Valley View Bank

11313
RECORDATION NO. ..... Filed 1425

JAN 2 1980 9 25 AM

INTERSTATE COMMERCE COMMISSION

No. 8-002A020
Date JAN 2 1980
Fee $ 50.00
ICC Washington, D. C.

December 27, 1979

Ms. Mildred Lee
Interstate Commerce Commission
12th and Constitutional Avenue N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed please find one original and two copies of the Management Agreement signed between PLM Railcar Management, Inc. and Joe F. Bayless.* Also enclosed is a cashier's check in the amount of $50 for payment of the recordation fee.

As I stated in our conversation of December 26, 1979, the attached should be filed along with the three (3) executed original security agreements dated December 5, 1979 by and between Valley View Bank, Dallas, as secured party and Joe F. Bayless, Jr. as debtor. These documents were forwarded to you on December 11, 1979.

The one new Hopper Car described in the Security Agreement was described as follows:

> One new 100 ton triple covered hopper railcar PLMX, # #11113, manufactured by Portec, Inc. with 4750 cubic feet.

Please return the original of the attached agreement along with the original security agreement with filing data noted thereon, to Mr. Doyle Lee, Senior Vice President, Valley View Bank, P.O. Box 30100, 75230. If you have any questions or need additional information with regard to the attached, please contact the undersigned.

Sincerely,

Doyle Lee
Senior Vice President

rm

enclosures

* 2200 Sutton Place
Richardson, TX
75080

13101 Preston Rd. Dallas, Texas 75240 (214) 661-1100

RECORDATION NO. 11313 Filed 1425

JAN 2 1980-9 35 AM

INTERSTATE COMMERCE COMMISSION

EXHIBIT "C"

MANAGEMENT AGREEMENT
PLM RAILCAR MANAGEMENT, INC.

12/12/79

THIS AGREEMENT is made by and between PLM RAILCAR MANAGEMENT, INC., a California corporation (hereinafter called "RMI"), and the person executing this Agreement, as owner (hereinafter called "Owner").

RECITALS OF FACT

Owner has, pursuant to a Covered Hopper Railcar Purchase Contract (the "Purchase Contract") with National Equipco, Inc., purchased the covered hopper railcars identified in Schedule I attached hereto and incorporated herein by reference (such car or cars purchased by Owner being hereinafter referred to as the "Cars");

Owner may have financed a portion of the purchase price for the Cars from the proceeds of a borrowing (hereinafter referred to as the "Loan") from an institution or other entity (hereinafter referred to as the "Lender") and repayable in the periodic payments of principal and interest identified in and payable at designated times and in amounts, all as may be referred to in Schedule 2 attached hereto and incorporated herein by reference, which Owner shall provide to RMI concurrently with the execution of this Agreement (hereinafter referred to as "Debt Service");

RMI is engaged in the business of managing railcars for railcar owners, and Owner desires to retain RMI as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

RMI intends to manage approximately 1,250 railcars identical in all material respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially identical to those which RMI will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses (the "Pool") of all cars managed by RMI under the RMI Covered Hopper Railcar Management Program 79-1 (the "Program"), all on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and RMI hereby agree as follows:

1. *Engagement of RMI.* Owner hereby engages RMI as agent of Owner to manage the Cars, collect amounts due to Owner with respect to the Cars and disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and RMI accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

2. *Term.* The term of this Agreement and the agency created hereby shall commence as of the date of this Agreement, and shall continue for a period of ten years thereafter; provided, however, that, except for Sections 10 and 11, which shall, notwithstanding this proviso, remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement shall terminate with respect to any Car which is withdrawn pursuant to Section 12 hereof, sold, lost or totally destroyed as of the date that such withdrawal is effective, such sale is consummated, or such Car is lost or destroyed; provided further, however, that notwithstanding any termination of this Agreement, whether upon the expiration of ten years after the date of this Agreement, or upon the withdrawal, sale, loss or total destruction of any Car, RMI shall continue to be obligated

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with RMI, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and personal injury, (ii) loss of or damage to the Cars, and (iii) loss of revenues with respect to the Cars; *provided, however,* that if RMI effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; *provided, further,* however, that if RMI, in its sole discretion, determines that the cost of insurance described above is unreasonably high, or cannot be obtained, RMI need not place or acquire such insurance and shall so notify Owner.

(h) Use its best efforts to pay in Owner's name all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in RMI's discretion, defend against any such charges and to seek revision or appeal from any assessment or charge deemed improper, all such actions to be in the name of Owner.

(i) Monitor and record movement of the Cars.

(j) Maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives during reasonable business hours.

(k) Paint the Cars such colors and with such designs as RMI may from time to time approve and place reporting marks or other such marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the AAR.

(l) Provide Owner with advice and recommendations concerning the sale of the Cars.

(m) Use its best efforts to 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 to remit all sums due Owner as hereinafter provided.

(n) Furnish factual information reasonably requested by Owner in connection with federal, state, Canadian and Provincial tax returns.

(o) If Owner has elected to finance a portion of the purchase price for the Cars from the Loan and (i) there will be a "ballon payment" identified as such in Schedule 2 hereto, (ii) Owner shall have requested within one year of the due date thereof that RMI assist in arranging refinancing for such payment, and (iii) RMI shall have agreed to so assist the Owner at a fee to be mutually agreed upon, then RMI will use its best efforts to arrange refinancing for such balloon payment on the Loan at or prior to the due date for such payment. Neither RMI nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to the refinancing of such balloon payment.

(p) Pending distribution of funds to Owner, may but is not required to, temporarily invest any funds held for Owner, not necessary for operation of the Management Program, in short term, highly liquid investments with appropriate safety of principal, such as U.S. Treasury Bonds or Bills, insured savings accounts, or similar investments.

(q) Perform for Owner such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the leasing and operation of the Cars.

4. *Authority, and Limitations on Authority, of RMI.*

(a) It is recognized that RMI will manage under the Program the railcars, including the Cars, purchased by investors who enter into a management agreement substantially identical to this Agreement. It is recognized that RMI will receive from owners of other cars in the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that RMI's services for and obligations to and rights with respect to

operation of Cars, including, but not limited to, maintenance; repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f); painting; costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(d); legal and accounting fees incurred pursuant to Section 13; legal fees incurred in connection with enforcing lease rights or repossessing Cars; insurance (and, if such insurance has been effected under a blanket insurance policy, or insurance policy covering the Cars and other cars of other owners, Owner's pro rata share of such insurance cost, it being understood that RMI will use its best efforts to allocate to Owner's Cars only such portion of such insurance cost as is attributable to such Cars); charges, assessments, or levies imposed upon or against Cars of whatever kind or nature; losses from liabilities which are not the responsibility of Owner under Section 7(g); Owner's pro rata share of that portion of ad valorem, gross receipts and other property taxes which are levied against all railcars bearing "PLMX" reporting marks and determined by RMI to be attributable to the cars in the Program (it being understood that it may not be possible to make an exact allocation of such taxes but RMI will use its best efforts to allocate to the cars in the Program only such portion of the aggregate of such taxes as are attributable to such cars); and the lease negotiation fee payable to RMI as provided for in Section 6(d).

(iii) Gross Revenues and/or Operating Expenses attributable to a calendar quarter which are received or paid before or after such quarter shall be included in subsequent quarterly distributions and accounted for as Gross Revenues or Operating Expenses of the quarter in which such revenues were received or expenses paid; provided, however, that if such revenue is received or such expenses paid within one year of the quarter to which they relate and the amount involved exceeds $500 per Car, the items shall be accounted for with the Gross Revenues and Operating Expenses for the quarter to which such items relate; provided further that, notwithstanding the foregoing, any such item or items received or paid prior to the close of the quarter following the quarter during which the last car to be managed by RMI under the Program is delivered to a lessee shall be accounted for with the Gross Revenues and Operating Expenses for the quarter to which such items relate.

(c) Owner's Gross Revenue and Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues derived from all cars managed under the Program or Operating Expenses incurred by or with respect to all cars managed under the Program, as the case may be, multiplied by (ii) a fraction the numerator of which is the product of the number of Cars multiplied by the number of days in such fiscal period that the Car is managed under the Program (or, if the Owner owns more than one Car managed under the Program, the sum of such products computed with respect to each of the Owner's Cars) and the denominator of which is the product of the total number of Cars managed under the Program multiplied by the number of days in such fiscal period that such cars are managed under the Management Program. The number of cars (or Cars, as the case may be) managed under the Program shall be the number of cars actually managed under the Program from time to time during such fiscal period and if any cars are destroyed, lost, sold, disposed of or withdrawn from the Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, sale, disposition or withdrawal; provided, however, that (f) notwithstanding that the owner of any cars managed under the Program shall have entered into a management agreement with RMI, the cars owned by such owner (which may be Owner) shall not be considered to be managed under the Program until such cars shall first have been delivered to and accepted by a lessee thereof and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction.

be made (which request may be made by execution of the request form on the signature page of this Agreement or by written notice to RMI) and shall terminate after the distribution for the month during which, by written notice to RMI, Owner shall request that no further such distributions be made.

(b) *Regular Distributions of Net Earnings.* Within 75 days after the end of each calendar quarter, RMI shall distribute to Owner the excess of (i) the Net Earnings attributable to the operation of the Cars during each quarter over (ii) the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner by RMI pursuant to Section 7(a).

(c) *Payment of Operating Deficits.* Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the amount by which Net Earnings for a calendar quarter, reduced by the Net Earnings, if any, for such quarter distributed for the benefit of Owner by RMI pursuant to Section 7(a), shall be less than zero.

(d) *Payment for Special Improvements.* The cost of any alterations, modifications, improvements or additions which are required by the AAR, Department of Transportation or other regulatory agency or are otherwise required to comply with applicable laws or regulations or any lease or which, in the discretion of RMI, are otherwise necessary or advisable and are consented to by Owner shall be the sole responsibility of Owner. RMI shall have the right to require Owner to pay the approximate cost thereof to RMI, upon ten (10) days prior written notice. Upon completion, RMI shall notify Owner of the exact amount of such costs, and, in the event that Owner has already paid more than such cost, RMI shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to RMI the amount of such difference.

(e) *Payment for Additional Insurance.* If RMI determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance to the extent obtainable, the cost thereof shall be the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the cost of any such insurance placed or purchased by Owner through RMI.

(f) *Payment for Certain Property Damage.* The cost of repair of damage to any Car (other than the cost of repairs which RMI determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payment) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). RMI shall have the right to require Owner to pay to RMI, upon ten (10) days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner or, at RMI's election, such portion of such cost as RMI believes will not be covered by any such payments which may be received by RMI [as co-insured or additional insured, as provided in Section 3(g)] to cover the cost of such damage (it being understood that RMI may apply to such cost of such repair any payments so received by RMI to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by RMI and applied to payment of the cost of such damage, RMI shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by RMI to such repair, RMI shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by RMI to such repairs, the Owner shall promptly pay to RMI the amount of such difference. RMI shall promptly remit to Owner any payments to cover such damage to such Car which are received by RMI and not applied to payment of the cost of repair of such damage.

ninety (90) days after receipt of a copy of the Offer from Owner, to purchase all or any of the Cars upon the same terms and conditions set forth in the Offer. If RMI purchases a Car from Owner pursuant to this Section 9(a) and within 90 days thereafter RMI resells the Car to a third party [other than an affiliate (as defined in Section 9(b) of RMI], RMI shall pay to such Owner the excess, if any, of (i) the gross sales price of the Car over (ii) the sum of (x) the purchase price previously paid by RMI to Owner, (y) RMI's commission pursuant to Section 9(b) below, notwithstanding any limitations therein, and (z) any costs or expenses incurred in connection with such resale, including any commission payable to any broker-dealer; *provided, however,* that if the Car is sold through a broker who is an affiliate of RMI, any commission payable to, and retained by, such affiliate shall not exceed the commission payable to the salesman employed by such affiliate.

(b) *Exclusive Sales Agency.* During the term of this Agreement and for a period of four months thereafter, RMI shall have the exclusive right to sell the Cars. Except in case of any sale or other disposition of a Car to RMI (whether pursuant to Section 9(a) or otherwise) or any of its affiliates (that is, any company, person or firm controlling, controlled by, or under common control with, RMI) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to RMI upon the sale of a Car a sales commission equal to the sum of (i) four percent (4%) of the sale price and (ii) 25% of the sale price in excess of the total purchase price of the Car provided under paragraph 6 of the Purchase Contract (including any storage and transit costs contemplated by said paragraph 6).

10. *Subordination.* This Agreement and RMI's authority and rights hereunder are subject to the lien upon, and security interest in, the Cars and revenues generated by the Cars held by any Lender to whom Owner has granted a security interest in the Cars; provided, however, that all such liens and security interests are subject to any lease entered into during the term of this Agreement (including any rights of the lessees thereunder referred to in Section 11) and to RMI's right to collect Gross Revenues accruing during the term of this Agreement until such time as sums due RMI hereunder as of the later of the date of default under the terms of any security agreement or repossession of the Cars pursuant to such security agreement are paid.

11. *Dealings with Lessees.*

(a) It is intended that leases of cars managed under the Program will cover several or all of the cars so managed under the Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Program) shall, until the expiration or termination of such lease, acknowledge RMI as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under such lease (which rentals RMI shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and RMI may select a person or entity, other than RMI, as agent of such foreclosing mortgagee or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) In the event that RMI determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any car which is subject to the leases referred to in Section 11(a) and which is not managed under the Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then RMI may require the transfer to RMI of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the cars of such person from such leases and, if necessary, substitute thereunder cars identical or substantially similar to the cars so withdrawn.

meaning of Section 48(a)(2)(A) of the Internal Revenue Code of 1954, as amended, or any successor provision thereof, and the regulations thereunder. RMI in the leasing of Cars and in the allocation of Cars to various leases shall cause each lease for the Cars entered into, or arrangements for the use of the Cars made, subsequent to the termination of any of the leases to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars. This provision shall not, however, require RMI to enter into any lease which restricts the location of the use of the Cars on a fiscal year rather than a calendar year basis.

15. *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 of the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to RMI: PLM Railcar Management, Inc.
50 California Street
San Francisco, California 94111
Attention: Vice President—Investor Programs

If to Owner: To the address set forth on the signature page to this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

16. *Miscellaneous.*

(a) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of California.

(b) *Counterparts.* This Agreement may be executed in two 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 the 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 explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) *Successors and Assigns.* The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against RMI without the prior written consent of RMI.

(f) *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 and without limitation acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

(g) *Other Customers of RMI.* It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit RMI from providing the same or similar services to any person or organization not a party to this Agreement. In particular, RMI shall be entitled to manage identical cars not managed under the Program under a similar management agreement with another owner; provided, however, that if RMI owns, or manages for another party, railroad cars which are similar to the Cars, and the total of such cars (including the Cars) available for lease exceeds the demand for such cars, the Cars shall be treated no

PLEASE BE SURE TO FILL IN ALL BLANKS.

For Owner who is an individual:

STATE OF Texas
COUNTY OF Dallas } ss.:

On this 5th day of December, 19 79, before me personally appeared Lee F. Bayless, Jr. (name of the signer of the foregoing instrument), to me known to be the person 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.

[SEAL]

Janet Parton

My commission expires

02-26-81

For Owner which is a corporation:

STATE OF .....
COUNTY OF ..... } ss.:

On this ..... day of ....., 19...., 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), 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.

My commission expires

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 7th day of December, 19 79, before me personally appeared Charles J. Peucello (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the VP (title of office) of PLM RAILCAR MANAGEMENT, INC., 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.

Lottie S. Mineau

[SEAL]

My commission expires

OFFICIAL SEAL
LOTTIE S. MINEAU
NOTARY PUBLIC – CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO
My Commission Expires May 20, 1983

SCHEDULE 2

FINANCING NOTICE

Owner has financed a portion of the purchase price for the Cars described in that certain Management Agreement under RMI Covered Hopper Railcar Program 79-1 and, pursuant to Section 7(a) of the Management Agreement, hereby requests that RMI assist in providing for payment of Debt Service. RMI is hereby authorized to rely on the following information.

Name of Lender: .....

Address: .....

.....

Phone: .....

Officer in charge of account: .....

Account or Loan Number: .....

Date Installments commence: .....

Amount of each Installment: .....

Day of month Installments Due: .....

Number of Installments: .....

Due Date of Final Installment: .....

Amount of "Balloon Payment": .....

Due Date of any "Balloon Payment": .....

Owner hereby requests that payment be made:

(Please check one.)

First day of Month: .....

Last day of Month: .....

Name .....

[Please Print]

Signature .....