

STEPTOE & JOHNSON

1250 CONNECTICUT AVENUE  
WASHINGTON, D. C. 20036

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RECORDATION NO. 11965-4  
FILED 1425

AUG 29 1980 10 45 AM

August 29, 1980

INTERSTATE COMMERCE COMMISSION

6-242A030

No.

Date AUG 29 1980

Fee \$ 10.00

ICC Washington, D. C.

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

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U. S. C. § 11303 are six (6) copies of the following document:

Amendment dated as of August 1, 1980 (to the Credit and Security Agreement dated as of October 1, 1979) between Brae Corporation and Manufacturers Hanover Trust Company, The First National Bank of Boston, Crocker National Bank, and, The Bank of California, N.A.

It relates to the same railroad equipment as that identified in the Credit and Security Agreement dated as of October 1, 1979, assigned recordation number 11965.

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

- Debtor: Brae Corporation  
Suite 1760, 3 Embarcadero Center  
San Francisco, CA 94111
- Lender: Crocker National Bank  
One Montgomery Street  
San Francisco, CA 94104
- Lender: Bank of California, N. A.  
400 California Street  
San Francisco, CA 94104
- Lender: First National Bank of Boston  
100 Federal Street  
Boston, MA 02110
- Lender/  
Agent: Manufacturers Hanover Trust Company  
741 Fifth Avenue  
New York, NY 10022

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T.C.C.  
FEE OPERATION BR.

*C. Dennis Harris*

Ms. Mergenovich

-2-

August 29, 1980

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 Credit and Security Agreement (previously identified), it is additionally requested that it be assigned the next available letter designation (which is believed to be "E") under the primary recordation number - 11965.

Please return to the person presenting this letter: (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) any copies of the document not required for recordation--all stamped to indicate appropriate filing information.

Very truly yours,

  
Cheryl A. Skigin

mbm

Enclosures

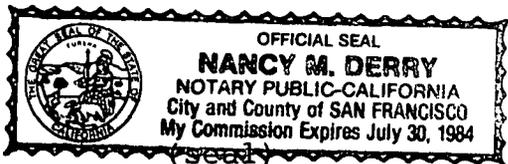
STATE OF CALIFORNIA            )  
  )  
COUNTY OF SAN FRANCISCO    )

  )        ss.

I, Nancy M. Derry, a Notary Public in and for the State of California, duly commissioned and sworn, do certify that on this 27 day of August, 1980, I carefully compared the annexed copy of the Amendment, dated as of August 1, 1979, to the Credit and Security Agreement, dated as of October 1, 1979, with the original thereof, and that the same is a full, true and exact copy of said Amendment.

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

Nancy M. Derry  
Notary Public



My Commission Expires: July 30, 1984

AUG 29 1980 -10 45 AM

INTERSTATE COMMERCE COMMISSION

AMENDMENT, dated as of August 1, 1980, to the Credit and Security Agreement, dated as of October 1, 1979 (the "Credit and Security Agreement"), among BRAE CORPORATION, a Delaware corporation (the "Company"), MANUFACTURERS HANOVER TRUST COMPANY, THE FIRST NATIONAL BANK OF BOSTON, CROCKER NATIONAL BANK, THE BANK OF CALIFORNIA, N.A. (the "Banks") and MANUFACTURERS HANOVER TRUST COMPANY, as Agent for the Banks (in such capacity, the "Agent").

W I T N E S S E T H :

WHEREAS, the Company and the Banks are parties to the Credit and Security Agreement; and

WHEREAS, the Company has requested that the Banks agree to amend the Credit and Security Agreement to increase the aggregate amount of the Revolving Credit Commitments from \$6,000,000 to \$10,000,000 and to decrease the rates of interest payable thereunder; and

WHEREAS, the Banks are willing to make such amendments to the Credit and Security Agreement;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the Company, the Agent and the Banks hereby agree as follows:

1. Subsection 2.1 of the Credit and Security Agreement is hereby amended by deleting the table which follows the colon and precedes the word "During," and by substituting the following:

<u>Bank</u>	<u>Commitment</u>	<u>% of Total Commitment</u>
Manufacturers Hanover Trust Company	\$4,000,000	40%
The First National Bank of Boston	4,000,000	40%
Crocker National Bank	1,000,000	10%
The Bank of California, N.A.	1,000,000	10%
	<u>\$10,000,000</u>	<u>100%</u>

2. Subsection 2.3 of the Credit and Security Agreement is hereby amended by deleting the phrase "at a fluctuating rate per annum equal to 110% of the MHTC Rate, and after such amount shall have become due and payable at a rate per annum equal to 120% of the MHTC Rate" and substituting therefor, "at a fluctuating rate per annum equal to 107% of the MHTC Rate, and after such amount shall have become due and payable at a rate per annum equal to 120% of the MHTC Rate".

3. Subsection 2.7 of the Credit and Security Agreement is hereby amended by deleting the phrase "at a fluctuating rate per annum equal to 115% of the MHTC Rate, and thereafter at a rate per annum equal to 125% of the MHTC Rate until such amount is paid in full" and substituting therefor, "at a fluctuating rate per annum equal to 110% of the MHTC Rate, and thereafter at a rate per annum equal to 120% of the MHTC Rate until such amount is paid in full".

4. Exhibit A and Exhibit B to the Credit and Security Agreement are amended by deleting them in their entirety and substituting therefor Exhibit I and Exhibit II hereto respectively.

5. This Amendment shall not become effective unless and until

a. the Agent shall have received from the Company for and on behalf of each of the Banks a duly executed Revolving Credit Note in the form of Exhibit I hereto, with appropriate insertions therein as to payee and principal amount.

b. The Agent shall have received, with a counterpart for each of the Banks, a copy of the resolutions of the Board of Directors of the Company, certified as of the date of execution of this Amendment by the Secretary or an Assistant Secretary thereof, authorizing the execution and delivery by the Company of this Amendment and the performance by the Company of the Credit and Security Agreement as amended by this Amendment.

c. The representations and warranties contained in Section 3 of the Credit and Security Agreement shall be true and correct in all material respects on and as of the date of execution of this Amendment with the same effect as if made on and as of such date; no Default or Event of Default shall be in existence on the date of execution of this Amendment; and the Bank shall have received, with a counterpart for each of the Banks, a certificate of the Company to the foregoing effect dated as of the date of execution of this Amendment and signed by a responsible officer of the Company.

d. The Agent shall have received, with a counterpart for each of the Banks, an opinion of counsel for the Company satisfactory to the Agent, dated the date of execution of this Amendment, substantially in the form of Exhibit III hereto.

6. Except as expressly amended hereby, the Credit and Security Agreement shall remain in full force and effect.

7. The Company agrees to pay or reimburse the Agent for all its out-of-pocket costs and expenses incurred in connection with the preparation, execution and delivery of this Amendment, including, without limitation, the fees and expenses of counsel to the Agent.

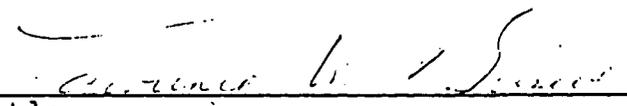
8. This Amendment shall be effective as of the date first above written when counterparts hereof signed by the Company, each Bank and the Agent have been delivered to the Agent and when all the conditions of Section 5 hereof have been satisfied. This Amendment may be executed by one

or more of the parties hereto on any number of separate counterparts and all of said counterparts shall be deemed to constitute one and the same instrument.

9. This Amendment shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

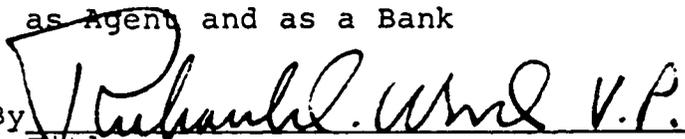
IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and delivered by their respective duly authorized officers as of the date first above written.

BRAE CORPORATION

By 

Title: President

MANUFACTURERS HANOVER TRUST COMPANY,  
as Agent and as a Bank

By 

Title: V.P.

THE FIRST NATIONAL BANK OF BOSTON

By Richard C. Wallace VP  
Title:

CROCKER NATIONAL BANK

By Ferdinand T. Kelly 8.13.80  
Title: **CORPORATE BANKING OFFICER**

THE BANK OF CALIFORNIA, N.A.

By Pat Fitzpatrick  
Title: **Assistant Vice President**

[FORM OF SUBSTITUTE REVOLVING CREDIT NOTE]

\$

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New York, New York

August 1, 1980

FOR VALUE RECEIVED, the undersigned, BRAE CORPORATION, promises to pay on \_\_\_\_\_, 19 \_\_, to the order of \_\_\_\_\_ (the "Bank") at the office of Manufacturers Hanover Trust Company located at 741 Fifth Avenue, New York, New York 10022, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ (\$ \_\_\_\_\_) or, if less than such principal amount, the aggregate unpaid principal amount of all loans made by the Bank to the undersigned pursuant to Subsection 2.1 of the Credit and Security Agreement hereinafter referred to. The undersigned further agrees to pay interest at said office, in like money, on the unpaid principal amount owing hereunder from time to time from the date hereof at a fluctuating rate per annum equal to 107% of the MHTC Rate until such principal amount shall become due and payable (whether at maturity, by acceleration or otherwise), and thereafter at a rate per annum equal to 120% of the MHTC rate until such principal shall be paid in full. As used herein, the MHTC Rate shall mean the commercial loan rate of Manufacturers Hanover Trust Company from time to time generally in effect in New York City on unsecured borrowings having a 90-day maturity by its most responsible and substantial domestic corporate borrowers. Any change in the interest rate resulting from a change in such MHTC Rate shall become effective as of the opening of business on the day on which such change in such MHTC Rate occurs. Interest shall be payable on the last day of each March, June, September and December, commencing on the first such date to occur after the date hereof, and upon payment in

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\* Insert Termination Date.

\*\* Insert or revise as per Subsection 2.3 of Credit and Security Agreement.

full of the unpaid principal amount hereof. All loans made by the Bank pursuant to Subsection 2.1 of the Credit and Security Agreement, and all payments of the principal

amount of such loans, shall be indorsed by the holder of this Note on the schedule annexed hereto.

If any payment on this Note becomes due and payable on a Saturday, Sunday or other day on which commercial banks are authorized or required to close under the laws of the State of New York, the maturity thereof shall be extended to the next succeeding business day and, with respect to payments of principal, interest thereon shall be payable during such extension at the then applicable rate during such extension.

This Note is one of the Revolving Credit Notes referred to in a Credit and Security Agreement dated as of October 1, 1979 among the undersigned, the banks parties thereto (including the Bank) and Manufacturers Hanover Trust Company as Agent for such banks, as amended by an Amendment dated as of August 1, 1980, and is entitled to the benefits thereof and may be, or may be required to be, prepaid in whole or in part as provided therein.

Upon the occurrence of any one or more of the Events of Default specified in said Credit and Security Agreement, all amounts then remaining unpaid on this Note may be declared to be immediately due and payable as provided in said Credit and Security Agreement.

This Note, together with the other Notes referred to in said Credit and Security Agreement, is secured by the Collateral described in said Credit and Security Agreement. Reference is made to said Credit and Security Agreement for a description of the nature and extent of the security for this Note and the rights of the holder hereof with respect to such security.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

BRAE CORPORATION

By \_\_\_\_\_  
Title:



[FORM OF TERM NOTE]

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New York, New York  
August 1, 1980

FOR VALUE RECEIVED, the undersigned, BRAE CORPORATION, promises to pay to the order of \_\_\_\_\_ (the "Bank") at the office of MANUFACTURERS HANOVER TRUST COMPANY located at 741 Fifth Avenue, New York, New York 10022, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ \* DOLLARS (\$ \_\_\_\_\_ \* ) in twenty (20) consecutive quarterly installments, each in the amount of \$ \_\_\_\_\_, on the last day of each March, June, September and December commencing on the first such date to occur after the date hereof. The undersigned further promises to pay interest in like money at said office from the date hereof on the unpaid principal amount hereof at a fluctuating rate per annum equal to 110% of the MHTC Rate until such amount shall become due and payable (whether at maturity, by acceleration or otherwise), and thereafter at a rate per annum equal to 120% of the MHTC Rate until such overdue principal amount is paid in full. As used herein, the MHTC Rate shall mean the commercial loan rate of Manufacturers Hanover Trust Company from time to time generally in effect in New York City on unsecured borrowings having a 90-day maturity by its most responsible and substantial domestic corporate borrowers. Any change in the interest rate resulting from a change in such MHTC Rate shall become effective as of the opening of business on the day on which such change in such MHTC Rate occurs. Interest shall be payable on the last day of each March, June, September and December, commencing on the first such date to occur after the date hereof, and upon payment in full of the unpaid principal amount hereof.

If any payment on this Note becomes due and payable on a Saturday, Sunday or other day on which commercial banks are authorized or required to close under the laws of the State of New York, the maturity thereof

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\* Insert or revise as per Subsection 2.7 of the Credit and Security Agreement.

shall be extended to the next succeeding business day and, with respect to payments of principal, interest thereon shall be payable during such extension at the then applicable rate during such extension.

This Note is one of the Term Notes referred to in a Credit and Security Agreement dated as of October 1, 1979 among the undersigned, the banks parties thereto (including the Bank) and Manufacturers Hanover Trust Company as Agent for such banks, as amended by an Amendment dated as of August 1, 1980 and is entitled to the benefits thereof and may be or may be required to be prepaid in whole or in part as provided therein.

Upon the occurrence of any one or more of the Events of Default specified in said Credit and Security Agreement, all amounts then remaining unpaid on this Note may be declared to be immediately due and payable as provided in said Credit and Security Agreement.

This Note, together with the other Notes referred to in said Credit and Security Agreement, is secured by the Collateral described in said Credit and Security Agreement. Reference is made to said Credit and Security Agreement for a description of the nature and extent of the security for this Note and the rights of the holder hereof with respect to such security.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

BRAE CORPORATION

By \_\_\_\_\_  
Title:

August 1, 1980

Manufacturers Hanover Trust  
Company, as Agent  
350 Park Avenue  
New York, New York 10022

Dear Sirs:

We have acted as counsel for Brae Corporation, a Delaware corporation (the "Company"), in connection with (i) the preparation, execution and delivery of the Amendment, dated as of August 1, 1980 (the "Amendment") to the Credit and Security Agreement dated as of October 1, 1979 (the "Credit and Security Agreement"), among the Company, Manufacturers Hanover Trust Company ("MHT"), The First National Bank of Boston, Crocker National Bank and The Bank of California (collectively, the "Banks" and individually, a "Bank"), and MHT as agent for the Banks (the "Agent"). The Credit and Security Agreement as amended by the Amendment is hereinafter referred to as the Credit and Security Agreement.

Unless the context otherwise requires, terms used herein which are defined in subsection 1.1 of the Credit and Security Agreement shall have the respective meanings stated in said subsection 1.1.

We have reviewed the Credit and Security Agreement, and we have examined such certificates of public officials and of officers of the Company and copies, certified or otherwise identified to our satisfaction, of such corporate documents and records of the Company and such other documents, records, certificates, papers and legal matters as we have deemed relevant and necessary as the basis for our opinions hereinafter set forth. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to original documents of documents submitted to us as certified or photostatic copies. We have relied upon such certificates with respect to the accuracy of material factual matters contained therein which were not independently established.

Based upon the foregoing, it is our opinion that:

1. Each of the Company and its Subsidiaries is a corporation duly organized and validly existing in good standing under the laws of its jurisdiction of incorporation, with full corporate power and authority to carry on its business as presently conducted and to own or hold under lease its properties; each of the Company and its Subsidiaries is duly qualified to do business as a foreign corporation in good standing in each other jurisdiction in which the conduct of its business or the maintenance of its properties requires it to be so qualified; and the Company has full corporate power and authority to execute and deliver the Amendment and to carry out the transactions contemplated by the Credit and Security Agreement.

2. Each of the Amendment and the Revolving Credit Notes dated the date hereof has been duly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

3. The execution and delivery by the Company of the Amendment and the performance by the Company of the Credit and Security Agreement: are not and will not be in violation of the articles of incorporation or by-laws of the Company; are not and will not be in violation of or conflict with any law or governmental rule or regulation or, to the best of our knowledge, any judgment, writ, order, injunction, award or decree of any court, arbitrator, administrative agency or other governmental authority applicable to the Company or, to the best of our knowledge, any indenture, mortgage, contract, agreement or other undertaking or instrument to which the Company is a party or by which its property may be bound or affected; and, to the best of our knowledge, do not and will not result in the creation or imposition of any Lien on any of its properties pursuant to the provisions of any such indenture, mortgage, contract, agreement or other undertaking or instrument.

4. The execution and delivery by the Company of the Amendment and the performance by the Company of the Credit and Security Agreement have not and will not require the consent, authorization or other approval of, the giving of notice to, the registration or filing with, or the

taking of any other action in respect of, any court, administrative agency or other governmental authority.

5. There is, to the best of our knowledge, no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened (or any basis therefor known to us) which (i) involves any of the transactions contemplated by the Credit and Security Agreement, and (ii) is against or affecting the Company or its Subsidiaries, which, if adversely determined, would materially adversely affect the financial condition, business or operations of the Company or any of its Subsidiaries.

Our opinion as to the enforceability of any document, instrument or agreement is limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.

Very truly yours,