

# BRAE CORPORATION

No. 0-268A029

Date SEP 24 1980

Fee \$ 10.00

VIA FEDERAL EXPRESS

ICC Washington, D. C.

RECORDATION NO. 10203-B  
FILED 1428  
SEP 24 1980 - 11 15 AM  
SEP 24 1980 - 0  
INTERSTATE COMMERCE COMMISSION  
INTERSTATE COMMERCE COMMISSION

September 22, 1980

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Room 2215, 12th & Constitution  
Washington, D.C. 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. §11303 are two original, and two certified true and exact copies of the following document:

Amendment Agreement Number One dated as of June 1980 between BRAE Corporation and Michigan Interstate Railway Company

It relates to 200 XM boxcars marked as follows:

AA 5000 - AA 5199, inclusive

The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

Lessor: Brae Corporation  
Suite 1760, Three Embarcadero Center  
San Francisco, California 94111

Lessee: Michigan Interstate Railway Company  
1801 West Main Street  
Owosso, Michigan 48867

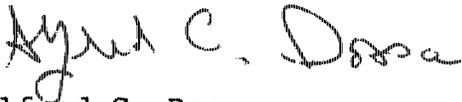
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It is requested that this document be filed and recorded under the names of the parties as set forth above. In view of the fact that it relates to the Lease Agreement and Lease Supplement between Lessor and Lessee, previously assigned recordation numbers 10203-B and 10203-C (filed March 14, 1979 at 10:15 a.m. and December 10, 1979 at 4:00 p.m. respectively), we request that it be assigned the next available letter designation under that primary number.

I enclose a check for \$10.00 for the required recordation fee.

Please return: (1) your letter acknowledging the filing, (2) a receipt for the \$10.00 filing fee paid by check drawn on this firm, (3) the enclosed copies of this letter, and (4) three copies of the document, retaining one original for your files -- all stamped with your official recordation information.

Very truly yours,

A handwritten signature in cursive script that reads "Alfred C. Dossa". The signature is written in dark ink and is positioned above the typed name.

Alfred C. Dossa  
Vice President and  
General Counsel

ACD nmd  
Enclosures

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

9/24/80

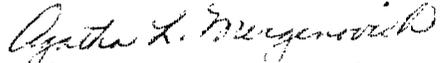
OFFICE OF THE SECRETARY

**Alfred C. Dossa**  
**Vice President & Gen.Counsel**  
**Three Embarcadero Center**  
**San Francisco, Calif. 94111**

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 **9/24/80** at **11:15am**, and assigned re-  
recording number(s). **10203-E**

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

SEP 24 1980 - 11 15 AM

INTERSTATE COMMERCE COMMISSION

## AMENDMENT AGREEMENT

## NUMBER ONE

THIS AMENDMENT AGREEMENT NUMBER ONE, date as of June 1980 ("Agreement"), between BRAE CORPORATION ("BRAE") and MICHIGAN INTERSTATE RAILWAY COMPANY ("LESSEE").

## WITNESSETH:

WHEREAS, the parties hereto have entered into a Lease Agreement, dated as of December 20, 1978, as modified by Riders Number One and Two (the "Lease"), pursuant to which BRAE has leased two hundred (200) XM boxcars to the Lessee; and

WHEREAS, the parties now desire to amend the Lease as hereinafter set forth;

NOW THEREFORE, in consideration of the premises set forth below and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Section 5D and Rider Number One to the Lease are hereby deleted and Amended Section 5D set forth below is substituted therefor:

(i) Lessee agrees to assume and pay all taxes, assessments and other governmental charges of whatsoever kind or character relating to each Car or to the lease, delivery or operation thereof which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessor or on an owner or secured party under any financing agreement with Lessor. BRAE shall forward to Lessee all demands for sales and use tax payments received by it on behalf of Lessee. Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars.

(ii) BRAE Corporation will pay to Lessee the funds equivalent to the ad valorem/property tax assessment by the State of Michigan on the Cars or 1.5 percent of the depreciated book value of the Cars whichever is greater. The determination of the amount will be by the formula promulgated by the State of Michigan pertaining to rail-road rolling stock owned or operated under the markings of Michigan based railroads and levied upon the cars without regard to any tax credits Lessee may enjoy as a result of legislation.

2. Section 6C of the Lease is hereby deleted and amended. Section 6C as set forth below, is substituted therefor:

(i) If, at the end of any calendar quarter (commencing with the calendar quarter beginning January 1, 1980) until the expiration of the term of this Lease, Car Use (as defined in the following sentence) for the quarter just ended and the preceding three quarters is less than 84%, Lessee shall pay to BRAE an amount (hereinafter "Guarantee Amount(s)") equal to the difference between the rent which BRAE would receive if Car Use during the four quarters in question (hereinafter the "Calculation Period") were equal to 84% and the actual rent received or to be received by BRAE for the Calculation Period; provided however, such Guarantee Amounts payable by Lessee during any calendar year shall not exceed the amount of the payment due from BRAE pursuant to amended Section 5D (ii) (hereinafter "Tax Payments"). Car Use shall mean a fraction, the numerator of which is the aggregate number of days that car hire revenues are earned by the Cars during any quarter, and the denominator of which is the aggregate number of days during such quarter that the Cars were available to the Lessee, less the aggregate number of days that the Cars were out of service on foreign railroads and therefor not earning car revenues.

(ii) With respect to the calculation of the Guarantee Amounts payable during the calendar year 1980 only, the maximum Guarantee Amount payable by Lessee shall not be greater than the total of Tax Payments due from BRAE for calendar year 1979 and calendar year 1980.

(iii) Lessee shall have the right to set off from Guarantee Amounts due to BRAE pursuant to subparagraphs (i) and (ii) hereof, the Tax Payments due from BRAE. If, during any calendar year, the Guarantee Amount due from the Lessee is less than the Tax Payments due from BRAE or if there are no Guarantee Amounts due for such year, BRAE shall make such Tax Payments as are due to Lessee, less any Guarantee Amounts due to BRAE, if any, within sixty (60) days after the end of such calendar year. If BRAE fails to make such payments, Lessee shall have the right to set off any such amounts due against rental payments due to BRAE.

(iv) In the event that the Guarantee Amounts for any calendar year during the term hereof exceeds the Tax Payments amount due from BRAE during such calendar year, the Lessee shall either (1) pay to BRAE the amount of such excess Guarantee Amount or (2) notify BRAE that it does not intend to make such payment in which event BRAE

shall have the right, upon delivery of ten (10) days prior written notice and supporting calculations made on a reasonable and mathematically proper basis, to terminate this Lease with respect to such number of the Cars which would have the effect of increasing Car Use during such calendar year to a level equal to 84%. Lessee shall have thirty (30) days from the end of each calendar year to make a determination whether or not to pay the excess Guarantee Amount and to give written notice thereof to BRAE, after which period BRAE shall have the right to begin to terminate Cars as provided above. If Lessee determines that it will pay to BRAE such excess Guarantee Amount as may be owed, Lessee shall make such payment within thirty (30) days after written notice of such determination is delivered to BRAE.

(v) In no event shall the provisions of this amended Section 6C (i) through (iv) or the payment or crediting of any Guarantee Amounts be construed or interpreted so as to affect, modify, amend or in any way change the Utilization calculations with respect to revenue sharing as set forth in Section 6A or the second paragraph of Section 6D hereof; except to the extent shown in Exhibit "A" hereto.

(vi) Exhibit "A" hereto provides an example of the calculations which may be made pursuant to the provisions of amended Sections 5D (ii) and 6C hereof.

3. Section 6E of the Lease is hereby terminated and Amended Section 6E as set forth below is substituted therefor:

6E. In the event that rental or Guarantee Amounts payments owed to BRAE pursuant to this Section 6 are not received by BRAE within twenty-one (21) days after they become due, Lessee shall pay to BRAE an overdue rent charge equal to 1.5 percent per month or part thereof, for such overdue payment period commencing upon the first day that such payment became due and payable hereunder.

4. Section 8A (i) of the Lease is hereby amended as follows:

The nonpayment by Lessee of any sum required hereunder within seven (7) days after telex or telegraphic notice is sent to Lessee stating that such payment is past due; providing that the time periods set forth in Section 6C and 6E hereof have run.

Except as amended hereby, the Lease shall remain in full force and effect in accordance with the terms hereof.

EXHIBIT "A"  
to  
AMENDMENT AGREEMENT

The following sample calculation is made in accordance with the terms of the Amendment Agreement dated as of June 10, 1980, between BRAE CORPORATION ("BRAE") and MICHIGAN INTERSTATE RAILWAY COMPANY ("Lessee"):

Assumptions:

- 1) 100 Cars on lease to Lessee;
- 2) Daily per diem is \$16.00;
- 3) Each calendar quarter is composed of 90 days; and
- 4) Quarterly income at 100% Car Use would equal \$144,000  
(16 x 90 x 100)

First calculation period is the end of March, 1980.

<u>Quarter Car Use</u>	<u>%</u>	<u>Income</u>
1st Quarter 1980	= 60%	\$ 86,400
4th Quarter 1979	85%	122,400
3rd Quarter 1979	85%	122,400
2nd Quarter 1979	90%	129,600
	Year Total	<u>\$ 460,800</u>
Income at 84% for Year		483,840
	Difference	<u>\$ ( 23,040)</u>

The negative difference would then be set off from the Tax Payment due from BRAE.

Second Calculation Period - June, 1980:

2nd Quarter 1980	60%	\$ 86,400
1st Quarter 1980	60%	109,440*
4th Quarter 1979	85%	122,400
3rd Quarter 1979	85%	122,400
	Year Total	<u>\$ 440,640</u>

\*The \$23,040 has been added to the \$86,400 actual.

Income at 84% =	\$ 483,840
Difference =	\$ ( 43,200)

We would then take this out of the Tax Payment due and add to the second quarter.

\$ 86,400
43,200
<u>\$ 129,600</u>

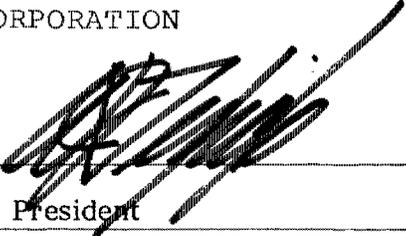
This process would continue until:

1. Car Use on a calendar year average equalled or exceeded 84%; or
2. The Tax Payment due from BRAE was cancelled, at which time the remaining provisions of the Amendment Agreement will control.

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

BRAE CORPORATION

MICHIGAN INTERSTATE RAILWAY COMPANY

By 

By Wm. M. Maloney

Title President

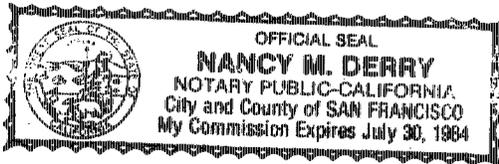
Title Chairman & President

Date July 23, 1980

Date July 3, 1980

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

On the 23<sup>rd</sup> day of July, 1980, before me personally appeared William J. Seibel, to me known, who, being by me duly sworn, did depose and say that he is the President of BRAE Corporation, the corporation which executed the above instrument; that he signed his name to the above instrument by authority of the Board of Directors of said corporation; and that he acknowledged that the execution of the above instrument was the free act and deed of such corporation.



[seal]

Nancy M. Derry  
Notary Public

My Commission Expires: July 30, 1984

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF SHIAWASSEE )

On this 3<sup>RD</sup> day of JULY, 1980, before me personally appeared VINCENT M. MALANAPHY, to me personally known, who, being by me duly sworn, did depose and say that he is the CHAIRMAN & PRES. of MICHIGAN INTERSTATE RAILWAY CO., the corporation which executed the above instrument, that he signed his name to the above instrument by authority of the Board of Directors of said corporation; and that he acknowledged that the execution of the above instrument was the free act and deed of such corporation.

[seal]

Melody Lee King  
Notary Public

My Commission Expires: JANUARY 4, 1982