PLM RAILCAR MANAGEMENT INC.
A Subsidiary of PLM, INC
50 California Street
San Francisco, California 94111
415/989 1860
Telex 34430

11175/A

RECORDATION NO. ..... Filed 1425

DEC 07 1979 - 1 [illegible] PM

November 8, 1979

INTERSTATE COMMERCE COMMISSION

12/7/79
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Washington, D. C.

Interstate Commerce Commission
Interstate Commerce Building
Washington, D. C. 20044

RE: PLM Railcar Management, Inc.

Ladies and Gentlemen:

You are hereby requested to record the original and two certified copies of the enclosed Management Agreement. Enclosed is a check in the amount of $50.00 in payment of your recordation fee.

Under the Management Agreement, Hayes C. McClerkin Suite 6, State Line Plaza, Texarkana, AR 75502 as owner, grants to PLM Railcar Management, Inc., a California corporation, whose principal business address is at 50 California Street, San Francisco, California 94111, the right to manage the equipment hereinafter described to collect amounts due to or on behalf of owner with respect to such equipment and to disburse funds of owner to pay costs, expenses and obligations of owner with respect to such equipment, all as set forth therein.

The above-described agreement relates to railway equipment consisting of ONE (1) 100-ton triple covered hopper, 4,750 cubic foot railroad car with center pockets, gravity discharge, and through hatch roof.

#11295

When the documents are recorded they should be returned to the States First National Bank of Texarkana, AR. 75502, attention, Mr. Jim Fincher.

Very truly yours,

C J Scarcello

Charles J. Scarcello
Vice President - Operations

CJS:rjt

Enclosures

Helene C. Medtcalfe

Countryman

(12)

RECORDATION NO. 11175 Filed 1425

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INTERSTATE COMMERCE COMMISSION

EXHIBIT "C"

11/1/79

MANAGEMENT AGREEMENT
PLM RAILCAR MANAGEMENT, INC.

THIS AGREEMENT is made by and between PLM RAILCAR MANAGEMENT, INC., a California corporation (hereinafter called "RMI"), and the person executing this Agreement, as owner (hereinafter called "Owner").

RECITALS OF FACT

Owner has, pursuant to a Covered Hopper Railcar Purchase Contract (the "Purchase Contract") with National Equipco, Inc., purchased the covered hopper railcars identified in Schedule I attached hereto and incorporated herein by reference (such car or cars purchased by Owner being hereinafter referred to as the "Cars");

Owner may have financed a portion of the purchase price for the Cars from the proceeds of a borrowing (hereinafter referred to as the "Loan") from an institution or other entity (hereinafter referred to as the "Lender") and repayable in the periodic payments of principal and interest identified in and payable at designated times and in amounts, all as may be referred to in Schedule 2 attached hereto and incorporated herein by reference, which Owner shall provide to RMI concurrently with the execution of this Agreement (hereinafter referred to as "Debt Service");

RMI is engaged in the business of managing railcars for railcar owners, and Owner desires to retain RMI as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

RMI intends to manage approximately 1,250 railcars identical in all material respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially identical to those which RMI will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses (the "Pool") of all cars managed by RMI under the RMI Covered Hopper Railcar Management Program 79-1 (the "Program"), all on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and RMI hereby agree as follows:

1. *Engagement of RMI.* Owner hereby engages RMI as agent of Owner to manage the Cars, collect amounts due to Owner with respect to the Cars and disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and RMI accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

2. *Term.* The term of this Agreement and the agency created hereby shall commence as of the date of this Agreement, and shall continue for a period of ten years thereafter; provided, however, that, except for Sections 10 and 11, which shall, notwithstanding this proviso, remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement shall terminate with respect to any Car which is withdrawn pursuant to Section 12 hereof, sold, lost or totally destroyed as of the date that such withdrawal is effective, such sale is consummated, or such Car is lost or destroyed; provided further, however, that notwithstanding any termination of this Agreement, whether upon the expiration of ten years after the date of this Agreement, or upon the withdrawal, sale, loss or total destruction of any Car, RMI shall continue to be obligated

to collect all rental payments, mileage allowances and other sums (including insurance benefits or lessee or railroad idemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars, due for or with respect to periods prior to such termination of this Agreement.

3. *Duties of RMI.* In consideration of the compensation to be paid to RMI by Owner pursuant to Section 6 hereof, and subject to the agreement of Owner to reimburse RMI pursuant to Section 7 hereof, RMI shall provide and perform the services on behalf of Owner set forth below during the term of this Agreement:

(a) Immediately upon execution, or as soon thereafter as reasonably practicable, take possession of the Cars as agent for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Use its best efforts to keep such Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to shippers, railroads, or other financially responsible parties for that purpose on terms and conditions which are customary in the industry and taking such steps as may be required to insure that all obligations and duties arising under such leases, whether of lessor or lessees, are performed or complied with in an orderly and timely fashion.

(c) Use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the Association of American Railroads ("AAR") as required by the terms of any lease or otherwise.

(d) Use its best efforts to collect all rental payments due with respect to the Cars, identifying itself as agent for that purpose, and to account for and remit all sums due to Owner as hereinafter set forth; *provided, however,* that RMI will place any funds received as mileage allowances with respect to the Cars in a segregated bank account and such funds will be commingled with mileage allowances received for cars managed by RMI and owned by investors participating in other programs. All such funds (whether or not attributable to Cars owned by Owner or other owners of cars who are participating in this Program and other programs) will be used to make payments of mileage allowances due to lessees with respect to all cars managed by RMI under all investor programs.

(e) Use its best efforts to terminate leases and recover possession of Cars and enforce all rights of Owner with respect thereto, including the payment of all amounts owed under leases or otherwise with respect to the Cars as shall be appropriate or necessary in the judgment of RMI exercised in good faith; and institute and prosecute legal proceedings in the name of Owner as is permitted by applicable laws in order to terminate such leases and/or recover possession of the Cars; and, when expedient, settle, compromise and/or release such actions or suits or reinstate such leases.

(f) Use its best efforts to arrange to have the Cars maintained in good condition, which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, (ii) any standard set by a lessee, whether by terms of a lease or by other understanding or agreement between a lessee and RMI, as agent for Owner, and (iii) any standard set by any insurance policy under which the Cars or any of them shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations or any leases or which, in the discretion or RMI, are otherwise necessary or advisable; *provided, however,* that no alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be made without the consent of Owner, which consent will be deemed to have been granted if Owner shall not have objected thereto in writing within 30 days after notice to Owner thereof and of the estimated cost thereof.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with RMI, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and personal injury, (ii) loss of or damage to the Cars, and (iii) loss of revenues with respect to the Cars; *provided, however,* that if RMI effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; *provided, further,* however, that if RMI, in its sole discretion, determines that the cost of insurance described above is unreasonably high, or cannot be obtained, RMI need not place or acquire such insurance and shall so notify Owner.

(h) Use its best efforts to pay in Owner's name all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in RMI's discretion, defend against any such charges and to seek revision or appeal from any assessment or charge deemed improper, all such actions to be in the name of Owner.

(i) Monitor and record movement of the Cars.

(j) Maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives during reasonable business hours.

(k) Paint the Cars such colors and with such designs as RMI may from time to time approve and place reporting marks or other such marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the AAR.

(l) Provide Owner with advice and recommendations concerning the sale of the Cars.

(m) Use its best efforts to collect all sums due Owner, including, without limitation, insurance benefits or railroad indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of this Agreement and to remit all sums due Owner as hereinafter provided.

(n) Furnish factual information reasonably requested by Owner in connection with federal, state, Canadian and Provincial tax returns.

(o) If Owner has elected to finance a portion of the purchase price for the Cars from the Loan and (i) there will be a "ballon payment" identified as such in Schedule 2 hereto, (ii) Owner shall have requested within one year of the due date thereof that RMI assist in arranging refinancing for such payment, and (iii) RMI shall have agreed to so assist the Owner at a fee to be mutually agreed upon, then RMI will use its best efforts to arrange refinancing for such balloon payment on the Loan at or prior to the due date for such payment. Neither RMI nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to the refinancing of such balloon payment.

(p) Pending distribution of funds to Owner, may but is not required to, temporarily invest any funds held for Owner, not necessary for operation of the Management Program, in short term, highly liquid investments with appropriate safety of principal, such as U.S. Treasury Bonds or Bills, insured savings accounts, or similar investments.

(q) Perform for Owner such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the leasing and operation of the Cars.

4. *Authority, and Limitations on Authority, of RMI.*

(a) It is recognized that RMI will manage under the Program the railcars, including the Cars, purchased by investors who enter into a management agreement substantially identical to this Agreement. It is recognized that RMI will receive from owners of other cars in the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that RMI's services for and obligations to and rights with respect to

Owner and the owners of other cars in the Management Program are several. Except as expressly provided in Section 4(b) hereof, RMI will not act or purport to act for or in the name of the Pool, the Program or the owners of cars in the Program collectively or as an entity, it being expressly understood that any actions taken on behalf of the owners of cars in the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming RMI as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement, the Management Program and the Pool are not intended to create a partnership, joint venture or venture or other entity among Owner, other owners of cars in the Management Program, RMI and/or any affiliate of RMI. RMI shall not take any action or engage in any course of dealing, or permit any affiliate of RMI to so act, which would suggest or create an inference that there is any understanding or agreement between owners of cars in the Program or that such owners are acting collectively or as an entity and RMI shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) Notwithstanding the provisions of Section 4(a), the Owner recognizes that the Internal Revenue Service (the "IRS") might assert that there exists among the Owner and the other owners of cars in the Management Program and/or RMI a partnership for federal income tax purposes and that, pursuant to Section 6698 of the Internal Revenue Code of 1954 (as amended), the Owner and the other owners of cars in the Management Program might be liable for a penalty for failure to file a federal information return with respect to the Management Program. Solely in order to avoid any such liability, until there shall have been an IRS or judicial determination whether pooling arrangements such as those embodied in the Management Program constitute partnerships for federal income tax purposes, RMI is authorized and directed to file a federal information return on Form 1065 with respect to the operations of the Management Program and, solely for such purpose, the Owner consents to being identified in such return as a "partner." For the purpose of preparing and filing such information return, the Owner hereby constitutes and appoints RMI as the agent and attorney-in-fact of the Owner and, with the consent of the other owners of Cars in the Management Program, of the Management Program for and on behalf of, and in the name, place and stead of the Management Program to prepare and sign as agent and attorney-in-fact and file federal information returns for the Management Program. In furtherance of such designation of RMI as agent and attorney-in-fact, the Owner will, if RMI shall so request, execute and deliver a Power of Attorney on Form 2848 and/or an Authorization and Declaration on Form 2848-D.

(c) RMI shall not have any authority to (i) offer for sale, contract or agree to sell or sell any Cars except as Owner may from time to time hereafter expressly request or direct; (ii) make any alterations, modifications, improvements or additions to the Cars of the type referred to in Section 7(d) without the consent [either express or inferred, as provided in Section 3(f)] of Owner; or (iii) make any loan of the funds of the Owner to itself, any affiliate, or any other person or entity.

5. *Owner's Revenues, Expenses and Net Earnings.*

(a) The actual Gross Revenues (as hereinafter defined) derived from the operation of the Cars and the actual Operating Expenses (as hereinafter defined) shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Program.

(b) (i) As used in this Agreement, the term "Gross Revenues" shall mean all income to Owner (unreduced by any expenses or costs) derived from the ownership, use and/or operation of the Cars including, but not limited to, rentals and mileage charges collected under leases and mileage allowances, if any, not payable to a lessee and interest.

(ii) As used in this Agreement, the term "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use and/or

operation of Cars, including, but not limited to, maintenance; repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f); painting; costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(d); legal and accounting fees incurred pursuant to Section 13; legal fees incurred in connection with enforcing lease rights or repossessing Cars; insurance (and, if such insurance has been effected under a blanket insurance policy, or insurance policy covering the Cars and other cars of other owners, Owner's pro rata share of such insurance cost, it being understood that RMI will use its best efforts to allocate to Owner's Cars only such portion of such insurance cost as is attributable to such Cars); charges, assessments, or levies imposed upon or against Cars of whatever kind or nature; losses from liabilities which are not the responsibility of Owner under Section 7(g); Owner's pro rata share of that portion of ad valorem, gross receipts and other property taxes which are levied against all railcars bearing "PLMX" reporting marks and determined by RMI to be attributable to the cars in the Program (it being understood that it may not be possible to make an exact allocation of such taxes but RMI will use its best efforts to allocate to the cars in the Program only such portion of the aggregate of such taxes as are attributable to such cars); and the lease negotiation fee payable to RMI as provided for in Section 6(d).

(iii) Gross Revenues and/or Operating Expenses attributable to a calendar quarter which are received or paid before or after such quarter shall be included in subsequent quarterly distributions and accounted for as Gross Revenues or Operating Expenses of the quarter in which such revenues were received or expenses paid; provided, however, that if such revenue is received or such expenses paid within one year of the quarter to which they relate and the amount involved exceeds $500 per Car, the items shall be accounted for with the Gross Revenues and Operating Expenses for the quarter to which such items relate; provided further that, notwithstanding the foregoing, any such item or items received or paid prior to the close of the quarter following the quarter during which the last car to be managed by RMI under the Program is delivered to a lessee shall be accounted for with the Gross Revenues and Operating Expenses for the quarter to which such items relate.

(c) Owner's Gross Revenue and Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues derived from all cars managed under the Program or Operating Expenses incurred by or with respect to all cars managed under the Program, as the case may be, multiplied by (ii) a fraction the numerator of which is the product of the number of Cars multiplied by the number of days in such fiscal period that the Car is managed under the Program (or, if the Owner owns more than one Car managed under the Program, the sum of such products computed with respect to each of the Owner's Cars) and the denominator of which is the product of the total number of Cars managed under the Program multiplied by the number of days in such fiscal period that such cars are managed under the Management Program. The number of cars (or Cars, as the case may be) managed under the Program shall be the number of cars actually managed under the Program from time to time during such fiscal period and if any cars are destroyed, lost, sold, disposed of or withdrawn from the Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, sale, disposition or withdrawal; provided, however, that (f) notwithstanding that the owner of any cars managed under the Program shall have entered into a management agreement with RMI, the cars owned by such owner (which may be Owner) shall not be considered to be managed under the Program until such cars shall first have been delivered to and accepted by a lessee thereof and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction.

(d) As used in this Agreement, the term "net Earnings" shall mean the Gross Revenues attributable to the Cars less the sum of (i) the amount of the Operating Expenses attributable to the Cars; (ii) all compensation due and payable to RMI under Section 6 not theretofore paid; (iii) such reserves as RMI shall, in its sole discretion, have reasonably created to provide for the efficient administration of this Agreement, for payment of accrued expenses not yet due, for the management of the Cars, or for expenses relating to the Cars arising or payable after the termination or expiration of this Agreement; and (iv) any storage and transit costs payable by Owner under paragraph 6 of the Purchase Contract.

6. *Compensation.* As compensation to RMI for the performance of services hereunder, Owner shall pay to RMI the amounts set forth below, which amounts shall be payable, in the case of Section 6(a), on the first day of each month for which they are due, and, in the case of Sections 6(c) and 6(d), on the last day of each month for which they are due. Except for the lease negotiation fee provided for in Section 6(d) below (which shall constitute an item of Operating Expenses), all such fees shall be the sole responsibility of Owner.

(a) *Base Compensation to RMI.* Owner shall pay to RMI a monthly management fee per Car equal to $55 per Car per month, which shall be subject to adjustment in accordance with Section 6(b), hereof. For any partial calendar month during the term of the Agreement, the fee shall be pro-rated on a daily basis.

(b) *Adjustment of Base Compensation to RMI.* The management fee shall be increased (or decreased), effective January 1, 1984, by an amount equal to the percentage increase (or decrease) in the Wage Rate and Supplement Index (Western District), published by the Association of American Railroads, for the period January 1, 1979 through December 31, 1983. Any such adjustment shall be computed to the nearest cent.

(c) *Servicing Fee to RMI.* If Owner shall have requested RMI to make the special distributions of Net Earnings provided for by Section 7(a), Owner shall pay to RMI an additional management fee equal to $7.00 per Car per month, commencing with the month which Net Earnings are first so distributed and ending with the month for which the last such distribution is made.

(d) *Lease Negotiation Fee.* RMI shall be entitled to a lease negotiation fee equal to 2% of all rentals received with respect to a Car subsequent to the termination of the original lease for such Car.

7. *Distribution to Owner of Net Earnings; Payment of Costs and Expenses.*

(a) *Special Distributions of Net Earnings.* If (i) Owner has financed a portion of the purchase price for the Cars from the Loan and Debt Service is due on either the first or the last day of each month and (ii) Owner has requested that RMI assist Owner in providing for timely payment of Debt Service, RMI shall, not later than three full business days prior to the time that Debt Service for any month is due and payable, distribute to Owner or on behalf of Owner as hereinafter provided, the lesser of (A) RMI's then best estimate of the Net Earnings attributable to the Cars for the preceding month, in the case of Debt Service due on the last day of each month, or the second preceding month, in the case of Debt Service due on the first day of each month, and (B) the Debt Service then to be due and payable. Such distribution shall be made by transfer to the Lender (which transfer may be made by sending by regular first-class mail a check for the amount transferred), in the name of Owner, of the amount so distributed. If the amount distributed for the benefit of Owner pursuant to the first sentence of this Section 7(a) is less than the full amount of the Debt Service then to be due and payable, RMI shall, not later than five full business days prior to the time Debt Service for such month is due and payable, advise Owner in writing (which advice may be sent by first-class mail) of the existence and amount of such deficiency. Distributions pursuant to this Section 7(a) shall commence for the month during which Owner shall request that such distributions

be made (which request may be made by execution of the request form on the signature page of this Agreement or by written notice to RMI) and shall terminate after the distribution for the month during which, by written notice to RMI, Owner shall request that no further such distributions be made.

(b) *Regular Distributions of Net Earnings.* Within 75 days after the end of each calendar quarter, RMI shall distribute to Owner the excess of (i) the Net Earnings attributable to the operation of the Cars during each quarter over (ii) the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner by RMI pursuant to Section 7(a).

(c) *Payment of Operating Deficits.* Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the amount by which Net Earnings for a calendar quarter, reduced by the Net Earnings, if any, for such quarter distributed for the benefit of Owner by RMI pursuant to Section 7(a), shall be less than zero.

(d) *Payment for Special Improvements.* The cost of any alterations, modifications, improvements or additions which are required by the AAR, Department of Transportation or other regulatory agency or are otherwise required to comply with applicable laws or regulations or any lease or which, in the discretion of RMI, are otherwise necessary or advisable and are consented to by Owner shall be the sole responsibility of Owner. RMI shall have the right to require Owner to pay the approximate cost thereof to RMI, upon ten (10) days prior written notice. Upon completion, RMI shall notify Owner of the exact amount of such costs, and, in the event that Owner has already paid more than such cost, RMI shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to RMI the amount of such difference.

(e) *Payment for Additional Insurance.* If RMI determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance to the extent obtainable, the cost thereof shall be the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the cost of any such insurance placed or purchased by Owner through RMI.

(f) *Payment for Certain Property Damage.* The cost of repair of damage to any Car (other than the cost of repairs which RMI determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payment) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). RMI shall have the right to require Owner to pay to RMI, upon ten (10) days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner or, at RMI's election, such portion of such cost as RMI believes will not be covered by any such payments which may be received by RMI [as co-insured or additional insured, as provided in Section 3(g)] to cover the cost of such damage (it being understood that RMI may apply to such cost of such repair any payments so received by RMI to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by RMI and applied to payment of the cost of such damage, RMI shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by RMI to such repair, RMI shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by RMI to such repairs, the Owner shall promptly pay to RMI the amount of such difference. RMI shall promptly remit to Owner any payments to cover such damage to such Car which are received by RMI and not applied to payment of the cost of repair of such damage.

(g) *Payment of Uninsured Losses.* Losses from third party liability for bodily injury or property damage caused by any Car (including attorneys' fees) which are (i) not covered by insurance and (ii) are in excess of the lesser of (x) $25,000 per occurrence per Car for liability for bodily injury and $25,000 per occurrence per Car for liability for property damage and (y) the amount of the deductible(s) under any liability insurance for bodily injury and property damage on the Cars are the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the amount of such liability.

(h) *Receipts and Payments as Acts of Owner; Obligations of Owner.* In collecting or receiving any Gross Revenues and in paying or disbursing any Operating Expenses RMI is acting solely as agent for Owner. The provisions of Sections 3, 5 and 7 of this Agreement shall not be understood to diminish or modify the rights of Owner to receive Gross Revenues or the obligations of Owner to pay Operating Expenses or Debt Service.

8. *Indemnification.*

(a) *By RMI.* The parties hereto acknowledge that RMI has entered into or intends to enter into lease agreements (the "Leases") with lessees (the "Lessees") for the 1,250 cars which may be included in the Program. If RMI is unable to deliver the 1,250 cars to the Lessees as a result of the failure of the Program to sell 1,250 cars which become subject to management agreements substantially identical to this Agreement (the "Indemnifiable Event"), then

(i) RMI shall defend, indemnify and hold Owner harmless from and against any and all claims, actions, damages, expenses (including attorneys' fees), losses or liabilities asserted against Owner and arising out of any claim made by the Lessees on account of the Indemnifiable Event, and

(ii) Any expenses incurred by RMI in obtaining substitute cars to meet the requirements under the Leases on account of the Indemnifiable Event shall be borne by RMI; such cars shall not be included in the Program; and the Gross Revenues and Operating Expenses of such substitute cars shall not be pooled hereunder with Gross Revenues and Operating Expenses of Owner's Cars.

(b) *By Owner.* Except as provided in Section 8(a), Owner shall defend (if such defense is tendered to Owner), indemnify and hold RMI harmless from and against and does hereby release RMI from any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against RMI arising out of or as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars, including, without limitation, claims for injury to or death of persons, loss of or damage to property (including the Cars) and economic loss due to the unavailability for use of the Cars; provided, however, that Owner shall not defend, indemnify or hold RMI harmless from and against, and RMI shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from negligence, bad faith, recklessness, gross negligence, gross misconduct or willful misconduct of RMI.

9. *Right of First Refusal; Exclusive Sales Agency.*

(a) *Right of First Refusal.* During the term of this Agreement and for a period of five months thereafter, if Owner shall have received from a third party ("Offeror") a bona fide offer (the "Offer") for the purchase of any or all of the Cars, and if (i) either (x) Offeror is a competitor of RMI or any of its affiliates in the business of originating, arranging, brokering, syndicating or dealing in leased equipment or the business of managing railcars or other railroad equipment or (y) Owner actively initiated the transaction or actively solicited the Offer *and* (ii) Owner desires to accept the Offer, Owner shall first obtain a copy of the Offer in writing signed by the Offeror and forward a true copy thereof to RMI. RMI shall in such cases (but no others), thereupon have the first option for a period not to exceed

ninety (90) days after receipt of a copy of the Offer from Owner, to purchase all or any of the Cars upon the same terms and conditions set forth in the Offer. If RMI purchases a Car from Owner pursuant to this Section 9(a) and within 90 days thereafter RMI resells the Car to a third party [other than an affiliate (as defined in Section 9(b) of RMI], RMI shall pay to such Owner the excess, if any, of (i) the gross sales price of the Car over (ii) the sum of (x) the purchase price previously paid by RMI to Owner, (y) RMI's commission pursuant to Section 9(b) below, notwithstanding any limitations therein, and (z) any costs or expenses incurred in connection with such resale, including any commission payable to any broker-dealer; *provided, however,* that if the Car is sold through a broker who is an affiliate of RMI, any commission payable to, and retained by, such affiliate shall not exceed the commission payable to the salesman employed by such affiliate.

(b) *Exclusive Sales Agency.* During the term of this Agreement and for a period of four months thereafter, RMI shall have the exclusive right to sell the Cars. Except in case of any sale or other disposition of a Car to RMI (whether pursuant to Section 9(a) or otherwise) or any of its affiliates (that is, any company, person or firm controlling, controlled by, or under common control with, RMI) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to RMI upon the sale of a Car a sales commission equal to the sum of (i) four percent (4%) of the sale price and (ii) 25% of the sale price in excess of the total purchase price of the Car provided under paragraph 6 of the Purchase Contract (including any storage and transit costs contemplated by said paragraph 6).

10. *Subordination.* This Agreement and RMI's authority and rights hereunder are subject to the lien upon, and security interest in, the Cars and revenues generated by the Cars held by any Lender to whom Owner has granted a security interest in the Cars; provided, however, that all such liens and security interests are subject to any lease entered into during the term of this Agreement (including any rights of the lessees thereunder referred to in Section 11) and to RMI's right to collect Gross Revenues accruing during the term of this Agreement until such time as sums due RMI hereunder as of the later of the date of default under the terms of any security agreement or repossession of the Cars pursuant to such security agreement are paid.

11. *Dealings with Lessees.*

(a) It is intended that leases of cars managed under the Program will cover several or all of the cars so managed under the Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Program) shall, until the expiration or termination of such lease, acknowledge RMI as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under such lease (which rentals RMI shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and RMI may select a person or entity, other than RMI, as agent of such foreclosing mortgagee or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) In the event that RMI determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any car which is subject to the leases referred to in Section 11(a) and which is not managed under the Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then RMI may require the transfer to RMI of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the cars of such person from such leases and, if necessary, substitute thereunder cars identical or substantially similar to the cars so withdrawn.

12. *Withdrawal in Case of Special Improvements.* In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Program. In the event that Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after (i) the effective date of any law or regulation prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation, or maintenance of railway cars, such as the Cars, which have not been so altered, modified, improved or added to, or (ii) the effective date specified by RMI in its written notice to Owner advising Owner of the necessity to make such alteration, modification, improvement or additions other than those referred to in (i) above, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

13. *Reports.*

(a) Not later than 75 days after the end of each calendar quarter other than the fourth calendar quarter, RMI on behalf of the Program will distribute to Owner an unaudited report showing, in reasonable detail, the Gross Revenues, Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of Owner's pro rata share of any items. Such reports shall also show the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner pursuant to Section 7(a).

(b) Within 75 days after the close of each calendar year, RMI on behalf of the Program will distribute to Owner a report showing for the fourth calendar quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Not later than 75 days after the close of Owner's taxable year (which will be deemed to be the calendar year unless Owner shall otherwise notify RMI in writing), RMI on behalf of the Program will deliver to Owner a statement setting forth all information (including computation of depreciation and amortization deductions computed on the same or similar bases as those set forth in the analytic models contained in the Prospectus relating to, among other things, the Program) reasonably necessary in connection with the preparation of Owner's federal income tax returns.

(d) Within 90 days after the close of each calendar year, RMI on behalf of the Program will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to RMI and its affiliates, as to such accountants' review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the operations of the Program, the mathematical correctness of the computations made by RMI in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by RMI to the obligations and duties of RMI under this Agreement.

(e) Notwithstanding this Section 13, if the Program is required pursuant to either Section 12 or Section 15(d) of the Securities Exchange Act of 1934 to file reports under Section 13 of the Securities Exchange Act of 1934, then, in lieu of the reports required under this Section 13, the Program shall provide to Owner a quarterly report or annual report, as the case may be, in such form and containing such information as shall be required under such sections and regulations thereunder.

14. *Use of Cars.* RMI shall enforce the obligations of the lessees under the Leases covering the Cars so that the Cars will not be used predominantly outside the United States within the

meaning of Section 48(a)(2)(A) of the Internal Revenue Code of 1954, as amended, or any successor provision thereof, and the regulations thereunder. RMI in the leasing of Cars and in the allocation of Cars to various leases shall cause each lease for the Cars entered into, or arrangements for the use of the Cars made, subsequent to the termination of any of the leases to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars. This provision shall not, however, require RMI to enter into any lease which restricts the location of the use of the Cars on a fiscal year rather than a calendar year basis.

15. *Notices.* Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to RMI: PLM Railcar Management, Inc.
50 California Street
San Francisco, California 94111
Attention: Vice President—Investor Programs

If to Owner: To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

16. *Miscellaneous.*

(a) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of California.

(b) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) *Headings.* Titles and headings of the sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) *Amendment.* No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) *Successors and Assigns.* The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against RMI without the prior written consent of RMI.

(f) *Force Majeure.* Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including and without limitation acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

(g) *Other Customers of RMI.* It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit RMI from providing the same or similar services to any person or organization not a party to this Agreement. In particular, RMI shall be entitled to manage identical cars not managed under the Program under a similar management agreement with another owner; provided, however, that if RMI owns, or manages for another party, railroad cars which are similar to the Cars, and the total of such cars (including the Cars) available for lease exceeds the demand for such cars, the Cars shall be treated no

less favorably than any other cars RMI owns or manages. Owner recognizes and acknowledges that it is RMI's intention to give priority to those cars which have been off-lease and available for the longest period of time.

(h) *Waiver.* The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) *Severability.* If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of ....., 19.... (date of Closing; to be completed by RMI).

PLM RAILCAR MANAGEMENT, INC.

By .....

OWNER:

.....

By .....

Address .....

.....

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests RMI to make the special distributions provided for in Section 7(a) of this Agreement.

.....

By .....

(If Owner has executed the above request form pursuant to Section 7(a), complete the "Financing Notice" attached hereto and deliver it to RMI; if all of the information required by the "Financing Notice" is not available at the time of delivery of this Agreement, please complete and transmit such Notice as soon as such information is available.)

The following legend is applicable to California residents only:

"IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER'S RULES."

less favorably than any other cars RMI owns or manages. Owner recognizes and acknowledges that it is RMI's intention to give priority to those cars which have been off-lease and available for the longest period of time.

(h) *Waiver.* The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) *Severability.* If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of NOV 1 1979, (date of Closing; to be completed by RMI).

PLM RAILCAR MANAGEMENT, INC.

By .....

OWNER:

.....

By .....

Address .....

.....

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests RMI to make the special distributions provided for in Section 7(a) of this Agreement.

.....

By .....

(If Owner has executed the above request form pursuant to Section 7(a), complete the "Financing Notice" attached hereto and deliver it to RMI; if all of the information required by the "Financing Notice" is not available at the time of delivery of this Agreement, please complete and transmit such Notice as soon as such information is available.)

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PLEASE BE SURE TO FILL IN ALL BLANKS.

For Owner who is an individual:

STATE OF ARKANSAS
COUNTY OF MILLER } ss.:

On this 3rd day of October, 1979, before me personally appeared Hayes C. McClerkin (name of the signer of the foregoing instrument), to me known to be the person described in and who executed the foregoing instrument and he or she acknowledged that he or she executed the same as his or her free act and deed.

Patsy A. Maddox

[SEAL]

My commission expires

March 30, 1981

.....

For Owner which is a corporation:

STATE OF .....
COUNTY OF ..... } ss.:

On this ..... day of ....., 19...., before me personally appeared ..... (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the ..... (title of office) of ..... (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said 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 said corporation.

.....

My commission expires

.....

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 1st day of Nov., 1979 before me personally appeared Charles Scarcello (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the V.P. (title of office) of PLM RAILCAR MANAGEMENT, INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed.

Charles David Davis

[SEAL]

My commission expires

.....

OFFICIAL SEAL
CHARLES DAVID DAVIS
NOTARY PUBLIC - CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO
My Commission expires Nov. 5, 1982

SCHEDULE 1

Number of Cars	Delivery Date	Type of Car	Reporting Marks
One (1)	November 1, 1979	4,750 cu.ft. capacity 100 ton covered hopper car	PLMX 11295