

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

9763-A
RECORDATION NO. 9763 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.

SECRET 1133
No.
Date OCT 13 1978
Fee \$ 200.00
ICC Washington, D. C.
9765-A
RECORDATION NO. 9765 Filed 1425
OCT 13 1978 2 10 PM
INTERSTATE COMMERCE COMMISSION
RECEIVED
OCT 13 2 05 PM '78
I.C.C.
FEE OPERATION BR.

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

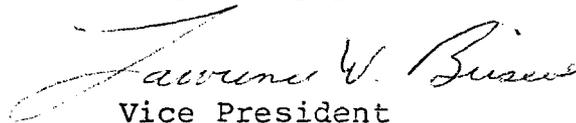
BRAE Corporation, the corporation which originally executed the Kyle Lease was merged into its wholly-owned subsidiary, BraeLease Corporation, on September 27, 1978. Pursuant to such merger, BraeLease Corporation assumed all of the rights and obligations of BRAE Corporation. Accordingly, BraeLease Corporation 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 (Both Inclusive)</u>	<u>Markings</u>
100	70-ton 50 '6" Box Cars, AAR Class XM	YW25101-YW25200	"Property of and leased from Birmingham Trust National Bank, as trustee, subject to an agreement filed under the Interstate Commerce Act, Section 20c"

RECORDATION NO. 9765-4 Filed 1978

OCT 13 1978 4 28 PM
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF PURCHASE AGREEMENT

DATED AS OF October 1, 1978

Between

BRAELEASE CORPORATION,
Assignor

and

BIRMINGHAM TRUST NATIONAL BANK, as Owner Trustee,
Assignee

ASSIGNMENT OF PURCHASE AGREEMENT dated as of October 1, 1978 Between BRAELEASE CORPORATION, a Delaware corporation, successor by merger to BRAE Corporation, a California corporation, (hereinafter called the Assignor), and BIRMINGHAM TRUST NATIONAL BANK as Owner Trustee under that certain Trust Agreement with Birmingham Trust National Bank and Schuler Industries, Inc. ("the Beneficiaries") dated as of May 31, 1978 (hereinafter called the Assignee).

WHEREAS, the Assignor has entered into a contract dated as of September 30, 1978 incorporating the letters of BRAE Corporation dated March 31, 1978 and FMC Corporation dated April 26, 1978, (hereinafter called the Purchase Agreement) with FMC Corporation (hereinafter called the Builder), pursuant to which the Builder has agreed to manufacture, sell and deliver to the Assignor the units of railroad equipment described in Schedule A hereto, which consist of 100 boxcars and are referred to as Lot No. 17941 (hereinafter called the Units); and

WHEREAS, the Assignor desires to assign its rights under the Purchase Agreement to the Assignee and when the Units are delivered under the Purchase Agreement to lease them from the Assignee pursuant to an Equipment Lease Agreement dated as of the date hereof (hereinafter called the Lease);

NOW THEREFORE in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Assignor and the Assignee agree as follows:

1. The Assignor hereby sells, assigns, transfers and sets over unto the Assignee, and its successors and assigns, all of the Assignor's right, title and interest in and to the Purchase Agreement and the Units.

2. The right, title and interest assigned pursuant to § 1 hereof, shall include, but shall not be limited to: (i) the right to accept delivery of the Units pursuant to the Purchase Agreement and to take title to the Units from the Builder; and (ii) all claims for damages arising from any failure of the Builder to perform or observe any of the terms of the Purchase Agreement and all rights, benefits and claims under all warranties contained in the Purchase Agreement and any other amounts which may become payable by the Builder under the Purchase Agreement.

3. Anything contained herein to the contrary notwithstanding: (i) the Assignor shall at all times remain liable to the Builder under the Purchase Agreement for the performance of all its duties and obligations thereunder to the same extent as if this Assignment had not been executed; (ii) the exercise by the Assignee of any of the rights assigned to it hereunder shall not release the Assignor from any of its duties or obligations to the Builder under the Purchase Agreement.

4. The Assignor agrees that at any time and from time to time, upon the written request of the Assignee, the Assignor will promptly execute and deliver any such further instruments and documents and take such further actions as the Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights assigned hereby.

5. The Assignor represents and warrants that: (i) the Purchase Agreement is in full force and effect (ii) the Assignor is not in default thereunder, (iii) the Assignor has not heretofore assigned or pledged the whole or any part of the rights assigned hereby to the Assignee; (iv) none of the Units has been delivered by the Builder under the Purchase Agreement; and (v) the Assignor has made no payments to the Builder in respect of the Units or any of them. The Assignor covenants and agrees that so long as this Assignment shall remain in effect, it will not assign or pledge the whole or any part of the rights assigned hereby.

6. The only obligation or liability of the Assignor under the Purchase Agreement assigned hereby to the Assignee is the obligation to pay the purchase price, as provided in the Purchase Agreement, for any Units delivered and accepted under the Purchase Agreement; provided, however, that the Assignee shall have no obligation or liability to purchase or pay for any Unit which shall not have been delivered to and accepted by the Assignee on or before December 31, 1978, for any Unit if the aggregate Purchase Price for such Unit and any Units theretofore delivered and accepted shall exceed \$3,655,000 or for any Unit with respect to which one or more of the other conditions set forth in § 5 of Lease shall not have been satisfied.

7. In the event that the Assignee shall, pursuant to the proviso to § 6 hereof, not theretofore have purchased and paid for any Units, the Assignee shall on January 1, 1979 either waive (conditionally, partially or absolutely) the conditions which have not been satisfied or reassign to the Assignor its rights under this Assignment relating to the Units not theretofore delivered and accepted under the Purchase Agreement.

8. The Assignor agrees to cause this Assignment to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act.

9. This Assignment shall be governed by, and construed in accordance with, the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. This Assignment may be executed in two or more counterparts, each of shall be an original hereof, but all of which when taken together shall constitute one and the same instrument.

11. The Assignee has executed this Assignment solely in its capacity as owner trustee under the Trust Agreement referred to above and not in its individual or corporate capacity, and its liability hereunder shall be limited to assets held by it as such trustee.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment to be executed by their duly authorized officers as of the date first above written.

[Corporate Seal]
Attest:

Fergus A. Wald

BRAELEASE CORPORATION

By *Lawrence W. Biscoe*

[Corporate Seal]
Attest:

Reginald Williams

BIRMINGHAM TRUST NATIONAL BANK,
as Owner Trustee

By *Carl A. Smith*

SCHEDULE A

SECTION 1. Purchase Order

Vendee's letter of March 31, 1978, Manufacturer's letters of April 26, 1978 and October 11, 1978. LOT NO. 17941.

SECTION 2. Delivery Point

Manufacturer's Plant.

SECTION 3. Railroad Equipment

100 70 Ton 50'6" Box Cars - YW 25101-25200 (AAR Designation XM)

SECTION 4. Purchase Price

The price will not exceed \$37,000 per unit nor \$3,700,000, ex factory, for all of the equipment.

SECTION 5. Markings on Cars

Stencil in letters at least one inch in height:
"Property of and leased from Birmingham Trust National Bank, as Trustee, subject to an Agreement Filed under the Interstate Commerce Act, Section 20c."

STATE OF ALABAMA)
) ss.
COUNTY OF JEFFERSON)

On this 12th day of October, 1978 before me personally appeared Carl B. Smith, to me personally known who, being by me duly sworn, says that he is a Vice President - Corporate Trust of BIRMINGHAM TRUST NATIONAL BANK, as owner Trustee under that certain Trust Agreement with Birmingham Trust National Bank and Schuler Industries, Inc. dated as of May 31, 1978, that one of the seals affixed to the foregoing instrument is the seal of such association, that such instrument was signed and sealed on behalf of such association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such association, acting in its capacity as Owner Trustee.

Helen W. Halcomb
Notary Public

My Commission Expires Sept. 20, 1980

[Notarial Seal]

My Commission Expires:

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

On this 11th day of October, 1978, before me personally appeared Lawrence W. Briscoe, to me personally known, who, being by me duly sworn, says that he is a Vice President of BRAELEASE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation, that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Jane B. Culmer
Notary Public

[Notarial Seal]

My Commission Expires: December 26 1980