

FEB 1 1979-9 25 AM

LAW OFFICES

MCGINNIS, LOCHRIDGE & KILGORE

ROBERT MCGINNIS INTERSTATE COMMERCE COMMISSION FLOOR, TEXAS STATE BANK BUILDING  
LLOYD LOCHRIDGE  
JOE M. KILGORE  
GEORGE D. BYFIELD  
MORGAN HUNTER  
WADE F. SPILMAN  
B. D. ST. CLAIR  
DENNY O. INGRAM  
SHANNON H. RATLIFF  
C. MORRIS DAVIS  
J. GAYLORD ARMSTRONG  
JOHN W. STAYTON, JR.  
WILLIAM H. BINGHAM  
ROBERT WILSON  
DAVID W. NELSON  
DAVID L. ORR

900 CONGRESS AVENUE

AUSTIN, TEXAS 78701

TELEPHONE (512) 476-8500

JAMES W. HACKNEY  
P. MICHAEL HEBERT  
WILLIAM H. DANIEL  
EARNEST C. CASSTEVENS  
PAMELA M. GIBLIN  
DEAN M. KILGORE  
DUANE F. EMMERT  
BOOK BENNETT BROWN  
THOMAS O. BARTON  
MARC O. KNISELY  
MATTON G. LOCHRIDGE  
JACK BALAGIA, JR.  
RICK HARRISON  
LOUIS FRANK OLIVER  
BREY M. BRENNAN, (ADM. ARK)  
JERRY A. BELL, JR.

9-032A010

No. 9939 D  
Date FEB 1 1979  
Fee \$1.00

ROBERT W. CALVERT  
OF COUNSEL

FEB 1 1979-9 25 AM

INTERSTATE COMMERCE COMMISSION

January 30, 1979

ICC Washington, D. C.

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D. C. 20423

Attention: Railroad Documentation

Gentlemen:

RECORDATION NO. 9939 C Filed 1425

FEB 1 1979-9 25 AM

INTERSTATE COMMERCE COMMISSION

FEE OPERATION BR.  
I.C.C.

9 20 AM '79

RECEIVED

Pursuant to the provisions of Section 1116.4 of Chapter X of the Regulations of the Interstate Commerce Commission, and on behalf of our client, Texas State Bank, the following letter is hereby submitted.

The names and addresses of the parties to the transaction are as follows:

Mortgagor, Debtor,  
Lessor and Assignor  
of Lease:

Harold A. Wolf  
7004 Edgefield  
Austin, Texas 78731

Lessee:

LAMCO, Inc.  
777 South Post Oak Road  
Suite 504  
Houston, Texas 77056

Mortgagee, Secured  
Party and Assignee  
of Lease:

Texas State Bank  
900 Congress Avenue  
Austin, Texas 78701

Guarantor:

None

This filing is to record and perfect Texas State Bank's purchase money security interest in the railroad tank car described below, and any and all additions, accessories, accessions and attachments thereto and substitutions and replacements therefor, and all Management Agreements, leases and chattel paper related thereto, all proceeds (hereinafter defined) of any of the foregoing, and all moneys, income, increase, benefits and products

January 30, 1979

moneys, income, increase, benefits and products attributable to the foregoing, or accruing thereto. The term "proceeds" shall have the same meaning as used in Chapter Nine of the Uniform Commercial Code as now or hereafter adopted in the State of Texas, and shall include (without limitation) all accounts, general intangibles, instruments, documents, moneys, insurance, chattel paper, income and other property, benefits or rights of whatever kind or nature arising from, attributable to or accruing from any and all sales, leases or other dispositions of any or all of the aforesaid collateral.

This filing is also to record and perfect Texas State Bank's security interest in the Lessor's interest in a certain lease ("Management Agreement") between Harold A. Wolf, as Lessor, and LAMCO, Inc., as Lessee, dated November 16, 1978, as amended and supplemented, and the collateral assignment of said lease, as supplemented and amended, by Lessor to Texas State Bank dated January 29, 1979 ("collateral assignment").

A general description of the railroad tank car for which this filing is made is as follows:

One 33,000-gallon nominal capacity railroad tank car, DOT 112J340W, non-coiled and insulated; with 100-ton roller bearing trucks bearing the following identifying mark and car number:

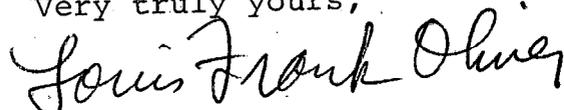
LAMX 3426

The owner of the aforementioned railroad tank car is Harold A. Wolf. Texas State Bank has previously perfected its security interest in two additional railroad tank cars (LAMX 3400 and LAMX 0028) which are also covered by the above-mentioned Management Agreement.

Enclosed on behalf of Texas State Bank are three executed counterparts of the Amendment to Security Agreement, Collateral Assignment and Consent to Collateral Assignment, as required by I.C.C. Rules and a check for \$100 to cover the filing fee.

The original document should be returned to me at the above address. If possible, please call me when the enclosed documents are recorded.

Very truly yours,



Louis Frank Oliver

ATTORNEY FOR TEXAS STATE BANK

CONSENT TO COLLATERAL ASSIGNMENT

WHEREAS, Harold A. Wolf is the owner of the rail rolling stock described in "Exhibit A" hereto, and FEB 1 1979-9 25 AM

WHEREAS, Harold A. Wolf has entered into a Management Agreement with LAMCO, INC. dated November 16, 1978, which agreement provides that it may not be assigned by Harold A. Wolf without the written consent of LAMCO, INC., and

WHEREAS, Harold A. Wolf desires to grant to Texas State Bank a security interest in said Management Agreement, and all rights accruing to him thereunder,

For and in consideration of the premises, the mutual promises expressed herein and ten dollars (\$10.00) and other good and valuable consideration in hand paid to LAMCO, INC. and Harold A. Wolf, the receipt and sufficiency of which are acknowledged, it is, therefore, agreed as follows:

1. Harold A. Wolf is hereby granted permission by LAMCO, INC. to assign all benefits accruing to him under the aforesaid Management Agreement, including all amendments and supplements thereto, to Texas State Bank as collateral for advances made or to be made to Harold A. Wolf. LAMCO, INC. consents to this assignment and agrees that all terms and conditions requisite for a valid assignment of said Management Agreement have been complied with. It is agreed by all parties hereto that Harold A. Wolf shall continue to perform all obligations placed upon him as "Owner" under that said Management Agreement and that Texas State Bank shall not have any liability upon said obligations unless and until such time as Texas State Bank shall foreclose upon the interest of Harold A. Wolf in said Management Agreement and assume the role of "Owner" thereunder. Any assumption of obligations under said Management Agreement by Texas State Bank before or after foreclosure shall not in any way prejudice any rights which Texas State Bank has or may have against Harold A. Wolf.

So long as any amounts secured by this Collateral Assignment of said Management Agreement remain unpaid and foreclosure has not occurred on the interest of Harold A. Wolf in said Management Agreement, LAMCO, INC. shall make all payments due under said Management Agreement to Texas State Bank, after deducting all deductions properly allowable to LAMCO, INC. under said Management Agreement. If deductions should at any time exceed the current amounts due under said Management Agreement, Harold A. Wolf shall pay said difference to LAMCO, INC.

This Consent shall bind the heirs, assigns, administrators and personal representatives of each party hereto.

LAMCO, INC.

Dated 1/3/79

By C. C. Webb  
Its Chairman of the Board

TEXAS STATE BANK

Dated 1-29-79

By [Signature]  
Its Senior V.P.

Dated January 29, 1979

[Signature]  
HAROLD A. WOLF

THE STATE OF TEXAS    §  
  §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned authority, on this day personally appeared C. C. Webb, Chairman of the Board of LAMCO, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3rd day of January, ~~1978~~ 1979.

[Signature]  
Notary Public in and for  
Harris County, Texas

MARIHA G. GASLER  
Notary Public in and for Harris County, Texas  
My Commission Expires 1-28-80



## 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.....Dr..Harold.Wolf.....("Owner"), a resident of..Austin.....,Travis.....County, ....Texas.....:

WITNESSETH:

WHEREAS, Owner has ordered....three.(3).....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.

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 disposes 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: .....  
.....  
7004 Edgefield 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 here 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...16th...day of.....November.....,19..78..

LAMCO, INC.

By.....  
President

OWNER

.....  
.....