

1392

LEASE

AGREEMENT made and entered into as of this 15th day of October, 1975, between

UNITED STATES RAILWAY LEASING COMPANY
an Illinois corporation (hereinafter called "United") and

William M. Gibbons, Trustee of the Property of the
CHICAGO ROCK ISLAND AND PACIFIC RAILROAD COMPANY, 8122

Debtor, RECORDATION NO. Filed & Recorded

(hereinafter called "Lessee")

NOV 19 1975 - 11 00 AM

RECITALS

INTERSTATE COMMERCE COMMISSION

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Lease.

AGREEMENT

It is Agreed:

1. *Lease of Cars.* United agrees to lease to Lessee and Lessee agrees to and does hereby lease from United the Cars (the term "Cars" and other terms used herein are defined in Paragraph 28 hereof). The Cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraphs 2 and 3 hereof. The lease shall become effective as to any Car immediately upon its acceptance pursuant to Paragraph 3. (Continued in Rider)

2. *Delivery of Cars.* United shall deliver the Cars as promptly as is reasonably possible. United's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and United shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond United's control; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after March 31, 1976.

Initial delivery shall be f.o.t. Washington, Indiana, or Blue Island, Illinois,
as United shall designate.

From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse United for the payment of, all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement at any time and from time to time to and from any repair shops, storage or terminal facilities.

3. *Condition of Cars - Acceptance.* All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and/or specifications contained in Exhibit A; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within five (5) days after United shall give Lessee notice that some or all Cars are ready for initial delivery, Lessee may have its authorized representative inspect such Cars at ~~(the point of delivery)~~ (the manufacturer's plant)* and accept or reject them as to condition. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease. Lessee shall issue and deliver to United with respect to all Cars accepted, a Certificate of Inspection and Acceptance in the form of Exhibit B.

*Strike inapplicable material in Paragraph 3.

4. **Use and Possession.** Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car (a) on its own property or lines; or (b) upon the lines of any railroad or other person, firm or corporation in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America or in Canada; and (v) in such service as will not constitute a "unit train" ~~which is subject to the provisions of the Chicago and North Western Railway Company's Unit Train Rules, provided,~~

5. **Term.** This Lease shall be for a term which shall commence on the date of delivery by United of the first Car, as provided in Paragraph 2 hereof, and shall terminate fifteen years from the Average Date of Delivery unless sooner terminated in accordance with the provisions of this Lease or unless extended pursuant to written agreement of the parties. See Rider for option to extend.

6. **Rental.** During the term of this Lease, Lessee shall pay to United for each Car, commencing on the date of delivery thereof a rental of \$ 297.00 per Car per month.

7. **Payment.** Lessee shall make payment of all sums due hereunder to United in Chicago funds at the address provided in Paragraph 21 hereof, or such other place as United may direct. Rental payments shall be made monthly in advance on or before the first day of each month for which such rental is due, except that the first full month's payment shall include rental covering any prior period of less than one month.

8. **Title.** Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. **Repairs.** Lessee shall perform or cause to be performed and shall pay all costs and expenses of, all Repair Work without any abatement in rent or other loss, cost or expense to United. Any parts, replacements or additions made to any car shall be accessions to such car and title thereto shall be immediately vested in United without cost or expense to United.

10. **Substitution of Cars.** United may, at any time and from time to time, replace any Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this Lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which United has assigned its rights hereunder, as permitted in Paragraph 19 hereof.

11. **No Abatement of Rent.** Rental payments on any Car shall not abate if such Car is out of service for Repair Work nor on account of any other reason whatsoever.

12. **Taxes.** Lessee shall be liable for and pay or reimburse United for payment of all Federal, State or other governmental charges or taxes assessed or levied against the Cars, including but not limited to (i) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars, this Lease, ~~and the maintenance, operation, use or~~ or use of the Cars for or under this Lease; (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof; and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars. If any levy or assessment is made against United or which United shall pay on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals hereunder or the net income of United therefrom (except any

however, that Lessee agrees that none of the Cars will be physically located outside the continental United States more than 40% of any calendar year and Lessee shall indemnify and hold United harmless for any loss, cost or expense suffered by United by reason of the breach of said covenant whether said loss, cost or expense is due to United's undertakings under any agreement under which it derives its interest in the Cars or otherwise.

such tax on rentals which is in substitution for, or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as hereinbefore provided), Lessee will promptly pay or reimburse United for same; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of United, the rights or interest of United in and to the Cars will be materially endangered. In the event any tax reports are required to be made on the basis of individual Cars, the Lessee will either make such reports in such manner as to show the ownership of such Cars by United or will notify United of such requirements and will make such report in such manner as shall be satisfactory to United.

13. *Liens.* Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect United's title, including but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

14. *Indemnities - Patent Covenants.* Lessee agrees to indemnify United and hold it harmless from any loss, expense or liability which United may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, and without regard as to how such charge, claim, proceeding suit or other event arose, including without limiting the generality of the foregoing, whether it arises from latent or other defects which may or may not have been discoverable by United. United agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by United upon delivery of a Car or upon the making of repairs thereto by United, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term "United" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14. Lessee's indemnity shall not eliminate any rights which Lessee may have under any manufacturer's warranty assigned to it pursuant to Paragraph 22. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

15. *Lettering - Inventory.* At United's election all cars may be marked with United's name designating it as owner or Lessor and may bear the following inscription: "Title to this car subject to documents recorded under Section 20c of Interstate Commerce Act". Except for renewal and maintenance of the aforesaid lettering or lettering showing the interest of the Lessee, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of United. United may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of United, but no more than once every year, furnish to United its certified inventory of all Cars then covered by this Lease.

16. *Loss, Theft or Destruction of Cars.* In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, by notice, promptly and fully advise United of such occurrence. Except where United shall have received payment for such Casualty Car from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, within 45 days after demand by United, promptly make payment to United in the same amount as is prescribed in the Interchange Rules for the loss of such Car. This Lease shall continue in full force and effect with respect to any Casualty Car irrespective of the cause, place or extent of any casualty occurrence, the risk of which shall be borne by Lessee; provided, however, that this Lease shall terminate with respect to a Casualty Car on the date United shall receive all amounts and things granted it on account of such Car under this Paragraph 16 and Lessee shall have no further liability to United hereunder except for accrued rent and as such arises or exists under Paragraphs 12, 13 and 14 hereof.

17. *Return of Cars.* Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to United by delivering same to United as such car shop, storage or terminal facility ~~at any time and place~~ by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, working order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, and shall be in need of no Repair Work. Until the delivery of possession to United pursuant to this Paragraph 17, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred. If United shall so request by notice delivered prior to surrender of possession of such Car as above provided, Lessee shall provide suitable storage for such Car for a period of ninety (90) days from the date of expiration or termination and inform United of the place of storage and the reporting number of the Car there stored. Delivery in storage shall constitute delivery of possession for the purpose of this Paragraph 17 and such storage shall be at the risk of United. Upon termination of the storage period or upon request of United prior thereto, Lessee shall cause the Car to be transported to United as above provided.

at Blue Island,
Illinois, or
Washington,
Indiana,

18. *Default.*

See RIDER, Paragraph R-4

19. *Sublease and Assignment.* The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of United; provided, however, that Lessee shall have the right to assign all of its rights under this Lease to another railroad corporation which succeeds to all or substantially all of the business of Lessee, provided such successor shall expressly assume all of the obligations and liabilities of Lessee hereunder.

(b) all rights of United hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by United. If United shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The rights of any assignee or any party or parties on behalf of whom such assignee is acting shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether arising out of any breach of any obligation of United hereunder or by reason of any other indebtedness or liability at any time owing by United to Lessee. The making of an assignment or sublease by Lessee or an assignment by United shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

20. *Opinion of Counsel.*

See RIDER, Paragraph R-5

21. **Notice.** Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

United at: 2200 East Devon Avenue
Des Plaines, Illinois 60018

Lessee at: 745 South LaSalle Street
Chicago, Illinois 60605
Attention: Treasurer

or at such other address as either party may from time to time designate by such notice in writing to the other.

22. **Warranty — Representations.** United makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in Exhibit A, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder; and United shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation. United agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. Lessee represents that all of the matters set forth in Paragraph 20(a) through and including (e) shall be and are true and correct at all times that any Car is subject to this Lease.

23. **Governing Law — Writing.** The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. **Counterparts.** This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

25. **Severability — Waiver.** If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of United to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. **Terminology.** In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

27. **Past Due Payments.** Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to

pay also an amount equal to ten per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time during which overdue and unpaid.

28. **Definitions.** For all purposes of this Lease the following terms shall have the following meaning:

(a) "Cars" – railroad cars of the type, construction and such other description as is set forth in Exhibit A.

(b) "Interchange Rules" – all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the American Association of Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(c) "Average Date of Delivery" – that date which is determined by (i) multiplying the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car hereunder, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee, as specified in Paragraph 2. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the following: (i) Certificate of Inspection and Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

(d) "Repair Work" – All repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good condition, working order and repair (wear and tear from ordinary use and the passage of time excepted), in compliance with Interchange Rules in effect from time to time and complete with all devices, appliances appurtenances and parts with which the Cars were initially equipped or which from time to time may be required by Interchange Rules.

(e) "Casualty Cars" – Cars which are lost, stolen, destroyed or damaged beyond economic repair.

(f) "Replacement Cars" – Cars of substantially similar description and specifications to that set forth in Exhibit A which are substituted for Casualty Cars.

(g) "Present Worth" – An amount equal to the excess of the total remaining rentals over the fair rental value all as determined in Paragraph 18(c), discounted five percent per annum compounded annually.

Continued in Rider, Paragraph R-6.

29. **Benefit.** Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of United, and if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

30. *Recording.* Upon request by United, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under Section 20c of the Interstate Commerce Act or such other recordation as United deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, United and Lessee have duly executed this Lease as of the day and year first above written.

UNITED STATES RAILWAY LEASING COMPANY
an Illinois corporation

By *Ralph E Bell*
R. E. Bell President

[SEAL]

ATTEST:

Paul J. [unclear]
Secretary

William M. Gibbons, Trustee of the Property
of the CHICAGO ROCK ISLAND AND PACIFIC
RAILROAD COMPANY, Debtor

W. M. Gibbons

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this 17th day of November, 1975, before me personally appeared Ralph E. Bell to me personally known, who being by me duly sworn says that he is VICE President of the United States Railway Leasing Company, and Fred Fickensht to me personally known to be the Asst Secretary of said 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edw. M. Rieger
Notary Public

My Commission Expires June 28, 1978

STATE OF _____ }
COUNTY OF _____ } ss

On this 7 day of Nov, 1975, before me personally appeared WILLIAM M. GIBBONS to me personally known, who being by me duly sworn, says that he is the Trustee of the Property of the CHICAGO ROCK ISLAND AND PACIFIC RAILROAD COMPANY, that said instrument was signed and sealed by said Trustee and he acknowledged that the execution of the foregoing instrument was the free act and deed of the said Trustee.

John M. Quinn
Notary Public

EXHIBIT A

Lease dated October 15, 1975, by and between United States Railway Leasing Company, ("United") and William M. Gibbons, Trustee of the Property of the CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY ("Lessee").

TYPE AND DESCRIPTION OF CAR: New 4750 cu. ft., 100-ton capacity Covered Hopper with trough hatch and gravity discharge gates.

NUMBER OF CARS: One Hundred (100)

INTERIOR EQUIPMENT: None

SPECIAL LININGS: None

PERMITTED LADING USE: Non-corrosive bulk commodities.

REPORTING NUMBERS AND MARKS: ROCK 133100 to 133199, inclusive.

SPECIFICATIONS DESIGNATED BY LESSEE:

Cars are to be painted per Lessee requirements.

EXHIBIT B

Lease dated.....October 15....., 19...75..., by and between United States Railway Leasing Company ("United") and.....William M. Gibbons, Trustee of the Property of the CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY ("Lessee").

CERTIFICATE OF INSPECTION AND ACCEPTANCE

_____, 19____

United States Railway Leasing Company
2200 East Devon Avenue
Des Plaines, Illinois 60018

Gentlemen:

The undersigned, being a duly authorized inspector for Lessee, hereby certifies that he has made an inspection of _____ (_____) Cars bearing numbers as follows:

or has, on behalf of Lessee, elected to forego such inspection all as provided in the Lease, and hereby accepts such Cars for the Lessee pursuant to the Lease; that each of said Cars is plainly marked in stencil on both sides of each Car with the words

UNITED STATES RAILWAY LEASING COMPANY
LESSOR

Title to this Car subject to documents recorded
under Section 20c of Interstate Commerce Act

in readily visible letters not less than three-quarters inch (3/4") in height; and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee.

Lessee

RIDER consisting of six (6) page(s) attached to and made a part of Lease dated as of October 15, 1975, by and between United States Railway Leasing Company ("United") and William M. Gibbons, Trustee of the Property of the Chicago Rock Island and Pacific Railroad Company, Debtor ("Lessee").

R-1. Lease of Cars (continued from Paragraph 1). In no event shall this Lease become effective prior to its approval and confirmation by the United States District Court, Northern District of Illinois, Eastern Division, or such other Court hereinafter called the "Reorganization Court" having jurisdiction in the Reorganization Proceedings (hereinafter defined in Paragraph 18[g]) of the Chicago Rock Island and Pacific Railroad Company, Debtor.

R-2. Option to Extend. Unless Lessee is in default under the provisions of this Lease, Lessee shall have an option to extend the term of this Lease, upon the same terms and conditions as to all or any portion of the Cars then subject to this Lease by notifying United in writing no less than ninety (90) days and no more than six (6) months prior to the end of the original term. An extension pursuant to this option with respect to any Car shall be for a period (hereinafter referred to as the "extended term") of five (5) years from the end of the original term.

Lessee shall pay to United as rental for each Car during the extended term, from and including the first day following the end of the original term, an amount per Car per month equal to the fair market rental value for the Cars as of the expiration of the original term of this Lease. The fair market rental value of all of the Cars shall be determined by both of the parties and in the event the parties cannot agree then such value shall be determined by arbitration in Chicago, Illinois, pursuant to the rules of the American Arbitration Association. One arbitrator shall be appointed by each party and a third arbitrator shall be appointed by the two arbitrators. In the event rental is determined by arbitration Lessee shall have a period of ten (10) days following notification of the decision of the arbitrators within which to terminate the term of this Lease notwithstanding any provision as to the length of the term contained in Paragraph 5 of the Lease or Paragraph R-2 of this Rider. Such termination shall be effected by written notice to United within the aforesaid ten (10) day period. In the event the fair market rental value has not been agreed upon by the parties or determined by arbitration prior to the expiration of the original term, the parties agree that Lessee shall be obligated to and shall pay rent for the Cars at the rate provided in the original term until the fair market rental value shall be determined. If after determination of the fair market rental value the amount so determined shall be in excess of that paid by Lessee or shall be less than that paid by Lessee and Lessee does not elect to terminate the Lease within the ten (10) day period above provided, the parties shall adjust and account for any overpayment or underpayment.

R-3. Lease or Sublease. Lessee acknowledges that at any time prior to delivery of the first Car hereunder United may, at its election, enter into a sale and leaseback of the Cars from such financing institution as United may elect and that thereafter this document shall constitute a sublease by and between United and Lessee. Lessee acknowledges that in the event of said sale and leaseback United's right, title and interest in the Cars shall be that of a Lessee under and pursuant to its leaseback agreement, copies of which shall have been filed with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and exhibited to Lessee. Lessee further acknowledges that United may assign this sublease to its lessor as security for United's undertakings and obligations under its leaseback agreement; provided, however, that United, Lessee and United's lessor shall have entered into an agreement as a part of said assignment acknowledging that although the rights of Lessee hereunder are subject and subordinate to the rights of United's lessor, Lessee shall be entitled to quiet possession of the Cars so long as Lessee shall not be in default under any of the terms and conditions of this Lease.

R-4. Default (Paragraph 18). The term "event of default" for the purpose hereof shall mean any one or more of the following:

(a) non-payment by Lessee within twenty (20) days after the same becomes due of any installment of rental or any other sum required to be paid hereunder by Lessee;

(b) the Lessee shall default or fail for a period of twenty (20) days in the due observance of performance of any covenant, condition or agreement required to be observed or performed on its part hereunder;

(c) the representations made by Lessee as provided in Paragraph 22 hereof shall at any time during the continuance of this Lease become untrue or incorrect;

(d) this Lease is rejected or the obligations of the Lessee hereunder are not assumed by the Reorganized Company (as that term is hereinafter defined); or the Reorganization Proceedings (as that term is hereinafter defined in subparagraph (g) of this Paragraph 18) are dismissed or otherwise terminated without the adoption of a plan confirming this Lease in all respects;

(e) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against any Reorganized Company as hereinafter defined and all the obligations of Lessee under this Lease

shall not have been duly assumed by a trustee or trustees or receiver or receivers appointed in such proceedings or otherwise given the same status as obligations assumed by such trustee or trustees or receiver or receivers within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier; or

(f) any proceedings shall be commenced by or against any Reorganized Company as hereinafter defined for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and all the obligations of Lessee under this Lease shall not have been duly assumed by a trustee or trustees or receiver or receivers appointed for such Reorganized Company or for its property in connection with any such proceedings or otherwise given the same status as obligations assumed by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(g) the order of the United States District Court for the Northern District of Illinois, Eastern Division, entered in the Reorganization Proceedings authorizing the execution and delivery of this Lease shall be reversed, modified, amended, terminated or superseded in any material respect which might adversely affect the rights, powers, privileges, remedies or obligations of United under this Lease or of any assignee of United's right, title and interest in and under the Lease and the continuance of any such order unstayed and in effect for a period of thirty (30) days from the date of entry thereof.

Upon the happening of an event of default, United at its option may:

(h) proceed by appropriate court action either at law or in equity for specific performance by the Lessee of the applicable covenants of this Lease or to recover from Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which United may sustain by reason of Lessee's default or on account of United's enforcement of its remedies hereunder;

(i) elect only to terminate the Lessee's right of possession (but not to terminate the Lease) without releasing Lessee in whole or in part from its liabilities and obligations accrued hereunder, or hereafter to accrue for the remaining term of the Lease, and thereupon require Lessee to deliver all such Cars to United at such places as it may designate or to take possession itself, of any or all of the Cars wherever same may be found. United may, but need not, require delivery of the Cars to it or repossess the Cars, but in the event the Cars are delivered to United or are repossessed, United shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. United shall not be required to accept or receive any lessee offered by Lessee, or do any act whatsoever or exercise any diligence whatsoever in or about the procuring of another lessee to mitigate the damages of the Lessee or otherwise. The election by United to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained;

(j) declare this Lease terminated and recover from Lessee all amounts then due and payable plus, as liquidated damages for loss of bargain and not as a penalty, the Present Worth, as of the date of such termination, of the excess, if any, of the total remaining rentals reserved under the Lease from the date of such termination to the expiration date of the then current term of the Lease over the fair rental value of the Cars for such period;

(k) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free from any right of the Lessee to use the Cars for any purposes whatsoever.

The remedies provided in this Paragraph 18 in favor of United shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies, in United's favor existing at law or in equity. The Lessee

hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

R-5. Opinion of Counsel (Paragraph 20). Upon the request of United or its assignee at any time or times, Lessee will deliver to United an opinion of counsel for Lessee or counsel designated by him, addressed to United or its assignee in form and substance satisfactory to counsel for United, or its assignee, which opinion shall be to the effect that:

(a) the Trustee has been and is duly appointed and validly acting as Trustee of the property of the Chicago Rock Island and Pacific Railroad Company, has the power and authority to carry on its business, and by specific order of court has been authorized to execute and deliver this Lease; or alternatively, if, during the continuance of this Lease there shall be a corporation or other entity succeeding to the aforementioned Lessee's interest, that such Lessee is duly organized and validly existing under all applicable laws and that it has full power and right to enter into or assume this Lease and carry out all of Lessee's obligations hereunder;

(b) this Lease constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, and the obligations of Lessee during the continuance of the Reorganization Proceedings for rental and any other sums due or which become due on account of the undertakings and obligations of the Lessee hereunder constitutes an expense of administration;

(c) the rights of United as set forth in this Lease and the title of United to the Cars are free and clear of the lien of any mortgage, security agreement, or other instrument binding on Lessee or in favor of any party claiming by, through or under Lessee or Chicago Rock Island and Pacific Railroad Company, Debtor and all of the Cars which are then subject to the Lease, were, upon delivery to Lessee in condition satisfactory to Lessee and were accepted by Lessee in accordance with the terms of this Lease; provided, that with respect to its opinion as to the satisfactory condition of the Cars, counsel for Lessee may rely upon Certificates of Inspection and Acceptance executed by the duly authorized representative of the Lessee;

(d) no recording, filing or depositing of this Lease, other than with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act

and with the Registrar General of Canada pursuant to Section 148 of the Railway Act, together with required notice of such depositing, is necessary to preserve or protect the title of United or its assignee in the United States of America and in Canada; and

(e) all governmental or other authority or approval necessary, if any, in connection with the execution and delivery of this Lease or the performance of any of Lessee's obligations thereunder has been obtained.

R-6. Paragraph 28 continued --

(h) "Lessee" - William M. Gibbons, Trustee of the Property of Chicago Rock Island and Pacific Railroad Company, Debtor, and not individually as well as any additional or successor Trustee of subject property, and upon assignment and transfer of or succession to the interest of the Lessee to a Reorganized Company, shall mean any such Reorganized Company, as well as any successor and assignee permitted in Paragraph 19 hereof.

(i) "Reorganized Company" - any corporation, including Chicago Rock Island and Pacific Railroad Company, Debtor, or other entity, which acquires substantially all of the property and business of Chicago Rock Island and Pacific Railroad Company upon termination of the trusteeship of the property of the Chicago Rock Island and Pacific Railroad Company and shall include any successor pursuant to Paragraph 19 hereof.



Chicago, Rock Island and Pacific Railroad Company

LA SALLE STREET STATION

CHICAGO, ILLINOIS 60605

LAW DEPARTMENT

~~XXXXXXXXXX~~

(312) 435-7915

O. L. HOUTS
GENERAL SOLICITOR

November 7, 1975

United States Railway Leasing Company
2200 East Devon Avenue
Suite 282
Des Plaines, Illinois 60018

Dear Sirs:

As counsel for William M. Gibbons, Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company ("Lessee") I have reviewed and am familiar with the following Lease ("Lease")

October 15, 1975 (100 - 100-ton covered hopper cars ROCK
133100 to 133199

of railroad equipment ("Cars") between United States Railway Leasing Company, as Lessor, and the Lessee and with such matters and proceedings as I have deemed requisite for the rendition of this opinion.

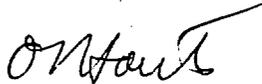
I am of the opinion that:

- (a) The Trustee has been and is duly appointed and validly acting as Trustee of the property of the Chicago, Rock Island and Pacific Railroad Company, has the power and authority to carry on its business, and by specific order of court has been authorized to execute and deliver this Lease;
- (b) The Lease constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, and the obligations of Lessee during the continuance of the Reorganization Proceedings for rental and any other sums due or which become due on account of the undertakings and obligations of the Lessee hereunder constitutes an expense of administration;
- (c) The rights of Lessor as set forth in the Lease and the title of Lessor to the Cars are free and clear of the lien of any mortgage, security agreement,

or other instrument binding on Lessee or in favor of any party claiming by, through or under Lessee or Chicago, Rock Island and Pacific Railroad Company, Debtor and upon issuance and delivery by Lessee of Certificate of Inspection and Acceptance, as referred to in Paragraph 3 of the Lease, all of the Cars would be upon delivery to Lessee in condition satisfactory to Lessee and would be accepted by Lessee in accordance with the terms of this Lease;

- (d) No recording, filing or depositing of this Lease, other than with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commerce Act and with the Registrar General of Canada pursuant to Section 148 of the Railway Act, together with required notice of such depositing, is necessary to preserve or protect the title of Lessor or its assignee in the United States of America and in Canada; and
- (e) All governmental or other authority or approval necessary, if any, in connection with the execution and delivery of this Lease or the performance of any of Lessee's obligations thereunder has been obtained.

Yours truly,



O. L. Houts

OLH:vf