United States
Rail Services, Inc.

A U.S. Leasing Company

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

REGISTERED MAIL
RETURN RECEIPT REQUESTED

3-235A010

14130

RECORDATION NO. ..... Filed 1425

August 16, 1983

AUG 23 1983

AUG 23 1983 -9 10 AM

50.00

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

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

Dear Secretary:

I have enclosed two originals of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Railroad Car Management Agreement, a primary document, dated April 1, 1983.

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

United States Rail Services, Inc., Managing Agent
633 Battery Street
San Francisco, CA 94111

The Frey Family Trust
Dated March 15, 1972, Owner
3110 Reed Road
Escondido, CA 92027

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

Two (2), 100 ton, 20,000 gallon, DOT111A100W1, tank cars, lettered and numbered RUSX 342-343 inclusive.

A fee of $50.00 is enclosed. Please return the original not needed by the Commission for recordation to the undersigned.

Sincerely,

Nancy C. Chapman

Nancy C. Chapman
Assistant Secretary

NCC:nj

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

8/23/83

OFFICE OF THE SECRETARY

Nancy C. Chapman
Assist. Sec.
U.S. Rail Services,Inc
633 Battery Street
San Francisco, Calif. 94111

Dear
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act,49 U.S.C. 11303, on **8/23/83** at **9:30am**, and assigned recordation number(s). **14130**

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 14130 Filed 1425

AUG 23 1983 9 48 AM

INTERSTATE COMMERCE COMMISSION

RECEIVED
AUG 11 1983
U.S. RAIL SERVICES

THE SECURITY REPRESENTED BY ONE OR MORE TANK CARS AS DESCRIBED IN THE PRIVATE OFFERING MEMORANDUM DATED JULY 31, 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 THE OWNER FURNISHES THE MANAGING AGENT AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGING AGENT TO THE EFFECT THAT THE PROPOSED DISTRIBUTION DOES NOT REQUIRE REGISTRATION PURSUANT TO THE ACT OR IS EXEMPT THEREFROM.

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 THEREFORE 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 1st day of April 1983, by and between United States Rail Services, Inc., a California corporation (herinafter called "Managing Agent") and The Frey Family Trust Dated March 15, 1972 of Escondido, State of California (hereinafter called "Owner").

WITNESSETH:

WHEREAS, Managing Agent has offered and sold 100-ton 20,000 gallon capacity railroad tank cars, ("Cars") under the Private Offering Memorandum dated July 31, 1979, which Cars will be operated in a pool ("Pool No. 6"); and

WHEREAS, Owner holds title or will hold title to 2 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. 6;

(b) Place the Managing Agent's reporting marks along with the serial number assigned to each Car 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, provided that where Cars are leased to a railroad the Managing Agent may permit the railroad's reporting marks to be placed on Owner's Cars for the period of the lease in which case the Managing Agent will file a copy of such lease with the Interstate Commerce Commission;

(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, railroads and other users of railroad cars. Without the prior written consent of Owner, such leases shall be (a) on terms and conditions of 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. 6, 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 separate bank and other accounts for all funds of said Pool No. 6, and, where Managing Agent in its judgment deems it appropriate, place such funds in an interest bearing bank account or money market security fund;

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

(k) File a copy of this Agreement with the Interstate Commerce Commission, the filing fee to be paid by the Owner and at Managing Agent's option deducted from Net Operating Profit due Owner.

Managing Agent shall not knowlingly 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 Revenue 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 by any person, including Owner, as a result of Managing Agent's (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 faith and amounting to fraud, bad faith or negligence, including, but not limited to, any and all loss or damage to lading, and injury or damage to persons or property;

(e) Provide policies of insurance, including (but not limited to), physical damage and public liability insurance, in kinds and amount required by Managing Agent, naming Owner and Managing Agent as beneficiaries and insuring both against liabilities deemed by Managing Agent to be required; and

(f) Not assign or otherwise transfer his rights hereunder without the consent of Managing Agent.

4. Insurance. The Managing Agnet is to provide, on Owner's behalf, and at Owner's expense, the policies of insurance Owner is required to provide as set forth in paragraph 3(e) hereof. Managing Agent shall provide such insurance under policies maintained by it until 90 days after Owner has given Managing Agent notice that Owner will itself provide such insurance and has also delivered to Managing Agent evidence that such insurance is in force. Managing Agent may deduct from Net Operating Profit due Owner the premium for such insurance as incurred.

5. Term.

(a) Duration. The term of this Agreement as to each of Owner's Cars will commence upon the respective dates of delivery of each of them pursuant to paragraph 3(a), and will remain in full force and effect until terminated upon the earliest of the following to occur:

(1) 90 days after the Owner gives the Managing Agent notice of its intention to terminate; or

(2) upon the total destruction of any such Car; or

(3) at the Managing Agent's option, upon breach by Owner of any of the covenants which it is required to perform; or

(4) at the Managing Agent's option, if Owner fails to permit modifications or improvements required as provided in paragraph 3(c) of this Agreement; or

(5) February 28, 1985.

(b) Termination. Upon termination of this Agreement Managing Agent shall:

(1) Make a complete and final settlement of all Net Operating Profit due Owner from operation of his Cars, at the expiration of 12 months from the actual date of termination. In calculating the final 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 therafter, 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 Managing Agent for accounting to Owner under this Agreement.

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

(3) Monthly Operating Profit shall mean the result of subtracting Operating Expenses paid during a particular month from Gross Revenue received in that month.

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

(5) 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 No. 6 and actually collected by Managing Agent and the income, if any, earned on the undistributed funds of Pool No. 6. Funds paid out to adjust lease rents or other revenue monies shall be deducted from Gross Revenue. Gross Revenue shall be allocated to the Calendar Quarter in which earned, but if not collected within nine months after the end of the Calendar Quarter in which earned shall be included in Gross Revenue for the Calendar Quarter in which collected.

(6) Incentive Management Fee shall be 20% of Operating Profit, and shall be determined as provided in paragraph 6(b) and (c). Twenty percent of this Incentive Management Fee (4% of Operating Profit) shall represent compensation to the Managing Agent for its lease services described in paragraph 2(d) of this Agreement.

(7) Net Operating Profit shall mean Operating Profit less the Incentive Management Fee.

(8) Operating Expenses shall mean all expenses of all Cars in Pool No. 6 actually paid by Managing Agent during a Calendar Quarter, though incurred prior to such Calendar Quarter, including but not limited to maintenance and repairs, cleaning, taxes of any kind (except taxes on net income), fees and railroad tariff charges, but excluding insurance, sales, general and administrative expenses and charges for improvements or modifications to any Car beyond the maximum amount provided for in clause 3(c)(2) hereof. Proceeds received in settlement from railroads and others or from insurance for damage to any Car in Pool No. 6 shall be credited to Operating Expenses, except a settlement received for a Car which is totally destroyed, which shall be paid to its Owner.

(9) Operating Profit or Operating Loss shall mean the result of subtracting Operating Expenses from Gross Revenue.

(10) Pro Rata shall mean an allocation based on the numerical proportion that the service time (expressed in Car Days) of an individual Car or group of Cars bears to the total service time of all Cars in Pool No. 6 during a Calendar Quarter or other accounting period. Service time of a Car in Pool No. 6 begins on the date it first earns lease revenue and continues until termination of this Agreement.

(b) Monthly Determination. Monthly Operating Profit, if any, shall be determined by the Managing Agent for each month on the last day thereof during each Calendar Quarter, and the Managing Agent shall deduct 20% thereof as its "Interim Incentive Management Fee Payment" (subject to the adjustment as provided in paragraph 6(c)(2)).

(c) Quarterly Determination. Operating Profit and the Net Operating Profit or the Operating Loss of Pool No. 6 shall be determined by the Managing Agent for each Calendar Quarter. The initial determination will be made within ninety days after the end of such Quarter. To the extent that Gross Revenue attributable to such Quarter is collected after the initial determination, further determinations will be made at least quarterly, provided no determination for such Quarter will be made more than nine months after the end of such Quarter. The initial and any further determination shall be made as follows:

(1) The Operating Profit or Loss for such Quarter shall be (i) Gross Revenue earned during such Quarter and collected at any time up to the date of the determination, less (ii) the Operation Expenses actually paid during such Quarter.

(2) At the time of the determination, the Managing Agent shall deduct and pay to itself with respect to its Incentive Management Fee an amount equal to (i) 20% of Operating Profit for such Quarter (zero if there is an Operating Loss), less (ii) the sum of all Interim Incentive Management Fee Payments and Incentive Management Fees, attributable to such Quarter, previously paid to the Managing Agent and not refunded. The Managing Agent shall promptly refund the amount, if any, by which the amount so calculated is less than zero.

(3) The remainder shall be Net Operating Profit for such Quarter and shall be paid to each Owner, as provided in paragraph 2(e) and 6(a)(10), after each determination to the extent not previously paid.

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 either party, the breaching party agrees to pay all expenses incurred by the non-breaching party arising from said breach, including reasonable attorneys' fees incurred by the non-breaching party 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. 6 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 shall 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 consideration and term thereof. A failure by either party to exercise any right set forther 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 Nancy C. Chapman

Carlton W. Frey Jr.
~~Owner~~ TRUSTEE

Owner

Address:
633 Battery Street
San Francisco, California 94111

Address:
3110 Reed Road
Escondido, CA 92027

POWER OF ATTORNEY

I hereby appoint Myron M. Christy, David A. Summers, Marvin L. Ferenstein or any other officer, from time to time, of United States Rail Services, Inc., 633 Battery Street, San Francisco, California 94111, as my attorney-in-fact to file any partnership returns in connection with my ownership of Railroad Tank Cars which are the subject of a Railroad Car Management Agreement between the undersigned and United States Rail Services, Inc. I authorize Messrs. Christy, Summers or Ferenstein to make in writing substitution of representatives or delegate authority to other representatives to act as my attorney-in-fact to file such partnership returns.

This Power of Attorney is granted with respect to any partnership returns required for 1979 and for all subsequent years during which such Cars are subject to such Railroad Car Management Agreement.

I do not intend by this Power of Attorney or by the execution of said Railroad Car Management Agreement to become a partner in any partnership. This Power of Attorney is executed because of the recognition that the filing of a partnership return may be expedient as a protective measure in light of substantial penalties that might apply if a partnership were found to exist.

8-8-83
Date

Name(s) of Taxpayer(s)

E.W. Frey, Jr.

3110 Reed Road
Address

Elizabeth Frey

Escondido, CA 92027

95-6782863
Taxpayer Identification Number
(Social Security Number if Individual)

The person(s) signing as or for the taxpayer(s) is (are) known to, and this power of attorney is being signed in the presence of, the two disinterested witnesses whose signatures appear hereunder:

Date

Signature of Witness

Date

Signature of Witness

GENERAL ACKNOWLEDGMENT

NO. 201

State of California
County of San Diego } SS.

On this the 8 day of August 1983, before me,

_____,

the undersigned Notary Public, personally appeared

E.W. Frey, Jr. and Elizabeth F. Frey,

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) names subscribed to the within instrument, and acknowledged that they executed it.
WITNESS my hand and official seal.

June B. Caywood
Notary's Signature

OFFICIAL SEAL
JUNE B. CAYWOOD
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires Sept. 17, 1985

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4625 • Woodland Hills, CA 91364