

CF

RECORDATION NO. 11328/B Filed 1425

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INTELLIGENCE COMMERCIAL COMMISSION

ASSIGNMENT AND ASSUMPTION

WHEREAS, Brae Corporation, a Delaware corporation ("Brae"), and Warrenton Rail Road Company, a North Carolina corporation ("Warrenton"), entered into a railcar lease agreement dated as of July 17, 1979 (the "Railcar Lease"), with Brae as lessor and Warrenton as lessee, relating to 300 covered hopper railcars ("Railcars"); and

WHEREAS, pursuant to the terms of the Lease, Brae is authorized and empowered to assign all, or any portion of its rights and obligations under the Railcar Lease to any other party; and

WHEREAS, Brae desires to assign all of its rights under the Railcar Lease to American Leasing Investors, a California limited partnership ("ALI") insofar as the Railcar Lease relates to such number of covered hopper cars bearing identification numbers WAR 15100 through WAR 15124, being twenty-five of the Railcars, as are delivered to ALI for acceptance on or prior to December 28, 1979 (the "Assigned Cars"); and

WHEREAS, Brae and Warrenton intend to enter into separate leases covering the Assigned Cars, on the one hand (the "Lease"), and other Railcars, on the other hand; and

WHEREAS, Brae entered into a shipper agreement with CF Industries, Inc., a Delaware corporation ("CF"), dated as of the 28th day of September, 1979, as amended (the "Shipper Agreement"); and

WHEREAS, pursuant to the terms of the Shipper Agreement, under certain circumstances expressly set forth therein, a full service lease agreement (the "Full Service Lease Agreement") between Brae and CF appended to the Shipper Agreement will become effective; and

WHEREAS, both the Shipper Agreement and the Full Service Lease Agreement (collectively, the "Shipper Instruments") relate to the Railcars; and

WHEREAS, pursuant to the terms of the Shipper Instruments, Brae is authorized to assign all or any portion of its right, title and interest to an entity or entities acquiring all or any portion of the Railcars (including without limitation, the Assigned Cars); and

WHEREAS, Brae desires to assign all of its rights and interests in the Shipper Instruments to ALI insofar as the Shipper Instruments relate to the Assigned Cars; and

WHEREAS, ALI has entered into an agreement to become the owner of the Assigned Cars and has entered into a management agreement for the management of the Assigned Cars by Brae Railcar Management, Inc., an affiliate of Brae;

NOW, THEREFORE, in consideration of the premises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, ALI, Brae and Green hereby agree as follows:

1. Brae hereby sells, assigns, conveys, transfers and delivers to ALI all of the right, title and interest of Brae in, to and under the Railcar Lease and the Shipper Instruments (insofar as the Railcar Lease and the Shipper Instruments relate to the Assigned Cars) and the Lease, which right, title and interest Brae represents and warrants to ALI, has not previously been sold, assigned, transferred or otherwise encumbered.

2. Brae agrees that: (i) it shall take all required actions under the Shipper Instruments, including, without limitation, the giving of notice to CF thereunder, which actions are required in order to effectuate the assignment of the Shipper Instruments (insofar as the Shipper Instruments relate to the Assigned Cars) hereunder; (ii) it shall take all required actions under the Railcar Lease, including, without limitation, the giving of notice to Warrenton thereunder, which actions are required in order to effectuate the assignment of Railcar Lease hereunder; (iii) it shall enter into the Lease, which shall be in the same form, at the same rent per Railcar and on the same terms as the Railcar Lease; and (iv) upon the execution of the Lease in replacement of the Railcar Lease

insofar as the Railcar Lease relates to the Assigned Cars, this Assignment and Assumption shall constitute for all purposes an assignment of all of the right, title and interest of Brae in, to and under the Lease effective simultaneously with such execution.

3. ALI hereby accepts the assignment contained in Section 3 hereof and covenants with Brae to assume, faithfully perform, satisfy and/or discharge all of the terms, conditions, obligations and/or responsibilities which were to have been performed, satisfied or discharged by Brae under the Lease, the Railcar Lease and the Shipper Instruments (insofar as the Railcar Lease and the Shipper Instruments relate to the Assigned Cars): provided, however, that ALI's obligations hereunder are conditioned on Brae's representation that the Assigned Cars shall be delivered to ALI for acceptance on or prior to December 28, 1979.

IN WITNESS WHEREOF, Brae and ALI have caused this Assignment and Assumption to be duly executed as of this 12th day of December, 1979.

BRAE CORPORATION

By *J. J. Ken*
Title *Vice President*

AMERICAN LEASING INVESTORS
by its Managing General Partner

By *Stephen J. L.*
Title *Mgr*

~~CONSENTED TO:
WARRENTON RAIL ROAD COMPANY
By _____
Title _____~~

COUNTY OF)

STATE OF)

On this 12th day of December, 1979, before me personally appeared Jerry A. Riessen, to me personally known, who being by me duly sworn says that such person is Vice President of Brae Corporation, and that the foregoing Assignment and Assumption was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

ROBERT S. NASH
Notary Public, State of New York
No. 41-4649501
Qualified in Queens County
Commission Expires March 30, 1981

Robert S. Nash

Notary Public



COUNTY OF)

STATE OF)

On this 12th day of December, 1979, before me personally appeared Stephen Goldsmith, to me personally known, who being by me duly sworn says that such person is Executive Vice President of ALI Management Corp., which is the Managing General Partner of American Leasing Investors, a Connecticut limited partnership, and that the foregoing Assignment and Assumption was signed on behalf of said partnership by authority of its Managing General Partner, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such partnership.

ROBERT S. NASH
Notary Public, State of New York
No. 41-4649501
Qualified in Queens County
Commission Expires March 30, 1981

Robert S. Nash

Notary Public

