of the monies received by Lessee pursuant to Sub-section 6A(ii).

(iv) The rental charges payable to BRAE by Lessee shall be paid from the payments received by Lessee in the following order until BRAE receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Care Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by BRAE, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five months after the end of each calendar year. However, to enable BRAE to meet its financial commitments, BRAE may, prior to such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due BRAE, BRAE shall within three months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly basis the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

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- (7) (only diversions approved by Lessee)  
(8) to BRAE and Lessee

C. 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 87.5 per cent, BRAE may, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine. (9)

D. BRAE may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive car hire payments for Cars on an annual basis to three months or less without a corresponding increase in straight car hire payments or other monies available to both BRAE and Lessee at least equal in amount to such reduction, (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this section or (3) require that Lessee spend funds not earned by the Cars in order for Lessee to continue to meet its obligations set forth in this section.

E. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such 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, Lessee shall be liable for and remit to BRAE an amount equal to the payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the period in excess of two days. (9a) Such option shall not be exercisable so long

7. Possession and Use as total utilization is 87.5% or more during any calendar quarter.

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, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. 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 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 made directly to such party and/or that the Cars 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 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 thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. Default

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

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.

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(9) (NOTE: Cars to be removed would be equal to an amount reasonably estimated by BRAE to achieve 87.5% utilization or Lessee has option to make up per diem payments so as to assure BRAE receives revenue as if cars were being utilized at 87.5%)

(9b) (assuming 55 miles per day)

(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 to Lessee of breach

(iii) Any act of insolvency 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 said 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, which is not released or bonded against within (60) days thereafter.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state, if such action would substantially decrease utilization as defined in 6A.

B. Upon the occurrence of any event of default, BRAE may, at its option, terminate this Agreement and may

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and <sup>non-prevailing party</sup> agrees to bear costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. 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 that date.

## 9. Termination

At the expiration or termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to BRAE by delivering the same to BRAE. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Cars 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 Cars 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. If such Cars are not on the railroad line of Lessee upon termination, <sup>or expiration</sup> any cost of assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense (11a) remove Lessee's railroad markings <sup>(10a)</sup> from the Cars <sup>(10)</sup> and place thereon such markings as may be designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to sixty (60) days' free storage on its railroad tracks <sup>(11)</sup> for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to (11b) prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint the Cars and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

BC-10/77 (11b) Section 8A (i), 8A (ii) or Lessee does not give preference in loading as outlined in 3B

(10a) (Note: only railroad initials & number)

(10) (only those Cars on Lessee's tracks.)

(11) to the extent track is available.

(11a) as promptly as practicable

## 10. Indemnities

BRAE will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, (12)

(2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars other than loss or physical damage (unless occurring through the fault of Lessee), including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by BRAE or 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 and has the corporate power and authority, and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(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 business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has not during the years 1964-1968 built, leased or purchased new freight cars or rebuilt freight cars.

## 12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises 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 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. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be 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

BC-10/77

(12) unless due to loss or damage created by willful neglect on part of Lessee.

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.

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 and in furtherance of this Agreement.

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 when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

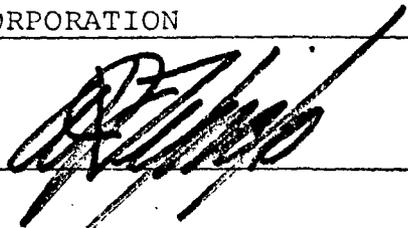
G. On the expiration of the initial lease term, Lessee shall have the option, if it is not then in default hereunder, to purchase the Cars on each Schedule at the then fair market value of such Cars; provided that if the Lease terminates for any reason prior to fifteen years from the date upon which the Cars on such Schedule have been delivered, this option shall be of no further force and effect.

H. BRAE will extend its physical damage insurance coverage to protect against the consequences of an event of loss involving the Cars while on Lessee's tracks. Any incremental charges for said coverage (but not to exceed \$10 per year per car for the first year and thereafter shall include any increase in cost for such additional coverage after the first year) will be deducted from Lessee's portion of revenues received. Should utilization fall below 88.5% Lessee will remit to BRAE the amount required for the incremental charges; however, at any time, Lessee has the option to self insure or obtain other insurance. BRAE will also name Lessee & Yreka Western Railroad as additional insured on its public liability and property damage coverage while cars are off Lessee's tracks.

I. If any provision of this agreement should be determined unenforceable, it shall be deemed in-operative and severable from this Agreement, which shall continue in full force and effect.

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

BRAE CORPORATION

BY: 

TITLE: President

DATE: March 2, 1978

WILLIS B. KYLE INC.

BY: 

TITLE: Vice President

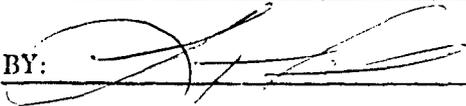
DATE: February 28, 1978

**EQUIPMENT SCHEDULE No. 1**

BRAE CORPORATION hereby leases the following Cars to WILLIS B. KYLE INC.  
 pursuant to that certain Lease Agreement dated as of February 28, 1978

| A.A.R.<br>Mech.<br>Design | Description   | Numbers              | Dimensions |                 |               | Doors<br>Width      | No.<br>of<br>Cars |
|---------------------------|---|----------------------|------------|-----------------|---------------|---------------------|-------------------|
|                           |   |                      | Length     | Inside<br>Width | Height        |                     |                   |
| XM                        | 50' 70 ton<br>General Purpose<br>boxcars with<br>10" end of car<br>cushioning<br>Specifications<br>shall be more<br>particularly<br>agreed upon<br>between BRAE &<br>Lessee | YW 25101<br>YW 25200 | 50' 6"     | 9' 6"           | 11'<br>1-3/4" | DBL<br>8'<br>offset | 100               |

BRAE CORPORATION  
 BY:   
 TITLE: President  
 DATE: March 2, 1978

WILLIS B. KYLE INC.  
 BY:   
 TITLE: Vice President  
 DATE: February 28, 1978

STATE OF California }  
COUNTY OF San Francisco }

On this 28th day of February, 1978, before me personally appeared L.T. CECIL, to me personally known, who being by me duly sworn says that such person is Vice President WILLIS B. KYLE, INC that the foregoing Equipment Schedule No. 1... 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.



*Veronica Marshall*  
Notary Public

STATE OF California }  
COUNTY OF San Francisco }

On this 2nd day of March, 1978, before me personally appeared William J. Texido to me personally known, who being by me duly sworn says that such person is President of BRAE CORPORATION, that the foregoing Equipment Schedule No. 1... 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.



*Veronica Marshall*  
Notary Public

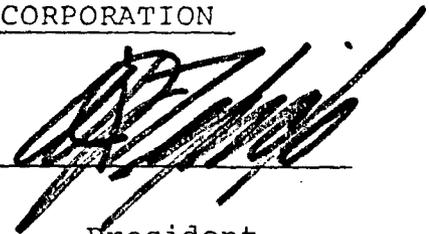
Rider No. 1 to the Lease Agreement made as of  
February 28, 1978, between BRAE CORPORATION and  
WILLIS B. KYLE INC.

A New Section 1C is added as follows:

"BRAE and Lessee agree that, as between themselves, Lessee shall be entitled to claim the benefits of any available Investment Tax Credit for Federal income tax purposes in connection with acquisition of the Cars bearing the identifying numbers YW 25101 - YW 25200 set forth on Equipment Schedule No. 1 to the Agreement. Such Cars shall be new equipment when delivered to Lessee hereunder and BRAE agrees to execute such documents as may be required to permit Lessee to claim any Investment Tax Credits relating to such Cars."

For the purposes of determining the rent for the Cars bearing the identifying numbers YW 25101 - YW 25200 set forth on Equipment Schedule No. 1 to the Agreement, the number "88.5 per cent" shall be substituted in Section 6A (i) and 6A (ii) for the number "90 per cent" each time it appears.

BRAE CORPORATION

BY: 

TITLE: President

DATE: March 2, 1978

WILLIS B. KYLE INC.

BY: 

TITLE: Vice President

DATE: February 28, 1978

Rider 1 . 2 to that Lease Agreement made as of  
February 28, 1978 between BRAE CORPORATION and WILLIS B. KYLE INC.

A New Section 1D is added as follows:

"This Lease has been entered into by BRAE on the representation of Lessee that it has an agreement to sublease the Cars which it has leased from BRAE pursuant to this Agreement to the Yreka Western Railroad Co. ("Sublessee") on terms identical to those contained in this Lease, except that such Sublease shall not contain Rider #2 to this Lease, (the "Sublease"). BRAE hereby consents to such Sublease and consents to the performance by Sublessee of the non-monetary obligations of Lessee under this Lease. With respect to the non-monetary obligations of Lessee, where appropriate the term "Lessee" shall be read to include Sublessee. Lessee covenants and agrees that within thirty days after execution of this Lease, Lessee shall deliver to BRAE in form and content reasonably satisfactory to BRAE and to counsel for BRAE the following:

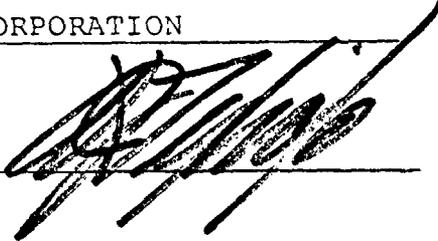
- (i) an executed copy of the Sublease;
- (ii) a written agreement by Sublessee to perform all of the terms of this Lease for the benefit of BRAE;
- (iii) a written agreement by which Sublessee agrees to make all payments otherwise due Lessee under the Sublease directly to BRAE;
- (iv) an assignment by Lessee to BRAE of the Sublease to secure the performance of Lessee's obligations under this Lease;

(v) an agreement to assign such Sublease for security purposes to any financial entity lending money or extending credit to BRAE;

(vi) a written acknowledgment of Lessee that it remains fully liable for the performance of all obligations under this Lease; and

(vii) an agreement by Sublessee that if BRAE shall terminate this Lease because of any default of Lessee, BRAE may at its election either (x) terminate such Sublease or (y) accept such Sublease, in which event Sublessee agrees to attorn to BRAE and perform all of the obligations of Lessee under this Lease."

BRAE CORPORATION

BY: 

TITLE: President

DATE: March 2, 1978

WILLIS B. KYLE INC.

BY: 

TITLE: Vice President

DATE: February 28, 1978

BRAE Corporation  
Three Embarcadero Center  
Suite 1760  
San Francisco, California 94111

Gentlemen:

On February \_\_\_\_\_, 1978, the undersigned Yreka Western Railroad Co. ("Yreka") subleased \_\_\_\_\_ railroad cars from Willis B. Kyle Incorporated ("Kyle") pursuant to a written sublease, a copy of which is attached to this letter ("Sublease"). The undersigned Yreka hereby acknowledges that the cars which it has subleased from Kyle were leased by Kyle from BRAE pursuant to a Lease Agreement dated February \_\_\_\_\_, 1978.

In that connection, we hereby covenant and agree to perform all of the obligations of Kyle under its lease with BRAE. We further agree that any payments otherwise due to Kyle pursuant to the attached Sublease shall be made to BRAE.

We further agree that in the event BRAE terminates its lease with Kyle because of any default under such lease, BRAE at its election may either (x) cause the Sublease to be terminated or (y) accept such Sublease, in which event the undersigned Yreka agrees to attorn to BRAE and treat BRAE as its lessor.

Very truly yours,  
YREKA WESTERN RAILROAD CO.

By

BRAE Corporation  
Three Embarcadero Center  
Suite 1760  
San Francisco, California 94111

Gentlemen:

The undersigned Willis B. Kyle Incorporated ("Kyle") leased from you \_\_\_\_\_ railroad cars pursuant to a written Lease Agreement dated February \_\_\_\_\_, 1978 ("Lease"). The undersigned has subleased such cars to the Yreka Western Railroad Co. ("Yreka") pursuant to a written sublease dated February \_\_\_\_\_, 1978, a copy of which is attached to this letter ("Sublease").

In that connection, we hereby assign to you all of our right, title and interest in such Sublease to secure the performance of our obligations under the Lease. We further acknowledge to you that we have irrevocably instructed Yreka to pay to you all sums which would otherwise be due us under the Sublease. We further acknowledge that such Sublease in no way reduces, diminishes or limits our obligations under the Lease.

We also hereby covenant and agree upon your written request to assign our right, title and interest in the Sublease as security to any financial entity lending money or extending credit to BRAE.

Very truly yours,  
WILLIS B. KYLE INCORPORATED

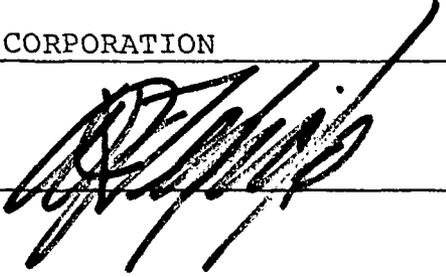
By

Rider No. 3 to the Lease Agreement made as of  
February 28, 1978, between BRAE Corporation and WILLIS B.  
KYLE INC.

- 1) Lessee agrees to make minimum rental payment equal to 40% of BRAE Base Rental if utilization goes below 40%. However, Lessee may at its option cancel lease upon 30 days notice should utilization go below 40%.
- 2) Prior to August 1, 1978, BRAE shall provide documentation satisfactory to Lessee of financing arrangements adequate to cover purchase of cars subject to this agreement; in the event of BRAE's failure to do so, Lessee shall thereafter be entitled, by written notice to BRAE, to terminate its obligation under this agreement.

BRAE CORPORATION

WILLIS B KYLE, INC.

BY: 

BY: 

TITLE: President

TITLE: Asst. Secretary

DATE: March 2, 1978

DATE: March 2, 1978

- 3) This agreement subject to the following:
  - a) Notwithstanding the last sentence of Section 5C, Lessee shall use its best efforts to have BRAE named as additional insured on its public liability policy per Section 5C.
  - b) BRAE will cause Lessee and Yreka to be named as additional insureds on its public liability policy, or will obtain separate insurance coverage for Lessee and Yreka with a carrier acceptable to Lessee, to protect against the consequences of any claims for personal injury or property damage arising out of the operation of the cars while the cars are off Yreka's tracks. The cost of such additional coverage shall be paid fifty percent (50%) by BRAE and fifty percent (50%) by Lessee; provided, however, that BRAE's payment in any one year shall not exceed one percent (1%) of the gross revenues received pursuant to this Agreement by BRAE during such year. At any time before such payment is due, Lessee may at its option, by written notice to BRAE, decline to have itself and Yreka so named. If Lessee elects to have itself and Yreka so named as additional insureds, Lessee may at its option, by written notice to BRAE, elect to terminate such insurance coverage as of any next following date on which payment of the premium for such coverage is due.

AMENDMENT NO. 1 dated as of March 31, 1978, to Lease Agreement ("Lease") dated as of February 28, 1978, between BRAE CORPORATION, a California corporation ("BRAE"), and WILLIS B. KYLE, INC., a California corporation ("Lessee")

Lessee has subleased the box cars subject to the Lease to Yreka Western Railroad Co., a California corporation ("Yreka"). Lessee has assigned such sublease to BRAE and Yreka has undertaken to BRAE to perform all of the obligations of Lessee under the Lease. Lessee and BRAE desire to amend the Lease as hereinafter provided, and Yreka has agreed to such amendment.

Accordingly, BRAE and Lessee hereby agree as follows:

1. The Lease is amended by:

- (a) deleting the figure "88.5 per cent" in the fifth line of Section 6A(i) and inserting in its place the figure "90 per cent";
- (b) deleting the first sentence of Section 6A(ii) in its entirety and inserting in its place the following sentence:

"In the event utilization exceeds 90 per cent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental."

- (c) deleting the figure "88.5 per cent" in the fifth and seventh lines of Section 6A(ii) and inserting in its place in each case the figure "90 per cent"; and
- (d) deleting the phrase "one-half of" in the seventh line of Section 6A(ii).

- e. delete Section 13G and substitute therefor the following:

On the expiration of the initial lease term, Lessee shall have the option, if it is not then in default hereunder, to purchase the Cars on each Schedule at the then fair market value of such Cars; provided that if the Lease terminates for any reason prior to fifteen years from the date upon which the last of the Cars on such Schedule have been delivered, this option shall be of no further force and effect.

"If Lessee declines to exercise this option, BRAE may sell such Cars to any third party. Upon receipt by BRAE of any bona fide offer from any third party to purchase any or all of such Cars, BRAE shall give Lessee written notice thereof, which notice shall specify the terms on which such sale to such third party is to be made. If within fifteen days of its receipt of such notice, Lessee makes a written offer to, purchase such Cars on terms at least as favorable to BRAE as those set out in such third party offer, BRAE shall accept Lessee's offer and shall sell such Cars to Lessee on the terms and conditions set out therein.

2. Except as expressly amended hereby, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the date first above written.

BRAE CORPORATION

AGREED:

By

\_\_\_\_\_  
President

YREKA WESTERN RAILROAD CO.

WILLIS B. KYLE, INC.

BY: \_\_\_\_\_

By

\_\_\_\_\_  
Vice President

STATE OF California )  
COUNTY OF San Francisco )

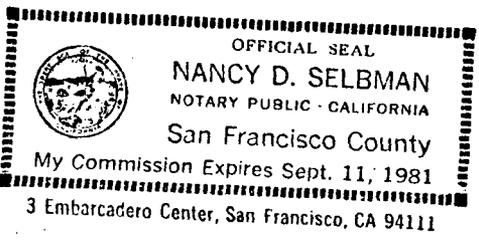
On this 29 day of March, 1978,  
before me personally appeared P. T. Cecil, to  
me personally known, who being by me duly sworn says that such  
person is Vice President of WILLIS B. KYLE, INC., that the  
foregoing Amendment No. 1 was signed on behalf of such corporation  
by authority of its board of directors, and such person acknowledged  
that the execution of the foregoing instrument was the free act  
and deed of such corporation.



Veronica Marshall  
Notary Public

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO )

On this 31 day of March, 1978, before me  
personally appeared William J. Texido, to me personally known,  
who being by me duly sworn says that such person is President of  
BRAE CORPORATION, that the foregoing Amendment No. 1 was signed  
on behalf of such 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.



Nancy D. Selbman  
Notary Public

AMENDMENT NO. 2 dated as of April 15, 1978, to Lease Agreement dated as of February 28, 1978, as amended by Amendment No. 1 dated as of March 31, 1978 (as so amended, the "Lease"), between BRAE CORPORATION, a California corporation ("BRAE"), and WILLIS B. KYLE, INC., a California corporation ("Lessee")

---

Lessee has subleased the box cars subject to the Lease to Yreka Western Railroad Co., a California corporation ("Yreka"). Lessee has assigned such sublease to BRAE and Yreka has undertaken to BRAE to perform all of the obligations of Lessee under the Lease. Lessee and BRAE desire to amend the Lease as hereinafter provided, and Yreka has agreed to such amendment.

Accordingly, BRAE and Lessee hereby agree as follows:

1. The Lease is amended by deleting the last two sentences in Section 6A(i) in their entirety and inserting in their place the following sentence:

"For the purpose of this Agreement, utilization of the Cars shall be determined by a fraction, the numerator of which shall be the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Cars, commencing from the date of delivery as specified in Section 3A hereof, and the denominator of which shall be the aggregate number of days in each calendar year that the Cars are on lease to Lessee, commencing from the date of delivery as specified in Section 3A hereof (such fraction being referred to herein as 'utilization')."

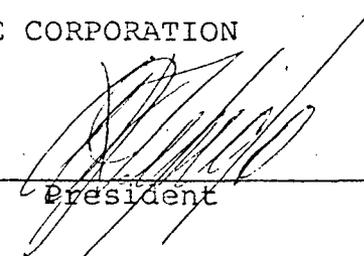
2. Except as expressly amended hereby, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this

Amendment No. 2 to be executed by their duly authorized officers,  
as of the date first above written.

BRAE CORPORATION

BY

  
\_\_\_\_\_  
President

WILLIS B. KYLE, INC.

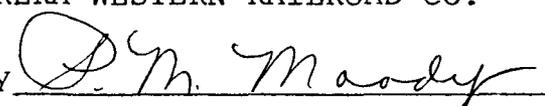
BY

  
\_\_\_\_\_  
Vice President

Agreed:

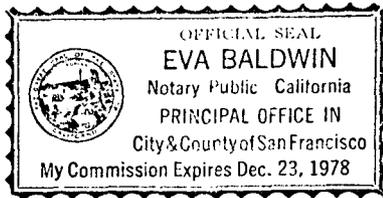
YREKA WESTERN RAILROAD CO.

BY

  
\_\_\_\_\_

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

On this 17<sup>th</sup> day of April, 1978, before me personally appeared L. T. CECIL EB, to me personally known, who being by me duly sworn says that such person is the Vice President of WILLIS B. KYLE, INC., that the foregoing Amendment No. 2 was signed on behalf of such 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.



Eva Baldwin

Notary Public  
My Commission expires: 12/23/78

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

On this 10<sup>th</sup> day of ~~April~~ MAY, 1978, before me personally appeared William J. Texido, to me personally known, who being by me duly sworn says that such person is the President of BRAE CORPORATION, that the foregoing Amendment No. 2 was signed on behalf of such 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.



Nancy D. Selbman

Notary Public  
My Commission expires: 9-11-81

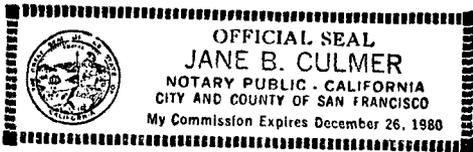
STATE OF CALIFORNIA

)  
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SS.

CITY AND COUNTY OF SAN FRANCISCO

IN WITNESS WHEREOF, the below signed attests that the attached documents are true and exact copies of the original lease agreement and Amendments between BRAE Corporation, a California corporation, and WILLIS B. KYLE, A California corporation, dated February 28, 1978, and Amendment No. 1 dated March 31, 1978 and Amendment No. 2 dated April 15, 1978



*Jane B Culmer*  
\_\_\_\_\_  
Notary Public

My commission expires: 12/26/80