RECORDATION NO. 11747 Filed 1425

APR 29 1980 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

United States
Rail Services, Inc.

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

REGISTERED MAIL
RETURN RECEIPT REQUESTED

J-120A112

APR 29 1980

Fee $ ~~50.00~~ 50.00

ICC Washington, D. C.

RECEIVED
APR 29 3 10 PM '80
I.C.C.
FEE OPERATION BR.

April 15, 1980

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

Dear Ms. Secretary:

On behalf of United States Rail Services, Inc., I submit for filing and recording under 49 U. S. C. Sec. 111303(a), a railroad car management agreement dated November 14, 1979, between United States Rail Services, Inc. and Earl W. Frey, Jr. duly executed and notarized. I also enclose three certified true copies of this management agreement.

The addresses of the parties to this transaction are:

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

Earl W. Frey, Jr., as car owner
3110 Reed Road
Escondido, CA 92025

The management agreement covers the following equipment:

Two 100 ton, 20,000 gallon capacity railroad tank car(s), DOT111A100W1, RUSX 342 and 343.

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

Once the filing has been made, please return
(a) the original document file stamped;
(b) the file stamped conformed copies 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.

2/28/85

Should you have any questions, please call me at (415) 445-7824.

Very truly yours,

UNITED STATES RAIL SERVICES, INC.

By Nancy C. I. Clayman

Title Assistant Secretary and Assistant Treasurer

Enclosures

11747
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APR 29 1980 -3 15 PM

INTERSTATE COMMERCE COMMISSION

STATE OF CALIFORNIA)
)
CITY AND COUNTY OF) SS
)
SAN FRANCISCO)

On this 15th day of April, 1980 before me personally appeared D. A. Summers (name), Vice President and General Manager (office), of United States Rail Services, Inc. (formerly called Rail-U.S. Leasing, Incorporated), to me personally known who being by me duly sworn, says that he (she) has compared the following railroad car management agreement (title of document) dated November 14, 1979, between United States Rail Services, Inc. and Earl W. Frey, Jr. with the original and that such copy is a true and complete copy of the original document, including date, signature and acknowledgements.

Nancy C. I. Chapman
Notary Public

(SEAL)

My commission expires:

My Commission Expires August 15, 1983

11747

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 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 14th day of NOVEMBER 1979, by and between United States Rail Services, Inc., a California corporation (hereinafter called "Managing Agent") and EARL W FREY JR 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 a 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.

EXHIBIT B

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 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 an-

nual 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 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 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 Agent 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 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 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 determinations 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 Manage-

ment 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 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

Owner

Address:
633 Battery Street
San Francisco, California 94111

Address: 3110 REED Rd.
ESCONDIDO, CALIF. 92025

PLEASE BE SURE TO FILL IN ALL BLANKS.

For Owner who is one individual or two individual Co-owners:

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On this 14 day of NOVEMBER, 1979, before me personally appeared EARL W FREY JR and _____ (name of the signer or signers of the foregoing instrument), to me known to be the person(s) described in and who executed the foregoing instrument and he or she acknowledged that he or she executed the same as his or her free act and deed.

OFFICIAL SEAL
R. W. INBODY
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires Aug. 24, 1981
COMMISSION NO. 362252

(SEAL)

R W Inbody
Notary Public

My commission expires:

For Owner which is a corporation:

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 1979, before me personally appeared _____, (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the _____ _____ (title of office) of _____ _____ (name of corporation), a _____ corporation, that the seal 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 acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

_____
Notary Public

My commission expires:

STATE OF CALIFORNIA)
) SS
CITY COUNTY OF SAN FRANCISCO)

On this 15th day of November 1979, before me personally appeared D.A. Summers, (name of signer of foregoing instrument) to me personally known, who being by me duly sworn, says that he is the V.P. & Gen'l. Mgr. (title of office) of United States Rail Services, Inc., a California corporation, that the seal 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 acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Nancy C. I. Chapman
Notary Public

(SEAL)

My commission expires:

OFFICIAL SEAL
NANCY C. I. CHAPMAN
NOTARY PUBLIC — CALIFORNIA
San Francisco County
My Commission Expires August 15, 1983