

RECORDATION NO. 13189-25

RECORDATION NO. 13189-A

United States Rail Services, Inc.



633 Battery Street  
San Francisco, California 94111  
(415) 445-7690

JUL 17 1981 -10 45 AM

JUL 17 1981 -10 45 AM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

1-198A032

July 9, 1981

Ms. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

No.  
Date **JUL 17 1981**  
Fee \$ 50.00  
ICC Washington, D. C.

Dear Ms. Mergenovich:

I submit for filing and recording under 49 U.S.C. Sec. 111303(a), a Railroad Car Management Agreement dated March 17, 1979 between United States Rail Services, Inc. and Patricia J. Cooper (formerly known as Patricia J. Christenson) and an Assignment dated January 1, 1981 assigning ownership in and to the covered hopper cars and the Railroad Car Management Agreement to Johnson Enterprises Limited Partnership duly executed and notarized. I also enclose two certified true copies of this management agreement and assignment.

The addresses of the parties to this transaction are:

United States Rail Services, Inc., as managing agent  
633 Battery Street  
San Francisco, CA 94111

Patricia J. Cooper (formerly known as Patricia J. Christenson), Assignor

Johnson Enterprises Limited Partnership, Owner/  
Assignee  
414 Main Street  
Roswell, MN 88201

RECEIVED  
JUL 17 9 16 AM '81  
REC. OPERATIONS

The management agreement and assignment cover the following equipment:

Five (5), 100 ton, 4650 cu.ft. capacity covered hopper cars, RUSX 4916-4920.

Enclosed is a check in the amount of \$50,00 in payment of the recording fee.

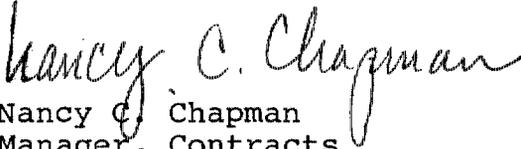
Ms. Agatha L. Mergenovich  
July 9, 1981  
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- Once the filing has been made, please return:
- (a) the original document file stamped;
  - (b) the file stamped conformed copy not required for filing purposes;
  - (c) the receipt;
  - (d) the letter from the Interstate Commerce Commission acknowledging the filing and
  - (e) the extra copy of this letter of transmittal.

Should you have any questions, please contact me at 415/445-7824.

Sincerely,

UNITED STATES RAIL SERVICES, INC.

  
Nancy C. Chapman  
Manager, Contracts

NCC:js

Enclosures



REGISTRATION NO. 13189  
JUL 17 1981 10 45 AM  
INTERSTATE COMMERCE COMMISSION

THE SECURITY REPRESENTED BY ONE OR MORE COVERED HOPPER CARS AS DESCRIBED IN THE PRIVATE OFFERING MEMORANDUM DATED FEBRUARY 7, 1979, TOGETHER WITH THIS MANAGEMENT AGREEMENT, HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THIS SECURITY MAY NOT BE SOLD OR OFFERED FOR SALE UNLESS REGISTERED PURSUANT TO SUCH ACT OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

FOR CALIFORNIA RESIDENTS ONLY:

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

RAILROAD CAR MANAGEMENT AGREEMENT

THIS AGREEMENT, made this Seventeenth Day of March 1979, by and between United States Rail Services, Inc., a California corporation (hereinafter called "Managing Agent") and Patricia J. Christenson of Roswell, State of New Mexico (hereinafter called "Owner").

WITNESSETH:

WHEREAS, Managing Agent has offered and sold 100-ton 4650 cubic foot capacity covered hopper cars, ("Cars") under a Private Offering Memorandum dated February 7, 1979, which Cars will be operated in a pool ("Pool No. 5"); and

WHEREAS, Owner holds title or will hold title to 5 Cars, which Owner desires Managing Agent to manage and operate as agent for Owner;

NOW THEREFORE, the parties hereby agree as follows:

1. Employment as Manager. Owner hereby employs Managing Agent to manage the operation of Owner's Cars in accordance with the terms and conditions hereinafter set forth and Managing Agent agrees to accept such employment. The relationship between Owner and Managing Agent is one of principal and agent and not one of partnership or joint venture.

2. Managing Agent's Duties. Managing Agent shall do the following (which Owner agrees shall be done by Managing Agent):

(a) Accept delivery of Owner's Cars, operate and account for them in Pool No. 5,

(b) Secure the assignment of Association of American Railroad's reporting marks for Owner's Cars, place such marks upon the Cars and register such Cars in such tariffs as required for their operation in railroad service, and paint such Cars any appropriate color and place on such Cars such markings or legends as it deems required or appropriate,

(c) Acting on behalf of Owner, execute in its name, if it deems it advisable (1) all required Association of American Railroads, Interstate Commerce Commission, local Public Utility Commission and all other governmental or industry agreements it deems necessary, appropriate or required in order to operate Owner's Cars in railroad service under this Agreement; and (2) all ad valorem and other tax filings and pay any such taxes with respect to such Cars;

(d) Use its best efforts to lease Owner's Cars to shippers or other users of railroad cars. Without the prior written consent of Owner, such leases shall be (a) on terms and conditions which are customary in the industry, and (b) for a lease term (taking into account options to renew) not to exceed 5 years and 11 months;

(e) Pay to Owner within 90 days after the end of each Calendar Quarter the Pro Rata Net Operating Profit of Owner's Cars as calculated under the provisions of Paragraph 6 hereof,

(f) Perform all managerial and administrative functions incident to the operation of Owner's Cars, including (but not limited to) collecting of all Gross Revenue, arranging for the maintenance and repair of such Cars for the account of Pool No. 5, and keeping adequate records of the operation of such Cars;

(g) Submit unaudited quarterly reports and audited annual reports including such information as is reasonably necessary to enable Owner to complete his tax returns. The annual report will be furnished within 90 days after the end of each calendar year. If necessary, the Managing Agent shall cause Federal and State of California partnership tax returns for each calendar year to be prepared and timely filed, pursuant to the Power of Attorney executed by Owner concurrently with the execution hereof.

(h) Notwithstanding the provision for quarterly payment of Net Operating Profit, Managing Agent may, if in its judgment it deems it appropriate, at any time, calculate Net Operating Profit and Incentive Management Fee, pay any unpaid Incentive Management Fee and distribute any undistributed Net Operating Profit with respect to any Car;

(i) Maintain a separate bank account for all funds of said Pool No. 5; and

(j) Not assign its rights hereunder without the consent of Owner.

Managing Agent shall not knowingly discriminate against or in favor of Owner's Cars in seeking leases.

3. Owner's Obligations. Owner shall:

(a) Make the initial delivery of his Cars to Managing Agent at the point or points designated by Managing Agent;

(b) Allow Managing Agent to act in his name, for and on behalf of Owner, and to do all things and incur any and all obligations it deems appropriate or necessary, all at the discretion of Managing Agent, in order to operate Owner's Cars under this Agreement;

(c) Reimburse Managing Agent promptly upon demand for (1) all Pro Rata Operating Loss Allocated to Owner's Cars if in any Calendar Quarter Operating Expenses exceed the Gross Revenues for that quarter and (2) the cost of any improvements or modifications to any of such Cars required by the Association of American Railroads or other official authority, in excess of a total expenditure of two hundred dollars (\$200) in any calendar year, provided however, that no modification or improvement costing in excess of that amount will be made on any Car of Owner without Owner's permission, except that such permission will be deemed to have been granted if Owner fails to advise Managing Agent to the contrary in writing within 30 days after notice to Owner by the Managing Agent of such required modification or improvement and its estimated cost. Managing Agent may apply against payment of these charges any Net Operating Profit due Owner,

(d) Bear all loss and damage to Owner's Cars and all claims damages, expenses and liabilities (including attorneys' fees) and indemnify and hold the Managing Agent harmless from and against any and all claims, damages, expenses or liabilities (including attorneys' fees) incurred by, or asserted against Managing Agent as a result of its (or any other party's) operation, possession, control or use of such Cars, other than for the Managing Agent's errors in judgment or other acts or omissions not undertaken in good

settlement, Managing Agent shall deduct from the Net Operating Profit due Owner on the settlement date the following expenses incurred prior to termination with respect to his Cars, which expenses may be estimated: adjustments for refunds, railroad tariff charges, repairs, taxes and all other expenses. Each such charge shall be calculated as of the date of the actual release of such Cars from this Agreement. Managing Agent shall have the option of making estimated quarterly payment of Net Operating Profit to Owner prior to said final settlement date. If the calculation results in an Operating Loss, Owner shall pay such Operating Loss to Managing Agent upon billing therefor.

(2) Except as to any Car of Owner which has been totally destroyed, arrange for the return of the Owner's Cars to Owner, at Owner's expense. If there are existing leases affecting any of such Cars, Managing Agent shall provide Owner with a copy of such leases, shall notify lessees to deal directly with Owner, and thereafter, Managing Agent shall have no further rights or obligations with respect to such Cars. However, Owner shall, at Managing Agent's option and direction, assign Owner's rights in such leases to Managing Agent. Owner's Cars shall be returned in condition acceptable in railroad interchange service, but otherwise in their then existing condition, except in the event that the Agreement is terminated by Managing Agent due to Owner's instructions that modifications or improvements required by the Association of American Railroads are not to be made to his Car; such improvements or modifications will not have been made.

#### 6. Determination of Profit or Loss.

(a) Definitions. The following terms shall, for the purposes of this Agreement, have the meanings set forth in this subparagraph:

(1) Calendar Quarter or Quarterly shall mean the calendar quarter used by Company for accounting to Owner under this Agreement.

(2) Car Day shall mean the service time of one Car for one day.

(3) Managing Agent shall mean, in addition to United States Rail Services, Inc., all agents and employees thereof.

(4) Gross Revenue shall mean all lease rents, railroad mileage allowances received as lease rents and other monies derived from the use of all Cars in Pool

(1) The Operating Expenses paid for all Cars in Pool No. 5 shall be deducted from the Gross Revenue collected for use of all such cars to determine the Operating Profit.

(2) The Managing Agent shall deduct from Operating Profit as its compensation the Incentive Management Fee. The remainder shall be Net Operating Profit for the Quarter.

The total Net Operating Profit shall be allocated Pro Rata to each of the Cars and paid to each Owner as provided in paragraph 2(e) and 6(a)(9).

7. Breach. In the event of a breach of this Agreement, the breaching party shall have 7 days after written notice thereof to cure said breach. The nonbreaching party shall have all rights afforded by law or equity against the breaching party in the event said breach is not cured within said 7 day period. All rights and remedies herein given to a party shall be cumulative. In the event of a breach of this Agreement, or any condition thereof, by Owner, Owner agrees to pay all expenses incurred by Managing Agent arising from said breach, including reasonable attorneys' fees incurred by Managing Agent in enforcing its rights hereunder.

8. Delay and Loss. The obligations of Managing Agent hereunder shall be subject to all delays and contingencies beyond the control of Managing Agent. Managing Agent shall not be liable for any loss of, or damage to Owner's Cars.

9. Inspection. The Owner or his authorized representative shall be entitled to inspect the books and records of the Managing Agent relating to Pool No. 5 during normal business hours and upon reasonable notice.

10. Miscellaneous. This Agreement has been executed by the Managing Agent in San Francisco, California. If any provision of this Agreement should be invalid, the remaining provisions hereof shall continue to be fully effective, unless a complete failure of consideration occurs thereby, or it would be unfair to thereafter continue this Agreement. Time is of the essence of this Agreement, and to each and every condition and term thereof. A failure by either party to exercise any right set forth in this Agreement shall not constitute a waiver of that right. Owner acknowledges that there are no warranties or representations, express or implied by Managing Agent as to the amount of Net Operating Profit, if any, to be derived under this Agreement. The Agreement is the complete agreement between the parties and supersedes all prior negotiations and agreements and documents as requested by Managing Agent in connection with management of the Cars. The Agreement shall be binding upon and, except as otherwise specifically provided hereby, shall inure to the benefit of the successors and heirs of the parties.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. Notices. Notices hereunder shall be deemed given when placed in a sealed envelope, properly addressed to the party to whom such notice is being given, at the addresses shown below their respective signatures at the end of this Agreement, and deposited in the United States mail, as a Certified or Registered Letter, return receipt requested, with all required postage thereon fully prepaid. Either party may, by written notice in accordance with the provisions of this paragraph 12, designate a new address to which all future notices shall be addressed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

UNITED STATES RAIL SERVICES, INC.

By

  
\_\_\_\_\_

  
\_\_\_\_\_

Owner

Address:

633 Battery Street  
San Francisco, California 94111

Address:

1214 Avenida Del Sumbre  
Roswell, New Mexico 88201

STATE OF New Mexico )  
 ) SS  
COUNTY OF Chaves )

On this 8th day of June, 1981, before me personally appeared Patricia J. Cooper (formerly known as Patricia J. Christenson), to me known to be the person described in and who executed the foregoing instrument and she acknowledged that she executed the same as her free act and deed.

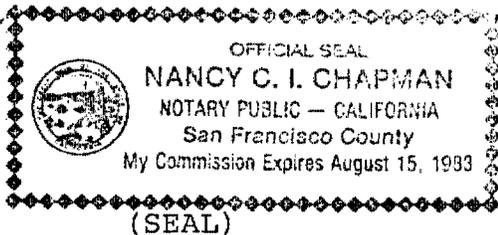
Mary S. Fowice  
Notary Public

(SEAL)

My commission expires:  
June 6, 1984

STATE OF CALIFORNIA        )  
  )   SS  
COUNTY OF SAN FRANCISCO)

On this 9th day of July, 1981, before me personally appeared D. A. Summers to me personally known, who being by me duly sworn, says he is the Vice President and General Manager (title of office) of United States Rail Services, Inc., a California corporation, and who executed the foregoing instrument dated March 17, 1979 between United States Rail Services, Inc. and Patricia J. Cooper (formerly known as Patricia J. Christenson), that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



*Nancy C. I. Chapman*  
Notary Public

My commission expires: