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## MANAGEMENT AGREEMENT

INTERSTATE COMMERCE COMMISSION

This MANAGEMENT AGREEMENT ("Agreement"), by and between Tank Car Service, Inc., a Texas Corporation ("TCSI"), having its principal place of business in Houston, Texas, and George B. Kelly ("Owner"), a corporation of \_\_\_\_\_

## W I T N E S S E T H

WHEREAS, Owner has One railroad tank cars TCSX 238 (the "Railway Equipment") and is desirous of entering into the following Agreement with TCSI, whereby TCSI will manage the Railway Equipment pursuant to the terms and conditions hereof; and

WHEREAS, TCSI 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:

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

2. TCSI hereby accepts the appointment set forth in Paragraph 1 and agrees to perform the duties and obligations set forth herein. Owner acknowledges and agrees that, whereas TCSI has accepted the responsibility of managing the Railway Equipment, except as specifically set forth herein to the contrary or as provided by law, TCSI shall have the sole function and operative judgement, 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. TCSI shall be entitled to rely upon written or oral instructions received from Owner as to any and all acts to be performed by TCSI.

3. Effective on the delivery of the Railway Equipment to TCSI, Owner does hereby deliver and release to TCSI the Railway Equipment for the management thereof by TCSI and TCSI acknowledges and delivery and receipt thereof.

4. 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 related costs, deductibles under insurance policies, minor and major repair and maintenance work (including, without limitation, running repairs, cleaning and painting), and other expenses, levies or charges, including the Management Fee (as defined in Paragraph 12 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").

5. 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 TCSI (the "TCSI Fleet") in an amount equal to the percentage which the Lease Fees (as defined in Paragraph 7-a) earned by the Railway Equipment are of the gross rental and service charges earned by all tank cars in the TCSI Fleet.

6. Owner agrees to cooperate fully with TCSI and to provide all assistance reasonably requested by TCSI to carry out its obligations hereunder. This shall include, subject to the provisions of Paragraph 13 hereof, full cooperation and assistance in any lawsuit or other similar matter or proceeding before any court or agency.

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

- a. 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 TCSI may elect to do so at its option but at the expense of the Owner, subject to the provisions of Paragraph 13 hereof.
- b. Obtain leases for the Railway Equipment for a term not to exceed sixty (60) months and maintain the Railway Equipment under lease throughout the term of this Agreement. TCSI shall execute any such lease for the account and on behalf of the Owner.
- c. Comply with the terms and conditions of any lease agreement to which the Railway Equipment is subject during the term hereof. It is understood, however, that before TCSI shall be obligated to comply with any lease not negotiated by TCSI or any amended terms and conditions of any such lease, such lease and/or amendments must be approved in writing by TCSI.
- \* d. 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.
- e. 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 Paragraph 5. TCSI may, however, retain during each calendar year of the term of this Agreement, an amount equal to three percent (3%) of the Lease Fees received during that calendar year, remitting to Owner any amount not required for such taxes.
- f. Maintain adequate books and records sufficient to account properly for the Lease Fees, Expenses and other such items applicable to the Railway Equipment.
- g. Contract for or otherwise obtain all repair and/or maintenance work on Railway Equipment considered necessary by TCSI, subject to the provisions of Paragraph 4.
- h. 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 7e and this Paragraph 7h) shall accompany the Quarterly Report. Should Expenses (incurred or reasonably foreseeable) exceed the Lease Fees at any time during the period in question, the Owner shall remit the amount to TCSI if requested. It is understood that TCSI 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 TCSI shall have the authority to retain portions of Lease Fees that exceed actual Expenses incurred to cover the future Expenses that can be reasonably foreseen to exceed the Lease Fees for the applicable future period or periods. Such retention of Lease Fees shall be accomplished on a reasonably basis and in such a manner as to minimize the effect that such retention shall have on cash distribution, if any, made to Owner.

1. Reasonably pursue any and all warranties and other claims against manufacturers, users, lessees, railroads and other parties on behalf of the Owner. Such duties shall not, however, be deemed to include the filing of suit, although TCSI may elect to do so at its option, but at the expense of the Owner, subject to the provisions of Paragraph 13.

8. Subject to the provisions set forth herein, this Agreement shall be effective commencing on the first date on which a railroad tank car included in the Railway Equipment is delivered to TCSI, and shall automatically terminate five (5) years from such date.

9. Except as otherwise provided in this Agreement, the Owner may terminate this Agreement by giving TCSI written notice of termination not less than three (3) months prior to the termination date designated in such notice; provided however, if Owner shall owe TCSI 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. TCSI shall, at its option be entitled to continue to lease and otherwise operate and manage the Railway 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 Railway Equipment have been paid.

10. Should either party default under its obligations set forth herein, the sole and exclusive remedy of the other party shall be to advise the defaulting party of such default, and should such default not be corrected within thirty (30) days of such notification, the aggrieved party may, at its option, immediately terminate this Agreement.

11. Neither TCSI 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 a account of expenditures, investments or commitments made in connection therewith, or in connection with establishment, development or maintenance of the business or goodwill of TCSI 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 or the Railway Equipment, and TCSI 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 TCSI 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 the Agreement, all obligations of the parties shall immediately cease. TCSI shall, however, provide at its expense and upon the 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 other information into Owner's operation.

12. In consideration of the services of TCSI hereunder, Owner shall pay to TCSI a management fee of ten percent (10%) of the total compensation 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.

13. TCSI will give written notice to Owner at least ten (10) days prior to the institution of legal proceedings by TCSI or not more than ten (10) days after being served with process in any legal proceedings against TCSI involving the Railway Equipment. Unless otherwise directed in writing by Owner, TCSI may, at its option, institute or defend, in its own name or in the name of the 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, claims, rents or other income for the Railway Equipment, or lawfully oust or dispose 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 action 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. TCSI shall keep Owner currently advised of all legal proceedings brought pursuant to the foregoing authority.

\* 14. 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; (b) may be assigned by TCSI in connection with the merger or consolidation of TCSI into another corporation or as part of the sale of substantially all of the assets of TCSI, provided that notice of such merger, consolidation or sale shall be given to Owner prior to the effective date hereof; and (c) this Agreement together with the Railway Equipment may be assigned by the Owner to a financial institution as collateral for financing the Railway Equipment.

15. Owner and TCSI jointly and severally acknowledge, agree and covenant that TCSI 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 TCSI, or to bind TCSI in any manner or respect whatsoever. Further, Owner agrees to indemnify and hold TCSI harmless from any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorney's fees, expenses and judgements, except those arising out of TCSI gross negligence or willfull 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. TCSI agrees to indemnify and hold harmless Owner from and against any and all claims, attorney's fees, expenses, and judgements which may hereafter by made or caused by any third party based on actions taken by TCSI in connection with the Railway Equipment, which actions were authorized hereunder, but performed negligently, or were not specifically requested or approved by Owner.

16. 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 the Agreement.

17. 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 TCSI. Accordingly, Owner agrees that it will promptly undertake upon such expiration or termination, at Owner's expense, all steps necessary to properly

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

18. 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:

TCSI: Tank Car Services, Inc.  
N. 200 Mullan Road  
Suite #201  
Spokane, WA 99206

Owner: George B. Kelly  
6 W. 11th Place  
Houston, TX 77005

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.

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

20. TCSI hereby confirms that it will act as agent of the Owner in entering into and performing all obligations and duties of the lessor under any lease of the Railway Equipment and hereby assigns to Owner all rights of the lessor under any such lease, including any rights of indemnification of the lessor thereunder; provided, that such assignment shall not affect or modify the relationship between, or the respective rights, obligations, and duties of, TCSI and Owner pursuant to this Agreement.

21. 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.

22. The terms and provisions of this Agreement shall be binding upon and insure 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 Paragraph 14.

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

IN WITNESS THEREOF, the parties have hereunto set their names, effective this 30 day of October, 19 84.

OWNER  
By: George B. Kelly  
Title: \_\_\_\_\_

TANK CAR SERVICES, INC.  
By: George M. Bartley  
Title: President