12000
RECORDATION NO. ..... Filed 1425

JUL 15 1980 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

United States
Rail Services, Inc.

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

REGISTERED MAIL
RETURN RECEIPT REQUESTED

July 10, 1980

No. 0-197AC20
Date JUL 15 1980
Fee $ 50.00
ICC Washington, D. C.

RECEIVED
JUL 15 10 43 AM '80
I.C.C.
FEE OPERATION BR.

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 October 4, 1974, between United States Rail Services, Inc. and Ellis A. and Addie V. Chamberlain 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

Ellis A. and Addie V. Chamberlain, as car owners
719 Pomona Avenue
Oroville, CA 95965

The management agreement covers the following equipment:

One 100 ton, 4650 cu.ft., center flow covered hopper car, RUSX 4606.

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

Once the filing has been made, please return
(1) the original document file stamped;
(2) the file stamped conformed copies not required for filing purpose;
(3) the receipt;
(4) the letter from the Interstate Commerce Commission acknowledging the filing and
(5) the extra copy of this letter of transmittal.

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

Very truly yours,

UNITED STATES RAIL SERVICES, INC.

By Nancy A. I. Chapman

Title Assistant Secretary and Assistant Treasurer

Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

7/14/80

OFFICE OF THE SECRETARY

Nancy C.I. Chapman
U.S. Rail Services, Inc.
633 Battery Street
San Francisco, California 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 7/15/80 at 10:50am, and assigned re-recordation number(s). 12000

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

12000

RECORDATION NO. ..... Filed 1425

JUL 15 1980 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

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

On this 10th day of July, 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 October 4, 1974, between United States Rail Services, Inc. and Ellis A. & Addie V. Chamberlain with the original and that such copy is a true and complete copy of the original document, including date, signature and acknowledgements.

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

Nancy C. I. Chapman
Notary Public

(SEAL)

My commission expires:

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 4th day of October 1974, by and between Rail-U.S. Leasing, Incorporated, a California corporation (hereinafter called "Company") and ELLIS A. CHAMBERLAIN and ADDIE V. CHAMBERLAIN of Oroville, California (hereinafter called "Owner").

WITNESSETH:

WHEREAS, Owner holds title or will hold title to the following railroad cars:
RUSX 4606 (hereinafter, together with any other railroad cars made subject hereto by agreement between the parties, called "the Cars," whether there are one or more cars subject to this Agreement); and

WHEREAS, Company is engaged in the business of managing, leasing and subleasing railroad cars; and

WHEREAS, Owner desires Company to manage the operation of the Cars;

NOW THEREFORE, the parties hereby agree as follows:

1. *Employment as Manager.* Owner hereby employs Company to manage the operation of the cars in accordance with the terms and conditions hereinafter set forth and Company agrees to accept such employment.

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

(a) Accept delivery of the Cars and operate and account for them in a Pool of cars of substantially the same type and size, under substantially the same terms and conditions as those contained in this Agreement. The age of the cars in such Pool will not vary by more than five years.

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

(c) 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 the Cars in railroad service under this Agreement; and (2) all ad valorem and other tax filings and to pay any such taxes attaching to the Cars;

(d) Use its best efforts to lease the Cars to shippers or other users of railroad cars for lease terms of not to exceed five [5] years on such terms and conditions as it may deem satisfactory, within its discretion;

(e) Pay to Owner within 120 days after the end of each Calendar Quarter the Cars' Pro Rata Net Operating Profit as calculated under the provisions of Paragraph 5 hereof;

(f) Perform all managerial and administrative functions necessary for the operation and leasing of the Cars, including (but not limited to) the collecting of all Gross Revenue, the arranging for the maintenance and repair of the Cars for the Pool account; and keeping adequate records of the operation of the 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. Prepare Federal and State of California partnership tax returns for each calendar year and shall timely file such returns. Copies of such returns will be made available to Owner.

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

In performing its managerial and administrative functions hereunder, Company shall not knowlingly discriminate against or in favor of the Cars in seeking leases.

3. *Owner's Obligation.* Owner shall:

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

(b) Allow Company to act in its 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 Company, in order to operate the Cars under this Agreement;

(c) Reimburse Company promptly upon demand for (1) all Pro Rata Operating Loss Allocated to the 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 the Cars required by the Association of American Railroads or other official authority, in excess of a total expenditure of one hundred dollars ($100) in any calendar year, provided however, that no modification or improvement costing in excess of that amount will be made on any car without Owner's permission, except that such permission will be deemed to have been granted if Owner fails to advise Company to the contrary in writing within 30 days after notice to Owner by the Company of such required modification or improvement and its estimated cost. Company may apply against payment of these charges any Net Operating Profit due Owner;

(d) Bear all loss and damage to the Cars and all claims, damages, expenses and liabilities (including attorneys' fees) arising from the operation, possession, control or use of the Cars, and indemnify and hold the Company harmless from and against any and all claims, damages, expenses or liabilities (including attorney's fees) incurred by, or asserted against Company as a result of its (or any other party's) operations, possession, control or use of the Cars, 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) all risks, physical damage and public liability insurance, in kinds and amount required by Company, naming Owner and Company as beneficiaries and insuring both against liabilities deemed by Company to be required;

(f) Not sell or dispose of any of the Cars nor assign his rights hereunder without the consent of Company. For a period of two years after the termination of this Agreement Company shall have a right of first refusal to purchase the Cars from Owner at the same price which any bona fide third party offers to purchase the Cars. If within such two year period

Owner shall receive any offers to sell the Cars, he shall immediately give Company notice of such offers, and Company shall have thirty days after the giving of such notice to agree to purchase the Cars upon the same terms as contained in such offers. Except for such right of first refusal by the Company, the provisions of this sub-paragraph 3(f) shall not be deemed to affect the Owner's rights to dispose of the Cars after the termination of this Agreement.

4. *Term.*

(a) *Duration.* The term of this Agreement as to each of the 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 either party gives the other notice of its intention to terminate; or

(2) upon purchase by the Company of any such Car; or

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

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

(5) at the Company's option, if Owner fails to permit modifications or improvements required as provided in paragraph 3(c) of this Agreement.

(b) *Termination.* Upon termination of this Agreement Company shall

(1) Make a complete and final settlement of all Net Operating Profit due Owner from operation of the Cars, at the expiration of twelve (12) months from the actual date of termination. In calculating the final settlement, Company shall deduct from the Net Operating Profit due Owner on the settlement date the following expenses incurred prior to termination with respect to the 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 the Cars from this Agreement. Company 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 Company upon billing therefor.

(2) Except as to any car which has been purchased by the Company or totally destroyed, arrange for the return of the Cars to Owner, at Owner's expense, upon the expiration of all existing leases affecting any of the Cars. Company may, at its option, arrange for the termination of any such existing lease prior or subsequent to the termination of this Agreement. The 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 Company 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.

5. *Determination of Profit or Loss.*

(a) *Definitions.* The following italicized words shall, for the purposes of this Agreement, have the meanings set forth in this sub-paragraph:

(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) *Company* shall mean, in addition to Rail-U.S. Leasing, Incorporated, all agents and employees thereof.

(4) *Gross Revenue* shall mean all lease rents, railroad mileage allowances received as lease rents and other moneys derived from the use of all cars in the same Pool and actually collected by Company. Funds paid out to adjust lease rents or other revenue moneys 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.

(5) *Incentive Management Fee* shall mean that portion of Operating Profit which the Company deducts and retains as its fee under this Agreement.

(6) *Multiple Car Premium* shall mean the amount payable to the Owner of 5 or more cars determined as provided in Paragraph 5(b)(3).

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

(8) *Operating Expenses* shall mean all expenses of all cars in the same Pool actually paid by Company 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 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) *Pool* shall mean only cars of the similar type and size operated by Company under substantially the same form of agreement, the Gross Revenues and Operating Expenses of which are pooled, as described in this Agreement.

(11) *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 the same Pool during a Calendar Quarter or other accounting period. Service time of a car in a Pool begins on the date it first earns lease revenue and continues until termination of this Agreement.

(b) *Determination.* Operating Profit and the Net Operating Profit or the Operating Loss of each Pool in which a Car is placed shall be determined by the Company for each Calendar Quarter, as follows:

(1) The Operating Expenses paid for all cars in the Pool shall be deducted from the Gross Revenue collected for use of all such cars to determine the Operating Profit.

(2) The Company shall deduct from Operating Profit and retain as its Incentive Management fee a dollar amount equal to 20% of such Operating Profit. The remainder shall be Net Operating Profit for the Quarter.

(3) If Owner owns 5 or more cars operated in such Pool, Company shall pay him the applicable following Multiple Car Premium to the extent the Company has deducted Incentive Management Fee for the operation of the Pool during such Calendar Quarter:

Number of Cars Managed	Premium per Car per Month
5 to 9 cars	$ 5.00
10 to 14 cars	6.25
15 to 19 cars	7.50
20 to 24 cars	8.75
25 or more cars	10.00

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), together with any Multiple Car Premium payable to such Owner as provided in Paragraph 5(b)(3).

6. *Breach.* In the event of a breach of this Agreement, the breaching party shall have seven (7) days after written notice thereof to cure said breach. The non-breaching party shall have all rights afforded by law or equity against the breaching party in the event said breach is not cured within said seven (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 Company arising from said breach, including reasonable attorneys' fees incurred by Company in enforcing its rights hereunder.

7. *Delay and Loss.* The obligations of Company hereunder shall be subject to all delays and contingencies beyond the control of Company. Company shall not be liable for any loss of, or damage to the cars.

8. *Miscellaneous.* This Agreement shall be deemed to have been executed 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 Company 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, supersedes all prior negotiations and agreements and may be amended only by a writing signed by both parties. Owner shall execute all agreements and documents as requested by Company 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.

9. *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 9, 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.

RAIL–U.S. LEASING, INCORPORATED

By Myron M. Cherry
President

Address:
633 Battery Street
San Francisco, California 94111

Cecil A. Chamberlain
Addie V. Chamberlain

By

Owner

Address:

719 Pomona Ave.,
Oroville, Calif 95965

STATE OF California)
)SS
COUNTY OF Butte)

On this 23rd day of May, 1980, before me personally appeared Ellis A. Chamberlain and Addie V. Chamberlain, to me known to be the person(s) described in and who executed the foregoing railroad car management agreement dated October 4, 1974 and he or she acknowledged that he or she executed the same as his or her free act and deed.

Faye H. Nevers
Notary Public

(SEAL)

My commission expires:

OFFICIAL SEAL
FAYE H. NEVERS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
BUTTE COUNTY
MY COMMISSION EXPIRES JULY 5, 1981

OFFICIAL SEAL
FAYE H. NEVERS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
BUTTE COUNTY
MY COMMISSION EXPIRES JULY 5, 1981

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

On this 10th day of July, 1980, before me personally appeared Myron M. Christy to me personally known, who being by me duly sworn, says he/~~she~~ is the President (title of office) of United States Rail Services, Inc., a California corporation, and who executed the railroad car management agreement dated October 4, 1974, between United States Rail Services, Inc. and Ellis A. & Addie V. Chamberlain, that said instrument was signed 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.

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

(SEAL)

Nancy C. I. Chapman
Notary Public

My commission expires: