CAPITAL NATIONAL BANK

10713/B
RECORDATION NO. Filed 1425
AUG 9 1979-1 05 PM
INTERSTATE COMMERCE COMMISSION

EXECUTIVE AND PROFESSIONAL SERVICES

10713
RECORDATION NO. Filed 1425
AUG 9 1979-1 05 PM
INTERSTATE COMMERCE COMMISSION

P.O. Box 550
Austin, Texas 78789
(512) 476-6611

August 7, 1979

10713/A
RECORDATION NO. Filed 1425
AUG 9 1979-1 05 PM
INTERSTATE COMMERCE COMMISSION

9 221A162
No.
Date AUG 9 1979
Fee $100
ICC Washington, D. C

Secretary of the Interstate
Commerce Commission
Washington, D. C. 20423

Dear Sir:

Enclosed for filing pursuant to 49 U.S.C. 20c and 49 C.F.R. 1116 are the following documents:

(1) One original and two original counterparts of a Management Agreement dated May 25, 1979, between Lamco, Inc., 777 South Post Oak Road, Suite 504, Houston, Texas, 77056 and Edward Lee and Kathy Summers of 3608 Highland View Drive, Austin Texas, 78731;

(2) One original and two original counterparts of a Collateral Assignment between Edward Lee and Kathy Summers of 3608 Highland View Drive, Austin, Texas, 78731 and The Capital National Bank in Austin, 114 West 7th Street, Austin, Texas, 78701; and

(3) One original and two original counterparts of a Security Agreement between Edward Lee and Kathy Summers of 3608 Highland View Drive, Austin, Texas, 78731 and The Capital National Bank in Austin, 114 W. 7th Street, Austin, Texas 78701.

The documents shown in (1) and (2) above are being submitted for filing concurrently in accordance with 49 U.S.C. 1116, 3 (d) (2). Accordingly, a cashier's check in the amount of $100 is enclosed as the filing fee for all three documents.

The rolling stock involved in the transaction is described as follows:

One (1) 34,000 gallon nominal capacity tank car, DOT105A300W, non-coiled and insulated; 100 ton roller bearing trucks bearing the following number: LAMX 55.

Capital National Bank

After the documents have been filed, please return the originals to Charles R. Miller, Vice President, The Capital National Bank in Austin, P. O. Box 550, Austin, Texas 78789.

Thank you for your cooperation.

Very truly yours,

Charles R. Miller
Vice President

CRM/lmk
enclosures

Capital
National
Bank

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INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement"), by and between LAMCO, INC., a Texas corporation (LMC), having its principal place of business in Houston, Texas and Edward Lee and Kathy Summers ("Owner"), a resident of Austin, Travis County, Texas:

WITNESSETH:

WHEREAS, Owner has ordered One (1) railroad cars (the "Railway Equipment") and is desirous of entering into the following Agreement with LMC whereby LMC will manage the Railway Equipment pursuant to the terms and conditions hereof; and

WHEREAS, LMC is desirous of undertaking the management of the Railway Equipment pursuant to the terms and conditions hereof;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions set forth herein, the parties hereto agree as follows:

ARTICLE I

Appointment

1. Owner hereby appoints LMC to manage and otherwise supervise the operation of the Railway Equipment in the name of the Owner, or in the name of LMC, but for the account and on behalf of the Owner pursuant and subject to the terms and conditions set forth in this Agreement.

2. LMC hereby accepts the appointment set forth in Paragraph 1 of this Article I and agrees to perform the duties and obligations set forth herein. Owner acknowledges and agrees that, whereas LMC has accepted the responsibility of managing the Railway Equipment, except as specifically set forth herein to the contrary or as provided by law, LMC shall have the sole function and operative judgment, to be exercised in a reasonable manner, for the leasing, operation and management of the Railway Equipment and for establishing and implementing policies and standards of leasing, operation, service, maintenance, repair, reporting and other such policies and standards affecting the Railway Equipment or the operation, maintenance or repair thereof. LMC shall be entitled to rely upon written or oral instructions received from Owner as to any and all acts to be performed by LMC.

ARTICLE II

Owner's Covenants and Responsibilities

1. Effective on the delivery of the Railway Equipment by LAMCO, INC. to Owner, Owner does hereby deliver and release to LMC the Railway Equipment for the management thereof by LMC, and LMC acknowledges delivery and receipt thereof.

2. Except as provided below, Owner shall be responsible for the payment of all expenses incurred in connection with the Railway Equipment, including ad valorem and other taxes, freight, storage, design changes and other modifications required by governmental regulations or technological changes and periodic inspection costs, deductibles under insurance policies, and other expenses, levies or charges, including the Management Fee (as defined in Article V hereof), incurred in connection with the Railway Equipment and the operation and leasing thereof (all of which shall hereinafter be sometimes collectively referred to as the "Expenses"). The Expenses shall not include, however, minor and major repair and maintenance work (including, without limitation, running repairs, cleaning, painting, and insurance premiums as set forth in Paragraph 9 of Article III).

3. Owner agrees to pay a portion of the aggregate ad valorem, gross receipts, property, or similar taxes levied against all tank cars (including the Railway Equipment) managed or owned by LMC (the "LMC Fleet") in an amount equal to the percentage which the Lease Fees (as defined in Paragraph 1 of Article III) earned by the Railway Equipment are of the gross rental and service charges earned by all tank cars in the LMC Fleet.

4. If the Lease Fees (as defined in Paragraph 1 of Article III) earned by the Railway Equipment are less than the Expenses incurred or reasonably foreseeable in connection with the operation and management of the Railway Equipment hereunder, LMC will so advise the Owner in the Quarterly Report provided for under Article III, Paragraph 8 hereof, including the amount of such deficiency and, if requested by LMC Owner will remit to LMC within ten days of receipt of the Quarterly Report the amount of such deficiency.

5. Owner agrees to cooperate fully with LMC and to provide all assistance reasonably requested by LMC to carry out its obligations hereunder. This shall include, subject to the provisions of Article VI hereof, full cooperation and assistance in any lawsuit or other similar matter or proceeding before any court or agency.

ARTICLE III

LMC's Covenants and Responsibilities

In consideration of the Management Fee provided for hereunder, LMC agrees to utilize reasonable time and efforts to:

1. Collect the rental and service charges earned by the Railway Equipment (the "Lease Fees"). Such duties shall not, however, be deemed to include the filing of a suit to collect such Lease Fees, although LMC may elect to do so at its option but at the expense of Owner, subject to the provisions of Article VI hereof.

2. Use its best efforts to obtain leases for the Railway Equipment for terms not to exceed 71 months and maintain the Railway Equipment under lease throughout the term of this Agreement.

3. Comply with the terms and conditions of any lease agreements to which the Railway Equipment is subject during the term hereof. It is understood, however, that before LMC shall be obligated to comply with any lease not negotiated by LMC or any amended terms and conditions of any such lease, such lease and/or amendments must be approved, in writing, by LMC.

4. Make all required registration and other filings with the Interstate Commerce Commission, the Association of American Railroads, the Department of Transportation and any other governmental or industry authority.

5. File applicable ad valorem and other tax returns and pay, from the Lease Fees or from funds advanced by Owner, all such taxes due, in accordance with the provisions of Article II, Paragraph 3. LMC may, however, retain during each calendar year of the term of this Agreement, an amount equal to three percent of the Lease Fees received during that calendar year to cover such taxes, but will, within 90 days following the end of each calendar year, remit to Owner any amount not required for such taxes.

6. Maintain adequate books and records sufficient to account properly for the Lease Fees, Expenses and other such items applicable to the Railway Equipment.

7. Contract for or otherwise obtain all repair and/or maintenance work on the Railway Equipment considered necessary by LMC, such repair and/or maintenance work to be paid by LMC, subject to the provisions of Article II, Paragraph 2.

8. Provide periodic reports to Owner on a quarterly basis (the "Quarterly Reports") which shall set forth the Lease Fees derived from the use of the Railway Equipment, as well as Expenses incurred or that are reasonably foreseeable to be incurred in connection with the Railway Equipment. The Quarterly Reports shall be for the quarters ending March 31, June 30, September 30 and December 31, and will be delivered to Owner as promptly as is reasonably possible. Should the Lease Fees exceed the Expenses incurred in connection with the Railway Equipment, payment of the excess (except for any amount retained under Paragraph 5 and this Paragraph 8 of Article III) shall accompany the Quarterly Report. Should Expenses (incurred or reasonably foreseeable) exceed the Lease Fees for the period in question, the Quarterly Report will set forth the amount to be remitted by Owner to LMC if requested. It is understood that LMC shall be under no obligation to advance funds for payment of the Expenses, regardless of the results of the nonpayment thereof. It is further understood that LMC shall have the authority to retain portions of Lease Fees that exceed actual Expenses incurred to cover future Expenses that can be reasonably foreseen to exceed Lease Fees for the applicable future period or periods. Such retention of Lease Fees shall be accomplished on a reasonable basis and in such a manner as to minimize the effect that such retention shall have on cash distributions, if any, made to Owner. No assessment for cash deficiencies shall be made to Owner, however, to the extent of unremitted mileage credits held by LMC.

9. Maintain general liability and property insurance on the Railway Equipment with limits of coverage not less than the amounts and against the risks insured against by LMC on railroad equipment owned by it; however, LMC will be limited to $20.00 per month for each Railway Equipment to cover such insurance premiums, any additional cost in insurance premiums or coverage shall be for the account of the Owner.

10. Reasonably pursue any and all warranties or other claims against manufacturers, users, lessees, railroads and other parties on behalf of Owner. Such duties shall not, however, be deemed to include the filing of suit, although LMC may elect to do so at its option, but at the expense of Owner, subject to the provisions of Article VI.

ARTICLE IV

Term and Termination

1. Subject to the provisions set forth herein, this Agreement shall be effective commencing with the first date on which a railroad tank car included in the Railway Equipment is delivered to Owner, as set forth in the invoice for such railroad tank car, and shall automatically terminate ten years from such date.

2. Except as otherwise provided in this Agreement, the Owner may terminate this Agreement by giving LMC written notice of termination not less than three months prior to the termination date designated in such notice; provided, however, if Owner shall owe LMC any amounts under this Agreement, the Owner may not terminate this Agreement as to any of the Railway Equipment until all such amounts have been paid. LMC shall, at its option, be entitled to continue to lease and otherwise operate and manage the Railroad Equipment and retain any and all Lease Fees received therefrom until all amounts outstanding and/or subsequently incurred in connection with such continued leasing of the Railroad Equipment have been paid.

3. Should either party default under its obligations set forth herein, the other party may advise the defaulting party of such default, and should such default not be corrected within 30 days of such notification, the aggrieved party may, at its option, immediately terminate this Agreement.

4. Neither LMC nor the Owner shall, by reason of the expiration or the termination of this Agreement in accordance with the terms and provisions hereof, be liable to the other for compensation, reimbursement or damages, either on account of present or prospective profits or on account of expenditures, investments or commitments made in connection therewith or in connection with establishment, development or maintenance of the business or goodwill of LMC or the Owner, or on account of any other cause or thing whatsoever; provided, however, that such expiration or termination shall not affect the rights or liabilities of the parties with respect to any indebtedness owing by either party to the other; and further provided, that such expiration or termination shall be subject to any then existing lease or leases of the Railway Equipment, and LMC at its option, shall be entitled to continue, pursuant to the terms and

conditions of this Agreement, the management and control of any of the Railway Equipment covered by such lease or leases as may be necessary for LMC to comply with such lease or leases, including the right to retain the Lease Fees, Management Fee and other sums as provided for herein, until the expiration or termination of such lease or leases. Except as may be otherwise expressly set forth herein, upon the expiration or termination of this Agreement, all obligations of the parties shall immediately cease. LMC shall, however, provide reasonable assistance to Owner in transferring to Owner, all at Owner's expense and upon Owner's request, all records, data and other information relating to the Railway Equipment and in assisting Owner in the implementation of such records, data and information into Owners's operations.

ARTICLE V

Management Fee

In consideration of the services of LMC hereunder, Owner shall pay to LMC a management fee of 16% of the Lease Fees collected for each railway car included in the Railway Equipment (the "Management Fee"). The Management Fee shall be deducted from the remittance due quarterly to Owner as otherwise provided herein.

ARTICLE VI

Legal Actions

LMC will give written notice to Owner at least 10 days prior to the institution of legal proceedings by LMC or not more than 10 days after being served with process in any legal proceedings against LMC involving the Railway Equipment. Unless otherwise directed in writing by Owner, LMC may, at its option, institute or defend, in its own name or in the name of Owner, or both, but not against each other, and in all events at the expense of the Owner, any and all legal actions or proceedings it considers necessary hereunder, including those to collect charges, rents, claims or other income for the Railway Equipment, or lawfully oust or disposses lessees or other persons in possession thereof, or lawfully cancel, modify or terminate any lease, license or concession agreement for the breach thereof or default by a lessee, licensee or concessionaire or take any and all necessary actions to protest or litigate to a final decision in any appropriate Court or other forum any violation, order, rule, regulation, suit, claim or other matter affecting the Railway Equipment. LMC shall keep Owner currently advised of all legal proceedings brought pursuant to the foregoing authority.

ARTICLE VII

Assignment

This Agreement is not assignable by either party except with the written consent of the other party; provided, however, (a) this Agreement together with the Railway Equipment may be transferred by Owner to his

estate, heirs, or devisees or to any purchaser at a foreclosure sale where this Agreement and the related Railway Equipment are sold as collateral so long as such sale complies with applicable federal or state securities laws and (b) may be assigned by LMC in connection with the merger or consolidation of LMC into another corporation or as part of the sale of substantially all of the assets of LMC provided that notice of such merger, consolidation, or sale shall be given to Owner prior to the effective date thereof.

ARTICLE VIII

Indemnification

Owner and LMC jointly and severally acknowledge, agree and covenant that LMC is entering into this contract as an independent contractor, and neither party hereto shall take any action to alter such legal relationship. Owner shall have no right or authority, and shall not attempt, to enter into contracts or commitments in the name, or on behalf, of LMC, or to bind LMC in any manner or respect whatsoever. Further, Owner agrees to indemnify and hold LMC harmless from any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorney's fees, expenses and judgments, except those arising out of LMC gross negligence or willful misconduct, which may hereafter be made or caused by any third party based on or relating to the Railway Equipment or the operation including the leasing, thereof. LMC agrees to indemnify and hold harmless Owner from and against any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorney's fees, expenses and judgments which may hereafter be made or caused by any third party based on actions taken by LMC in connection with the Railway Equipment, which actions were not authorized hereunder, were authorized hereunder but performed negligently, or were not specifically requested or approved by Owner.

ARTICLE IX

Additional Agreements

1. Each party hereto shall promptly and duly execute and deliver to the other party such further documents, assurances, releases and other instruments, and take such further actions, including any necessary filings and the execution of a power of attorney of Owner, as the other party may reasonably request, in order to more fully carry out the intent and purpose of this Agreement and to indicate the ownership of the Railway Equipment during the continuance and upon termination of this Agreement.

2. It is understood that upon the expiration or termination of this Agreement as to any or all of the Railway Equipment, Owner shall no longer be entitled to use the Recording and UMLER Car Initials and Numbers and other designations (the "Designations") that are presently the property of LMC. Accordingly, Owner agrees that it will promptly undertake upon

such expiration or termination, at Owner's expense, all steps necessary to promptly change the Designations on the Railway Equipment no longer included under the Agreement and to execute any and all documents requested by LMC to transfer to LMC any rights Owner may have acquired to such Designations. LMC agrees to prepare, at LMC's expense, documentation as, in its opinion, is necessary to change all designations on the Railway Equipment from the Designations of LMC to those adopted by Owner, and to provide reasonable assistance to Owner, at Owner's expense, in the filing of such documents.

3. Any notice or other communication by either party to the other shall be in writing, and shall be deemed to have been duly given if either delivered personally or mailed postage prepaid, registered or certified mail, addressed as follows:

LMC: LAMCO, INC.
777 South Post Oak Road
Suite 504
Houston, TX 77056

Owner: Edward Lee and Kathy Summers
3608 Highland View Drive
Austin, TX 78731

or to such other address, and to the attention of such other person or officer as either party may designate to the other in writing as provided by this Paragraph.

4. The Owner or his authorized representative shall be entitled to inspect the books and records of LMC applicable to the Railway Equipment at any reasonable time during the office hours of LMC.

5. This Agreement contains the entire agreement of the parties hereto pertaining to the management and operation of the Railway Equipment. Except as otherwise provided herein, this Agreement may not be modified or amended, except by express, written agreement signed by both parties hereto. Any waiver of any obligation of either party hereto shall not be construed as a continuing waiver of any such obligation under any provision hereof.

6. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the heirs, administrators, executors, successors and assigns, if any, of the parties hereto, subject to the provisions pertaining to the assignment hereof set forth in Article VII.

7. This Agreement shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have hereunto set their names, effective this....25th...day of....May.....,19.79...

LAMCO, INC.

By Wayne C. Jansen
President

OWNER

.....

✓ Edward Lee Summers
Edward Lee Summers

✓ Kathryn B. Summers
Kathy Summers

THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared EDWARD LEE SUMMERS and KATHY SUMMERS, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 2 day of July, 19 79.

Leann Kloesel
Notary Public in and for Travis County, Texas

My Commission Expires:

9-15-, 19 79.