

2-034A022

• 17692

RECORDED BY _____ FILED IN

FEB 3 1992 -2 40 PM

INTERSTATE COMMERCE COMMISSION

December 12, 1991

Ms. Mildred Lee
Interstate Commerce Commission
Rail Division - Room 2303
12th and Constitutional Avenue N.W.
Washington, D.C. 20423

EB 4955 21 09 PM 1992
MOTOR OPERATING UNIT

Re: Recording of Management Agreement

Dear Ms. Lee:

Enclosed for filing with the Interstate Commerce Commission is an original Management Agreement notarized by the parties thereto. The parties to the Agreement are as follows:

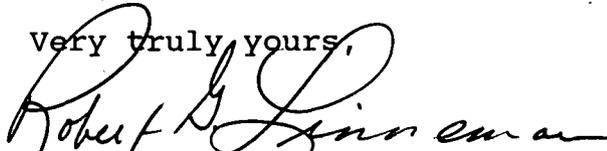
- Owner -*
1. Robert G. and Sara J. Linneman
2775 Mesa Verde Drive East, P112
Costa Mesa, CA 92626
Telephone: (714) 434-6586
 2. MFRX, Inc., a California Corporation, dba D.L.C., Inc.
P.O. Box 470
Rancho Santa Fe, CA 92067

The Agreement between the parties is for the management of a privately owned Mechanically Refrigerated Railcar identified as SLC 1110. Mr. and Mrs. Linneman are the owners of the car, and they have engaged MFRX, Inc. to manage and control said car.

The required filing fee of \$10.00 is also enclosed.

If you have any questions or need additional information, please call.

Very truly yours,


Robert G. Linneman

Interstate Commerce Commission
Washington, D.C. 20423

2/4/92

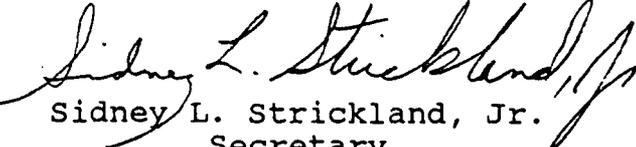
OFFICE OF THE SECRETARY

Robert G. Linneman
2775 Mesa Verde Drive East, P112
Costa Mesa CA. 92626

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 2/3/92 at 2:40pm, and assigned recordation number(s). 17692

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

"ORIGINAL" 17692

FEB 3 1992 - 2 40 PM

MANAGEMENT AGREEMENT

INTERSTATE COMMERCE COMMISSION

This Agreement is made and entered into by and between MFRX, INC., a California Corporation (hereinafter called "MFRX") and ROBERT LINNEMAN (hereinafter called Owner).

WHEREAS, without the participation of MFRX certain persons have purchased mechanical refrigerator railcars, as identified on the signature page hereof.

WHEREAS, MFRX desires to manage the mechanical refrigerator railcars (Car(s)) for Owner under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein, MFRX and Owner, intending to be legally bound by virtue of their execution and delivery of this Agreement, hereby agree as follows:

1. Engagement of MFRX. Owner hereby agrees to engage MFRX to manage its Car(s), and MFRX agrees to manage said car(s) on behalf of and for the benefit of Owner.

2. Term. Owner, by execution of this Agreement, acknowledges that the railroad cars are leased to San Luis Central Railroad until December 31, 1993. Either party may terminate this Agreement as of that date by providing the other party with written notice of such termination ninety (90) days prior to December 31, 1993.

3. Duties of MFRX Related to Car Operations. In consideration of the compensation to be paid to MFRX by Owner pursuant to Paragraph 4. hereof, MFRX shall provide and perform the following services on behalf of Owner during the term of this Agreement.

(a) Immediately upon execution, or as soon thereafter as reasonably practicable, take possession of the Car(s) for the purpose of managing and operating the Car(s), as herein provided.

(b) Use its best efforts without discrimination to keep the Car(s) covered by this Agreement in active use, entering into, as agent for Owners, lease agreements (provided, however, MFRX may not, without written consent from Owner, enter into a lease whose duration would preclude the Owner's right to claim Investment Tax under the Internal Revenue Code, as amended), providing for the lease of the Car(s) to railroads or others on whatever terms and conditions MFRX deems necessary to accomplish that

purpose. Should such Car(s) be in surplus supply at certain times, for conditions beyond MFRX's control, MFRX reserves the right to place such Car(s) in temporary storage until such time as demand increases for such Car(s), without regard for ownership of the Car(s) or any similar equipment under MFRX's control. MFRX, however, makes no guarantees as to the projected revenues or expenses of the Car(s).

(c) Use its best efforts to collect all car rental, Mechanical Protective Service and detention charges due with respect to the Car(s), and account for and remit all sums due to Owner as hereinafter set forth in Paragraph 4.

(d) Use its best efforts to arrange to have the Car(s) maintained in good condition, which shall be equal to or greater than the higher of (1) any standard required or set forth for the Car(s), or for cars of a similar class, by the AAR, Department of Transportation, or other regulatory agency, and (2) any standard set by any insurance policy under which the Car(s), or any of them, shall from time to time be insured; and to arrange for all alterations, modifications, improvements or additions to the Car(s) as necessary to comply with the applicable laws or regulations which, in the discretion of MFRX, are necessary or advisable in order maintain or improve the operational status of the Car(s).

(e) Use its best efforts to pay, at Owner's expense and on behalf of Owner's interest, all personal property taxes and other taxes, charges, assessments or levies imposed upon or against the Car(s) of whatever kind or nature, of which MFRX receives notice thereof.

(f) Replace reporting marks or legends as shall be appropriate or necessary to comply with any lease agreements entered into by MFRX for the Car(s) or to comply with any regulation imposed by the AAR.

(g) Use its best efforts to collect all sums due Owner from railroad indemnity payments in the event of damage to, or loss or total destruction of a Car(s) during the terms of this Agreement, and to remit all such sums, net of a Two Hundred Dollar (\$200.00) processing fee to Owner; provided, however, MFRX shall not be required to bring or maintain suit to collect such sums, although MFRX may elect to do so at its option, but at the expense of Owner.

(h) Furnish factual information reasonably requested by Owner in connection with federal or state income tax returns; however, MFRX shall not assume any responsibility for the preparation of such returns.

(i) 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 Car(s).

4. Net Earnings and Payments to Owners.

(a) As used in this Agreement, the term "net Earnings" shall mean the revenues derived from all Car(s) of the same type under MFRX management operated as a pool, net of (1) all operating expenses of the cars, including all repairs and maintenance thereto, (2) such reserves as MFRX shall determine necessary to provide for the efficient administration of this Agreement, for payment of accrued expenses not yet due, for the management of the Car(s), or for expenses relating to the Car(s) arising or payable after the termination or expiration of this Agreement, and (3) any storage and transit costs payable by Owner.

(b) The net earnings remaining after payment of the above expenses, or after provision for payment has been made through the establishment of the necessary reserves, shall be distributed to the owners on a pro-rata basis according to the number of Car(s) each owners has in the pool. MFRX shall distribute fifty percent (50%) of the net earnings to the car owners within fifteen (15) days after the receipt of the net car revenues from the operating railroad, absent unforeseen exigencies and/or extenuating circumstances beyond its control.

(c) It is not the purpose or the intention of this Agreement to create, and this Agreement shall not be interpreted or construed as creating, a joint venture, partnership or other relationship whereby any party shall be liable for the omission or commission of any acts of any other party.

5. Payment of Costs and Expenses Other Than Operating or Other Expenses Not Previously Covered.

(a) Payment for Special Improvements. The cost of any alterations, modifications, improvements or additions not previously covered which, in the discretion of MFRX, are necessary and advisable and are consented to by Owners shall be the sole responsibility of Owners. MFRX shall have the right to require Owners to pay the approximate costs thereof to MFRX, upon fifteen (15) days prior written notice to Owner. Upon completion, MFRX shall notify Owner of the exact amount of such cost. If the amount already paid by Owner is more than the exact amount of such costs, MFRX shall refund the difference to Owners. If the amount already paid is less than the exact amount, Owner shall pay MFRX the amount of such difference.

(b) Payment for Certain Property Damage. The cost of repair or damage to any Car(s) (other than the cost of repairs which MFRX determines constitute maintenance of such Car(s) the cost of which is included as "Operating Expenses" in Paragraph 4. hereof) is the sole responsibility of Owner, except for those items of repair which are normally and customarily paid by railroads under handling line responsibility. Any payments including, without limitation, insurance benefits or railroad indemnity payments, received to cover the damage to such Car(s) shall be solely for the account and benefit of Owner, and shall not be included in revenues or in the determination of the net earnings distributable to owners pursuant to paragraph 4. MFRX shall have the right to require Owner to pay to MFRX, upon fifteen (15) days prior written notice and demand thereof, the approximate cost of the repairs which are the responsibility of the Owner or, at MFRX's election, such portion of the costs as MFRX believes will not be covered by said payments which may be received by MFRX to cover the cost of such damage (it being understood that MFRX may apply to such costs of repair any payments received by MFRX to cover the cost of damage to the Car(s)). Upon completion of such repairs and the determination of the payments received by MFRX for payment of the cost of such damage, MFRX 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 said payments received and applied by MFRX to such repair, MFRX shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from said payments received and applied by MFRX to such repairs, MFRX shall cause the Owner promptly to pay MFRX the amount of such difference. Owner shall also have the option to accept the insurance proceeds and remove the car from the active fleet of the operating railroad.

(c) Payment of Liability Losses. Losses from third party liability for bodily injury or property damage caused by any Car(s) (including attorney's fees) are the sole responsibility of Owner, provided, however, that if Owner carries liability insurance (which shall name MFRX as an additional insured) the Owner shall not be liable for any judgments, costs or attorney's fees unless and until said insurance coverage has been discharged in full and there are unpaid final judgments and costs. Within fifteen (15) days of receipt of notice and demand from MFRX, Owner shall pay to MFRX the amount of such liability.

6. Indemnification.

(a) Owner agrees on its own behalf and on behalf of MFRX to defend (if such defense is tendered to Owner), indemnify, release and hold MFRX harmless from and against and does hereby release MFRX from any and all claims, actions, damages, expenses

first class, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to MFRX: Thomas Fair Neblett, President
 MFRX, INC.
 P.O. Box 470
 Rancho Santa Fe, California 92067

If to Owner: At the address given on the signature
 page of this Agreement.

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

11. Insurance. MFRX shall use its best efforts to place in Owner's name, and at Owner's expense, such insurance as shall be reasonably available to protect the interest of the Owner in the Car(s) (with MFRX and its agents or contractors in any capacity on behalf of Owner being named in each such policy of insurance as a co-insured or as an additional insured), including, without limitation, insurance against (i) personal liability, including property damage and personal injury, (ii) loss of, or damage to the Car(s), and (iii) loss of revenues with respect to the Car(s); provided, however, that if MFRX effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Car(s) and other railcars of other owners, such insurance need not be placed in Owner's name so long as the Owner is named as an insured; and, provided further, however, that if MFRX, in its sole discretion, determines that the cost of the insurance described above is unreasonably high, or cannot be obtained, MFRX need not place or acquire such insurance and shall promptly so notify Owner. If MFRX determines that the cost of insurance described herein is unreasonably high, or it 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 of MFRX, Owner shall pay to MFRX the cost of any such insurance placed or purchased by Owner through MFRX.

12. Arbitration. Any claim, dispute, or controversy, arising out of, or in connection with, or relating to, this Agreement shall be resolved, determined and settled by arbitration in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association, and judgments upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any such arbitration, and any hearings in connection therewith, shall be held and conducted in the County of San Diego, State of California.

13. 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 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.

(f) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation 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 MFRX. It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit MFRX from providing the same or similar services to any person or organization not a party to this Agreement. Should the total of such cars (including the Car(s)) available exceed the demand for such cars, MFRX reserves the right to place the Car(s) into storage until such time as the demand increases.

(h) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) Severability. If any term or provision of this Agreement or the performance thereof shall to any extent be deemed invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

3008 (1/93) (General) First American Title Company

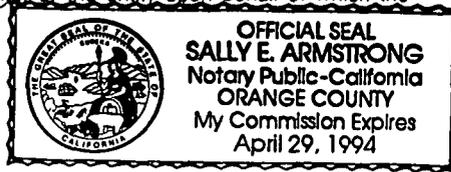
STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.

On 1/22/92 before me, SALLY E. ARMSTRONG
personally appeared ROBERT LINNEMAN

_____ personally known to me (or proved
to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Sally E. Armstrong



(This area for official notarial seal)

(j) Initial Fee. Owner shall pay MFRX \$200.00 on the execution of this Agreement.

(k) Entire Agreement. This Agreement constitutes the entire Agreement between MFRX and Owner concerning the subject matter hereof, and supersedes all prior and contemporaneous agreements between the parties. Owner and MFRX specifically acknowledge that they are not relying upon any warranties, representations or inducements not set forth herein.

(l) Car(s) Covered by This Agreement. The Car(s) covered by this Agreement are:

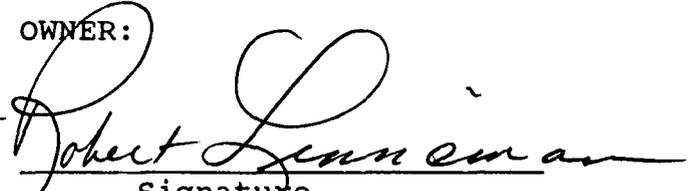
- (a) 1110
- (b) _____
- (c) _____

IN WITNESS WHEREOF, the parties have executed this Agreement on December 16, 1991.

MFRX, INC., dba
D.L.C., INC.:

By: 
Thomas F. Neblett, President

OWNER:


Signature

ROBERT LINNEMAN

(Name--Please Print)

2775 Mesa Verde Drive, East Pl12

Address

Costa Mesa, CA 92626

City, State, Zip Code

220-12-3260

Social Security # or ID #