

# BRAE CORPORATION

RECORDATION NO. 9837-B File 1425

NOV - 8 1982 12 45 PM

INTERSTATE COMMERCE COMMISSION

2-312A072

RECEIVED  
NOV 8 12 36 PM '82  
I.C.C.  
FEE OPERATION BR.

November 3, 1982

No. ....  
Date NOV 8 1982  
Fee \$ 10.00

ICC Washington, D. C.

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

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303 are 1 original and six copies of the following document:

Equipment schedule No. 3, dated as of September 29, 1982 to the Lease Agreement dated as of March 1, 1978 between BRAE Corporation and the Oregon & Northwestern Railroad Co.

This document relates to up to 50, 60-100 ton bulkhead flat cars.

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

LESSOR: BRAE Corporation  
Four Embarcadero Center - Suite 3100  
San Francisco, CA 94114

LESSEE: Oregon & Northwestern Railroad Co.  
200 South Michigan Avenue  
Chicago, Illinois 60604

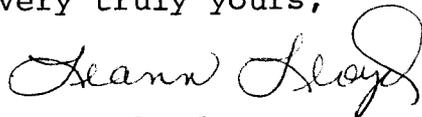
It is requested that this document be filed and recorded under the names of the parties as set forth above. In view of the fact that it relates to a Lease Agreement dated as of March 1, 1978 between BRAE Corporation and the Oregon & Northwestern Railroad Co. previously recorded and assigned recordation number 9837, we request that it be assigned the next available letter designation under that primary number.

I also enclose a check in the amount of \$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 copy of this letter and (4) the original and five copies of

the document (retaining one copy for your files) all stamped with your official recordation information.

Very truly yours,

A handwritten signature in cursive script that reads "Leann Lloyd". The signature is written in black ink and is positioned above the typed name and contact information.

Leann Lloyd  
Legal Assistant  
(415) 951-1555

LL/es

cc: Al Dossa

Enclosures

9839  
RECORDATION NO. .... Filed 1425  
NOV 15 1978 -2 25 PM  
INTERSTATE COMMERCE COMMISSION

[FRUIT GROWERS]

ASSIGNMENT OF PURCHASE AGREEMENT

DATED AS OF OCTOBER 1, 1978

Between

BRAELEASE CORPORATION,  
as Assignor

and

FIRST MARYLAND LEASECORP,  
as Assignee

ASSIGNMENT OF PURCHASE AGREEMENT dated as of October 1, 1978 Between BRAELEASE CORPORATION, a Delaware corporation (the "Assignor"), and FIRST MARYLAND LEASECORP, a Maryland corporation (the "Assignee").

WHEREAS, the Assignor has entered into a contract by letter agreement dated April 6, 1978 incorporating the Assignor's mailgram dated March 6, 1978 and the Builder's mailgram dated March 9, 1978 (the "Purchase Agreement") with Fruit Growers Express Company (the "Builder"), pursuant to which the Builder has agreed to manufacture, sell and deliver to the Assignor, among others, the units of railroad equipment described in Schedule A hereto, which consist of 50 class XM boxcars (the "Units"); and

WHEREAS, the Assignor desires to assign to the Assignee the Assignor's rights under the Purchase Agreement to the extent that they relate to the Units 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 (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, to the extent that the Purchase Agreement relates to the Units and in and to 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 pursuant to a bill of sale 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, to the extent it relates to the Units, and all rights, benefits and claims under all warranties contained in the Purchase Agreement, to the extent it relates to the Units, and any other amounts which may become payable by the Builder under the Purchase Agreement, to the extent it relates to the Units. Notwithstanding the foregoing, so long as no Event of Default (as defined in the Lease) shall have occurred and be continuing, the Assignee hereby appoints and constitutes the Assignor its agent and attorney-in-fact during the term of the Lease to assert and enforce from time to time, in the name of and for the account of the Assignee or the Assignor, as their interests may appear, at the Assignor's sole cost and expense, whatever claims and rights the Assignee may have against the Builder pursuant to the Purchase Agreement, except the right to purchase and take title to the Units. The Builder shall be entitled to deal solely with the Assignor, as such agent, until it shall have received written notice of the occurrence of an Event of Default from the Assignee.

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 with regard to the Units and is enforceable in accordance with its terms; (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 Assignor on or before December 31, 1978, for any Unit if the aggregate Lessor's Cost (as defined in the Lease) for such Unit and for any Units theretofore delivered and accepted under the Lease shall exceed \$2,075,550 or for any Unit with respect to which one or more of the conditions set forth in § 24 of the 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 Unit, 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.

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:

BRAELEASE CORPORAITON,

*Fergal Wilson*

By *Lawrence A. Bisio*

Vice President

[Corporate Seal]  
Attest:

FIRST MARYLAND LEASECORP

*Donald H. Hook, Jr.*

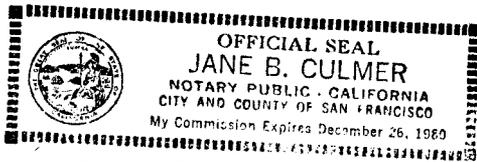
By *Maurice E. Moore*  
FINANCIAL OFFICER

SCHEDULE A

<u>Quantity</u>	<u>Type</u>	<u>Identifying Numbers (Both Inclusive)</u>	<u>Markings</u>
50	70-Ton XM Box- cars	ONW 5001- ONW 5050	"First Maryland Leasecorp, Owner-Lessor"

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

On this 23 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

STATE OF MARYLAND )  
 ) ss.  
~~CITY~~  
~~COUNTY~~ OF BALTIMORE )

On this 9th day of October 1978, before me personally appeared MAURICE E. MOORE and \_\_\_\_\_, to me personally known, who, being by me duly sworn, say that they are a FINANCIAL OFFICER and \_\_\_\_\_, respectively of FIRST MARYLAND LEASECORP, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Deborah Ann Kiser  
Notary Public

[Notarial Seal]

My Commission Expires: July 1, 1982