



# NORTHBROOK CORPORATION

March 6, 1986

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

4918  
Filed 1425  
MAR 12 1986 - 11 50 AM  
INTERSTATE COMMERCE COMMISSION

No. 6-071A014  
MAR 12 1986  
Date .....  
Fee \$ 10.00  
ICC Washington, D. C.

Dear Sir:

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the U.S. Code and the regulations thereunder are the original and one copy of Management Contract, a primary document dated as of November 1, 1985.

The names and addresses of the parties to the enclosed documents are:

Manager: Northbrook Corporation  
2215 Sanders Road, Suite 370  
Northbrook, IL 60062  
Attention: President

Owner: Bank of New England, N.A.  
28 State Street  
31st Floor  
Boston, MA 02108  
Attention: A. Thomas Retjos

100 COPIES OF  
MGT CONTRACT  
MAR 12 11 44 AM '86

A general description of railroad equipment covered by the enclosed document is as follows:

One hundred (100) open-top hopper railcars

The original and all extra copies of the enclosed documents should be returned to Ms. Sharon Schumacher of Northbrook Corporation, 2215 Sanders Road, Suite 370, Northbrook, IL 60062.

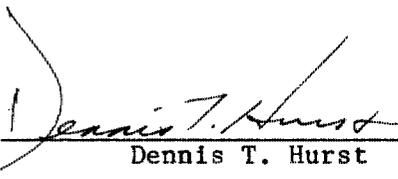
Also enclosed is a remittance in the amount of \$10.00 for payment of recordation fees.

Mr. James H. Bayne  
Interstate Commerce Commission  
March 6, 1986  
Page 2

I am an officer of Northbrook Corporation and have knowledge of the matters set forth herein.

Very truly yours,

By



Dennis T. Hurst

Dennis T. Hurst

DTH:pb  
encl.

SENT VIA: Certified Mail

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

4918

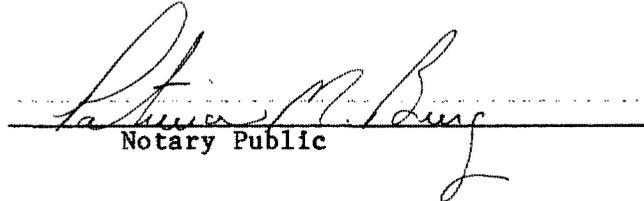
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MAR 12 1986 -11 20 AM

INTERSTATE COMMERCE COMMISSION

On this 6th day of March, 1986, I hereby certify that I have compared the attached copy of Management Contract between Northbrook Corporation and Bank of New England, N.A. dated November 1, 1985 with the original and have found the copy to be complete and identical in all respects to the original document.



  
Notary Public

My Commission Expires Nov. 5, 1988

MANAGEMENT CONTRACT

MAR 12 1986 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

This Agreement made as of the 1st day of November, 1985 by and between Northbrook Corporation ("Manager") and Bank of New England, N.A. ("Owner").

WHEREAS, Manager is engaged in the business of managing and leasing railcars for the Manager and other railcar owners, the Owner desires to retain Manager for the purpose of managing the railroad cars identified on Exhibit A attached hereto (the "Cars"), on Owner's behalf on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and Manager, intending to be legally bound, hereby agree as follows:

1. Engagement of Manager

Subject to all of the terms and conditions set forth herein, Owner hereby engages Manager to manage the Cars, and Manager accepts such engagement and agrees to perform such duties in accordance with the terms and conditions hereof. Nothing in this Agreement precludes Manager from engaging in additional management contracts for rail equipment other than the Cars.

2. Term

(a) The term of this Agreement ("Term") shall commence, and this Agreement shall be effective, as of November 1, 1985, and shall continue through October 31, 1986, unless terminated sooner in accordance with the provisions of this Agreement.

(b) This Agreement shall terminate (a "Termination") with respect to (i) any Car which is withdrawn from the terms of this Agreement in accordance with Section 2(c) hereof, or (ii) any Car which is lost, destroyed or damaged beyond repair, or (iii) all Cars in the event of Termination under paragraph 2(d) or 8 hereof, as of the date of such Termination provided, however, that notwithstanding any Termination of this Agreement with respect to any Car, Manager shall be obligated to collect all rental payments, mileage allowances and other sums (including insurance benefits, and lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of Cars), and to arrange for payment of all expenses, taxes and other charges with respect to any Car, due or with respect to periods prior to such termination of this Agreement. (Such expenses and charges to be reimbursed by Owner). Termination of this Agreement shall be subject to the provisions of paragraph 10(h).

(c) For each calendar quarter during the term of this Agreement, if the Net Revenue (defined below) less direct Car costs excluding Management Fees on any Car falls below an average of \$450 per car for any such calendar quarter the Owner may, upon 10 day written notice to the Manager, terminate this Agreement as to that Car provided, however, the sum of \$450 per Car, per quarterly period, shall be

reduced by an amount equal to the average rentals which the Cars would have earned incrementally above the amount of actual Gross Revenue but for the Owner's lack of consent to any assignment or operating lease which was acceptable to any former secured creditors of Manager who own railcars competitive to the Cars of Owner managed by Manager. For purposes of this Agreement, Net Revenue equals Gross Revenue (as defined below) less per diem reclaims. Gross Revenue means income from any per diem, mileage, rent, lease payments or other income earned by or attributable to the Cars for the benefit of Owner. Gross Revenue excludes any revenues paid by users of the Cars to the Manager's railroad subsidiaries in the ordinary course of their business for goods transported or services rendered.

(d) In addition, Owner may terminate this Agreement with respect to all Cars if the average Gross Revenue earned per Car managed hereunder is, for any six-month period during the term of this Agreement, less than 90% of the average Gross Revenue earned by other similar types of cars managed by Manager provided, however, that the average Gross Revenue shall be adjusted by an amount equal to the average rentals which the Cars would have earned incrementally above the amount of actual Gross Revenue but for the Owner's lack of consent to any assignment or operating lease which was acceptable to any former secured creditors of Manager who own railcars competitive to the Cars of Owner managed by Manager. For purposes of this section, the six month periods shall commence April 1 and October 1 of each calendar year. Notwithstanding the above, Manager may undertake to manage additional open-top hoppercars if such additional cars relate to a specific end user agreement that Owner has rejected, or to an agreement for which Owner's Cars are not suitable by or are otherwise not available for service with said end user.

### 3. Procurement of Assignments and Operating Leases

Manager will use its best efforts to seek to procure short term assignments and operating leases for each Car. No fixed term or fixed payment assignment in excess of the then remaining term of this Agreement may be entered into by the Manager unless such is preapproved in writing by Owner. (Free running service is not considered fixed term or fixed payment.) In the event this Agreement terminates with respect to any Car subject to an assignment or operating lease, Manager shall have the sole right to either allow such Car to remain subject to such assignment as provided in Section 10(h) hereof and to receive a Management Fee as provided herein or to replace that Car in that same service with any similar railroad car under its management if such replacement is allowed under the terms of the assignment or operating lease.

4. Duties of Manager

In consideration of the compensation to be paid to Manager pursuant to this Agreement, Manager shall provide and perform on behalf of Owner the services set forth below, which services shall be provided and performed during the term of this Agreement at a level or standard of care no less than Manager would use with respect to cars it owns or leases or manages for others. The Manager will:

(a) Arrange for payment for the maintenance and repair of each Car and remarking of any Car pursuant to the terms of assignments or operating leases. All such payments are to be reimbursed to Manager first from any receipts or earnings on the Cars and next from Owner.

Manager shall review, approve, or, if an invoice is not both reasonable and proper, reject, and audit each and every such invoice. Any such repair and maintenance shall be accomplished promptly and shall be inspected by Manager in accordance with usual and customary practices so as to determine the necessity and quality of such repair and maintenance. Manager shall keep each Car in good order and repair and shall comply with each required safety appliance and construction obligation specified by the Association of American Railroads and the Interstate Commerce Commission all at Owner's cost and expense. The Manager shall maintain, or cause to be maintained, each Car in a condition that is satisfactory for interchange in accordance with the Association of American Railroads rules, all at Owner's cost and expense. All maintenance and repair shall be accomplished in accordance with the Association of American Railroads ("AAR"), Interstate Commerce Commission ("ICC") and Federal Railway Association rules and regulations.

(b) At Owner's cost and expense, register the Cars and file or have filed all required initial and ongoing reports with the AAR, ICC, United States Department of Transportation ("DOT"), Universal Machine Language Equipment Register ("UMLER"), and each other regulatory authority having jurisdiction over the Cars in order to insure that the Cars will at all times be entitled to generate the maximum revenues under the circumstances.

(c) Subject to the provisions of Section 4(i) hereof, use its best efforts, at Owner's expense, to collect from any user, assignee and/or lessees all payments, mileage allowances or any other revenue due and which are not duly and promptly paid to the Manager or the Owner with respect to the Cars and any other sums due to Owner with respect to the Cars, identifying itself as agent for that purpose, and account for and remit those sums due to Owner as hereinafter provided.

(d) Maintain the Cars at Owner's expense in a 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, ICC or DOT, or any other regulatory authority having jurisdiction over the Cars, (ii) any standard set by the terms of any operating leases and (iii) any standard set by an insurance policy known to Manager, under which the Cars or any of them shall from time to time be insured.

Manager will, at Owner's expense, arrange for all alterations, modifications, improvements or additions to the Cars to comply with all applicable laws or regulations. For any non-running repairs under Sections 107 or 108 of the AAR rules, or for any alterations required by the AAR, Owner has right of pre-approval if the anticipated cost is greater than \$500 per car for any Car. Owner will have five (5) business days after written notification to make this election. If Owner makes no election within this time, Manager will use its best judgment. In the event Manager elects to make such repairs, Owner shall reimburse Manager. Manager shall also have the option to terminate this Agreement with respect to any Car which it elects not to repair after the failure of Owner to make a timely election.

(e) Use its best efforts to cause each car in need of repair to be transported to the repair facility by Manager at minimum cost to Owner. Manager will rely on its review of the overall costs of movement and repair to minimize the total costs.

(f) Pay on behalf of Owner (subject to reimbursement as provided herein) all taxes, charges, assessments, or levies imposed upon or against the Cars other than taxes, charges, assessments or levies payable by and chargeable to any lessee, or which are measured by Owner's income, of whatever kind or nature.

(g) Maintain or have maintained separate, complete and accurate books and records of transactions of maintenance, mileage and movement relating to the Cars in the same form and to the same extent as customary in the Manager's railcar leasing and management business, and retain such books and records for a period of no less than three (3) years and such books and records shall remain available for inspection by Owner or any of Owner's representatives upon forty-eight (48) hours written notice, during reasonable business hours, and allow Owner to make photocopies thereof at Owner's expense.

(h) Upon Termination with respect to any and all Cars, Manager will promptly cause those Cars which are the subject of such Termination to be returned to a location designated by Owner, all at Owner's expense, provided, however, that in the event of Termination by Owner under paragraph 8, below, Manager shall, at Owner's request, store the Cars without charge for a period of 60 days provided the Cars are stored on tracks controlled by Manager. Manager shall use its best efforts to store Cars on tracks controlled by Manager and to cause any such return to be accomplished on an income generating basis and as promptly as requested by Owner. However, if Manager is not reasonably able to accomplish such a return within the time period specified by Owner on an income generating basis, that return shall be accomplished with Manager using its best efforts to minimize transportation costs for Owner. The Owner, at its expense, will promptly have Manager's or its affiliates marks removed upon Termination.

(i) Collect in trust for Owner (but subject to any set-offs of Manager for sums owing to Manager by Owner), or have lessees or users 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 account for and promptly remit those sums. Manager may retain the services of outside counsel or other experts (each of whom must be acceptable to Owner) in order to collect sums due Owner.

(j) None of the Cars shall be placed in service outside the United States of America for more than 45% of any one-year period, excluding international service.

(k) In the event that Owner is a party to any legal action arising out of its Ownership of the Cars, Manager will, upon receipt of notice thereof, promptly provide Owner with written notice of such action and the opportunity to defend such action.

(i) Request Owner's consent prior to exercising any right to terminate any lease which the Owner has pre-approved in writing.

(m) If any Car which is the subject of this Agreement remains unused during the term of this Agreement and is stored on the tracks of a railroad owned by the Manager, it will be stored at no cost to Owner. Owner will pay the movement and storage costs if Owner wants the Cars stored other than where Manager has them stored.

(n) The Cars will be insured against all customarily insured against perils at coverage equal to that maintained on cars of similar type managed or leased by Manager and, in no event, at coverage less than that currently in effect or which is customary in the industry. The cost of this insurance will be paid by Owner as requested by Manager. Copies of all such insurance policies and a certificate of insurance shall be delivered to Owner.

## 5. Payments

Within 5 business days after the end of each calendar month, Manager shall remit to Owner all sums it has received and to which Owner is entitled pursuant to this Agreement, with only the costs, expenses and fees set forth in this Agreement subtracted from same. All sums collected by Manager, as agent of Owner, shall be held in trust for Owner and be recorded in Manager's books of account separate and apart from all other funds of Manager and remitted to Owner in accordance with this Agreement. The Owner acknowledges and agrees that Manager may commingle such revenues with the revenues earned and collected on behalf of the owner of other railcars managed by Manager; provided, however, that Manager shall neither commingle any such collections with its general operating funds, nor use any such collections for the payment of costs and expenses incurred on behalf of the owners of other railcars.

## 6. Fee to Manager

The Manager shall be entitled to the following fee ("Management Fee"):

(a) Manager shall receive a Management Fee of 20% of the Net Revenue collected and received, less costs and expenses of counsel and other

experts retained pursuant to paragraph 4(i) during the term of this Agreement.

(b) Manager will subtract the Management Fee from Net Revenue before remitting any funds to Owner.

(c) Manager will submit to Owner each month the calculations upon which the Management Fee was determined, and Owner will have the right to challenge any such calculations which it believes to be erroneous.

## 7. Reports

Manager shall monitor and record fleet allocation of the Cars under Manager's normal procedures.

Manager shall, at the time of submitting the calculations to Owner required by Section 6(c) hereof, submit to Owner a written report of the activity of the Cars. This report will summarize for the Cars for each service month (i) amounts earned and the amounts paid for the use of the Cars; (ii) the nature of the amounts earned and the amounts paid for the use of the Cars, i.e., whether such amounts represent mileage charges, per diem charges or some other source of revenue; (iii) amounts outstanding from prior months; (iv) operating expenses (i.e., costs incurred by Manager for or on behalf of Owner); (v) Management Fees; and (vi) amounts remitted to Owner or payable to Manager pursuant to this Agreement.

Manager shall, within 90 days following the end of each calendar year during the term of this Agreement, submit a statement to Owner signed by an executive officer or Manager (i) setting forth as of that calendar year end the amount, description and numbers of all Cars then subject to this Agreement; the amount, description and numbers of all Cars that have suffered a casualty occurrence during the preceding calendar year and are then undergoing major repairs (other than running repairs); (ii) stating that, in the case of all Cars repaired or repainted during the period covered by such statement, and to the best of Manager's knowledge, the proper number and markings have been preserved or replaced; (iii) certifying that all amounts to be remitted hereunder by Manager to Owner through the preceding December 31 have been remitted, or if unremitted amounts and the reason for their nonremittance; (iv) stating that to the best of Manager's knowledge after reasonable inquiry, Owner is in compliance with all of the provisions of this Agreement and that all amounts required to be paid by Owner have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment; and (v) stating that to the best of Manager's knowledge the Cars have been operated in compliance with the requirements of all regulatory authorities having jurisdiction over the Cars.

Manager shall notify Owner within 5 business days after becoming aware of the occurrence of any major casualty which would cause any Car to be taken out of service for over 90 days.

8. Events of Default

(a) The occurrence of any of the following events shall be an Event of Default:

(i) The non-payment or failure to remit, by Owner or Manager to the other of a total amount in excess of \$1,000 required herein to be paid or remitted within 10 days after any such payment or remittance is due. Notwithstanding the foregoing, the non-payment or non-remittance of such sum shall not relieve either party of the obligation to pay or remit any amounts then accrued hereunder.

(ii) The breach or non-fulfillment by Manager or Owner of any other term, covenant or condition of this Agreement, which is not cured within 10 days after written notification to the offending party of such breach or non-fulfillment.

(b) Upon the occurrence of any Event of Default by a party hereunder, the other party may, at its option, terminate this Agreement by delivering to the defaulting party written notice of such termination and may, in addition, pursue any other remedy available at law or in equity provided, however, that if the sole Event of Default by Manager is a breach of paragraphs 2(c) or 2(d), above, Owner's sole remedy shall be return of the Cars.

9. 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 in the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to Manager: Northbrook Corporation  
Suite 370  
2215 Sanders Road  
Northbrook, IL 60062

Attention: President

If to Owner: Bank of New England, N.A.  
28 State Street  
31st Floor  
Boston, MA 02108

Attention: ~~Michael A. Gorman~~  
A. Thomas Rojas

or any person whose address is given to the other party by notice in the manner set forth above.

10. Miscellaneous

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois

(b) Counterparts. This Agreement may be executed in one 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 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 modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) 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, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.

(f) No Partnership. It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, Manager shall have no authority to bind Owner or incur any liability for which Owner may be responsible without the prior written consent of Owner.

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

(h) Use After Termination. Notwithstanding any termination provision herein, if any Cars are placed in service for a term which goes beyond the termination of this Agreement, those particular Cars shall remain under the terms of this Agreement until they are returned by the user or lessee. Provided this Agreement is not terminated as to all or certain of the Cars under paragraph 8(a) (i) or a breach of paragraphs 4(d), 4(g), 4(i), 4(l), 4(n) or 5, above, Manager shall receive Management Fees based on these receipts pursuant to this Agreement, which Management Fee shall be calculated based upon the number of Cars subject hereto. If this Agreement is terminated by Owner as to all or certain of the Cars under paragraph 8(a) (i) or due to a breach of paragraphs 4(d), 4(g), 4(i), 4(l), 4(n), or 5, above, Manager shall not be entitled to any Management Fee on Net Revenues earned by the Cars subject to such termination accruing after the date of termination. Notwithstanding the above, in the event of a breach of paragraphs 4(d), 4(g), 4(i), 4(l), 4(n) or 5, and if Owner does not terminate this Agreement, Manager will be entitled to a Management Fee only after any such breach is cured by Manager.

(i) Assignment: Owner shall have the right to sell, transfer or assign ownership of the Cars and its rights hereunder to a corporation affiliated with Owner provided the financial condition of said corporation is reasonably acceptable to Manager or the obligations of said corporation hereunder are guaranteed by Owner.

11. Indemnification

Owner shall defend (if such defense is tendered to Owner), indemnify and hold harmless Manager and its subsidiaries whose railcar reporting markings may be upon the Cars from time to time from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees and reasonable cost of investigation) losses or liabilities incurred by or asserted against Manager and such subsidiaries as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars including claims for injury to or death of persons, loss of or damage to property (including the Cars) provided, however, that Owner shall not defend, indemnify or hold Manager and such subsidiaries harmless from and against, and Manager and such subsidiaries shall not be exculpated from, any claim, action, damage, expense, loss or liability caused by or arising from the negligence, bad faith, recklessness, or willful misconduct of Manager or such subsidiaries or the failure of Manager or such subsidiaries to perform Managers obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth above.

ATTEST

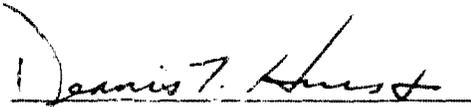


(CORPORATE SEAL)

BANK OF NEW ENGLAND, N. A.

By: 

ATTEST

  
Secretary

(CORPORATE SEAL)

NORTHBROOK CORPORATION

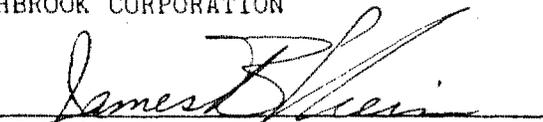
By:   
President

EXHIBIT A TO MANAGEMENT CONTRACT  
between Northbrook Corporation and Bank of New England, N.A.

UMP 7100	UMPX 7101-7102	WSOR 7104-7105
UMP 7103	UMPX 7108-7109	WSOR 7106-7107
UMP 7113-7114	UMPX 7120	WSOR 7110-7111
UMP 7116	UMPX 7125-7126	WSOR 7112
UMP 7118-7119	UMPX 7137	WSOR 7115
UMP 7121-7122	UMPX 7139	WSOR 7117
UMP 7127	UMPX 7146	WSOR 7123-7124
UMP 7130	UMPX 7164	WSOR 7128-7129
UMP 7132	UMPX 7169	WSOR 7131
UMP 7136	UMPX 7172	WSOR 7133-7135
UMP 7138	UMPX 7174	WSOR 7140
UMP 7141-7142	UMPX 7180-7181	WSOR 7143
UMP 7144	UMPX 7187-7191	WSOR 7145
UMP 7147	UMPX 7198	WSOR 7148
UMP 7149-7151		WSOR 7152-7157
UMP 7158		WSOR 7159-7160
UMP 7161-7162		WSOR 7163
UMP 7171		WSOR 7165
UMP 7173		WSOR 7166-7168
UMP 7175-7176		WSOR 7170
UMP 7178		WSOR 7177
UMP 7182-7183		WSOR 7179
UMP 7185-7186		WSOR 7184
UMP 7194-7195		WSOR 7192
UMP 7199		WSOR 7193
		WSOR 7196-7197

STATE OF Illinois )  
 )  
COUNTY OF Cook )

On this 9th day of October, 1985, before me personally appeared James B. Shein, to me personally known, who, being by me duly sworn, said that he/she is President of Northbrook Corporation, that the foregoing instrument was signed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carmen Montano  
Notary Public

My Commission Expires October 20, 1988  
\_\_\_\_\_

STATE OF Massachusetts )  
COUNTY OF Suffolk )

On this 28<sup>th</sup> day of February, 1986,  
before me personally appeared Michael A. Gorman, to me  
personally known, who, being by me duly sworn, said that he/she is an  
authorized officer of Bank of New England N.A.  
that one of the seals 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/she  
acknowledged that the execution of the foregoing instrument was the free act  
and deed of said corporation.

Cileen M. Coakley  
Notary Public

My commission expires:

My Commission Expires August 10, 1990