Fd 961

LEASE

AGREEMENT made and entered into this 28th day of May, 19 70 between

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

KELLOGG COMPANY
A Delaware Corporation

(hereinafter called "Lessee").

RECORDATION NO. 6299 Filed & Recorded
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INTERSTATE COMMERCE COMMISSION

RECITALS

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals and 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 that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Exhibit "A" attached hereto and by this reference made a part 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 hereof.

2. *Delivery of Cars.* United shall deliver the Cars as promptly as is reasonably possible from time to time in groups of no less than one. United shall not be responsible for failure to deliver or delay in delivering Cars due to casualties and contingencies beyond its direct control, such as, but not limited to, labor difficulties, fire, delays and defaults of carriers and car and material suppliers; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after September 1970 initial delivery shall be f.o.t. Battle Creek, Michigan

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 to and from United's plant at any time and for any reason.

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 10 days after United shall give Lessee notice that some or all Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at (the point of delivery) (United's plant) (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 meet all requirements of this Lease.

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 each Car and shall use such Car exclusively in its own service for

*Strike inapplicable material in Paragraph 3.

the transportation of .....non-corrosive...commodities..... (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 that all use shall conform to the then current Code of Rules adopted by the Association of American Railroads (hereinafter called the "AAR Rules") and to the terms and conditions of this Lease, and provided further, that at all times the Cars shall be used only in the Continental limits of the United States of America or in Canada and in a careful and prudent manner solely for the purposes and in the manner for which they were designed.

5. *Term – Average Date.* This Lease shall be for a term (hereinafter referred to as the "original term") which shall commence on the date of delivery by United of the first Car, as provided in Paragraph 2 hereof, and shall terminate .....one..... (...1.....) years from the Average Date of Delivery unless sooner terminated in accordance with the provisions of this Lease. The Average Date of Delivery shall be determined after delivery of the Cars as follows.

(a) multiply 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, then add all of the products so obtained and divide by the total number of Cars so delivered; the quotient rounded out to the nearest whole number shall be added to the date of delivery of the first Car, and the resulting date shall constitute the Average Date of Delivery;

(b) 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 either of the following: (i) a delivery receipt or other writing acknowledging delivery of 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.

6. *Rental.* Lessee shall pay to United as rental for each Car, during the original term, from and including the date of delivery of such Car, the sum of

Two hundred and eighty dollars ($280.00) per car per month

(See Rider for Option)

If, pursuant to Exhibit "A" hereof, the Cars bear United's reporting marks and numbers, then any mileage payments allowed by railroads on the Cars shall be the property of United, but United shall credit the mileage payments actually received by it (less any taxes due or to become due from United on account thereof, other than income taxes) to a mileage payment account maintained by United in respect to this Lease. Payments recorded in such account shall be offset pro tanto against and only against rental then or thereafter due from Lessee under this Lease; provided, however, that the total of the credits to Lessee on account of mileage payments shall not exceed the total rental paid by Lessee during the term hereof and any unused credits shall be cancelled at the end of the term hereof or at the termination of this Lease as to all Cars, whichever shall first occur. Lessee shall so use the Cars that their mileage under load shall be equal to their mileage empty upon each railroad (not having a published exemption therefor in its tariff) over which the Cars shall move, including movement to place of delivery to Lessee hereunder and movement to United upon termination or expiration of this Lease. Upon notice from any railroad, whether received prior to or after termination of this Lease, Lessee shall pay United as additional rental for all excess empty mileage (at the rate established by the tariff of such railroad) incurred on Cars covered by this Lease.

7. *Payment.* Lessee shall make payment of all sums due hereunder to United in Chicago funds at its offices located at ~~105 West Adams Street, Chicago, Illinois 60603,~~ 2200 E. Devon Ave., Des Plaines, Ill. 60018 or such other place as United may direct. Rental payments shall be made on or before the 15th day of each month succeeding the month for which such rental has accrued.

8. *Title.* United has or will have title to the Cars at the time they are delivered hereunder to Lessee and 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* *(a) Lessee.* Lessee shall make or cause to be made at its sole cost and expense all repairs and maintenance to Cars and replacement of parts for Cars which repair, maintenance, or replacement is required by reason of damage or other condition caused (i) by negligence of Lessee or anyone other than a handling railroad or (ii) by loading or unloading of any commodity other than of the kind or in the manner permitted herein.

(b) United. Except as otherwise provided in this Paragraph 9, United shall be responsible for maintaining and repairing the Cars furnished hereunder in accordance with the requirements of: (i) the AAR Rules, (ii) the Regulations of the Interstate Commerce Commission, and (iii) the applicable rules and regulations of Federal and State authorities having jurisdiction over the Cars. United shall have no such responsibility until informed of the need for such maintenance and repairs. United may require Lessee to return Cars for preventive maintenance work or repairs and may withdraw from this Lease any Car which it deems uneconomical to maintain or repair.

10. *Substitution of Cars.* United may, at any time and from time to time, replace any Cars withdrawn from service, as above provided, or which are lost, stolen or destroyed as provided in Paragraph 16 hereof, with Cars of like or similar specifications 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 and release of any Cars, as above permitted, or to include any substituted 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. *Abatement of Rent.* Rental payments on any Car out of service for maintenance or repair work shall abate from the fifth (5th) day after such Car has been placed in any railroad or car shop for service until such Car or a substituted Car is returned to service by Lessee or by delivery to Lessee or to a railroad for the account of Lessee; provided, however, that rental shall not abate on any car out of service by reason of repairs, maintenance or replacement for which Lessee is responsible under Paragraph 9(a) hereof. In the event rental is so abated, then if United so elects and notwithstanding anything contained in Paragraph 5 to the contrary, the original term of this Lease, as determined in Paragraph 5, shall be extended as to such Car for a period of time equivalent to that during which rental was abated.

12. *Taxes.* United shall pay all property taxes assessed or levied against the Cars. Lessee shall pay all taxes assessed or levied upon its interest as lessee of Cars and all sales or use taxes. Lessee shall reimburse United for payment of any taxes levied or assessed upon United for which Lessee is liable hereunder.

13. *Liens.* Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect United's title, 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 shall promptly discharge any such lien, encumbrance or legal process.

14. *Indemnities – Patent Covenants.* Except where liability under AAR Rules is imposed on a handling railroad or other party who has agreed to be bound by such Rules, Lessee agrees to indemnify United and save it harmless from any charge, loss, claim, suit, expense or liability which United may suffer or incur and which arises in connection with the use or operation of a Car or Cars while subject to this Lease (but not while in United's shop or possession) and without regard as to how such charge, loss, claim, suit, expense or liability arises, including without limiting the generality of the foregoing, whether the same arise from latent or other defects which may or may not have been discoverable by United or whether the same arises from any loss or damage from or to commodities loaded or shipped in the Cars. 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 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. *Use – Lettering.* Except for renewal and maintenance of lettering which exists when a Car is delivered to Lessee and for additional lettering indicating the rights of any assignee of United or that the Car is leased to the Lessee, or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of United.

16. *Loss, Theft, or Destruction of Cars.* In the event any Car is lost or stolen or is destroyed or damaged beyond economical repair, Lessee shall promptly and fully inform United of such occurrence. Except when such occurrence takes place under circumstances which entitle United to payment for such Car from a handling railroad or other party under and pursuant to AAR Rules, Lessee shall upon demand by United promptly make payment to United in the same amount as would be payable to United under such Rules if a handling railroad was liable for payment thereunder. Lessee shall cooperate with United and take any and all action required to assist and enable United to receive such payment directly from any handling line or other person, firm or corporation bound to make payment under AAR Rules. This Lease shall terminate with respect to any Car which is lost, stolen or destroyed or damaged beyond repair on the date United shall receive notice of such event provided that United shall within forty-five (45) days thereafter, receive from Lessee payment of all sums, if any, due from Lessee on account of such Car for rent, under this Paragraph 16, or otherwise and Lessee shall have no further liability to United hereunder, except such as arises or exists under Paragraphs 6, 12, 13, and 14.

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 free of residue and in good condition, ordinary wear and tear excepted, by delivering same to United at its plant at ...Blue Island,... ...Illinois..... Until the delivery of possession to United pursuant to this Paragraph 17, Lessee shall continue to 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.

18. *Default.* If Lessee shall fail to make any payment required hereunder within twenty (20) days after same shall have become due or shall default or fail for a period of twenty (20) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or its property, or Lessee shall make a general assignment for the benefit of creditors, then and in any of said events United may at its election terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date, or may without terminating the Lease repossess the Cars and relet same, and if after paying all expenses of retaking and reletting the Cars, the amount so realized will not satisfy the rentals reserved in this Lease, Lessee agrees that it will pay any such deficiency from time to time upon demand from United. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

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 written consent of United; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with the provisions of all applicable AAR requirements, tariffs, regulations, and laws and all terms and conditions of this Lease;

(b) all rights of United hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or 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 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 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.* Upon the request of United or its assignee at any time or times, Lessee will deliver to United an opinion of counsel for Lessee, 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) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power to enter into this Lease and carry out its obligations thereunder;

(b) this Lease constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee, and all of the Cars were, upon delivery to Lessee, in condition satisfactory to Lessee and were 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, is necessary to preserve or protect the title of United or its assignee in the United States of America; and~~

(e) no governmental authorization or approval is necessary in connection with the Lease or any other action contemplated hereunder.

21. *Notice.* Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when forwarded registered United States mail, return receipt requested, postage prepaid, addressed to:

United at: 2200 E. Devon Ave.
Des Plaines, Illinois 60018

or at such address as United may from time to time designate in writing, and to

Lessee at: Porter Street
Battle Creek, Michigan 49016

or any such other place as Lessee may from time to time designate by notice in writing.

22. *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.

23. *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 shall be evidenced by any such signed counterpart.

24. *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.

25. *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.

26. *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 their successors and assigns (to the extent permitted in Paragraph 19 hereof). 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 under an indenture under which notes of United have been issued in connection with the financing of the Cars, then to any holder of such notes.

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: .....
Vice-... President

ATTEST:
.....
ASST. Secretary

KELLOGG COMPANY
A Delaware Corporation

ATTEST:
J. Robert O'Brien
Ass't Secretary

By: T. R. Sykes
Vice President

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this 8TH day of JULY, 1970, before me personally appeared R 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 V. J. BISH, to me personally known to be the ASS'T 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.

Anna Vambrech
Notary Public

STATE OF MICHIGAN }
COUNTY OF CALHOUN } ss

On this 6th day of July, 1970, before me personally appeared T. R. Sykes, to me personally known, who being by me duly sworn, says that he is Vice President of Kellogg Company, and J. Robert O'Brien, to me personally known to be the Ass't. 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.

Arleine O. Lum
Notary Public

ARLEINE O. LUM
Notary Public, Calhoun County Mich.
My Commission Expires Sept. 29, 1973

EXHIBIT "A"

Lease dated May 28, 19 70, by and between United States Railway Leasing Company ("United") and Kellogg Company ("Lessee")

TYPE AND DESCRIPTION OF CAR: 52'5" inside length Insulated Box Car

Equipped with: 70-ton R.B. Trucks
20" cushion underframe,
Dual Air Pak interior load retaining device
16' door opening

NUMBER OF CARS: Fifty (50)

*REPORTING NUMBERS AND MARKS:

USLX 10483 to USLX 10532 inclusive

SPECIFICATIONS DESIGNATED BY LESSEE:

Application of the letter "K" three feet high
Application of Standard lease stencil
Application of stencil reading:
"Car equipped with pallets".

*When United's reporting marks are specified, this Lease is subject to the granting of all necessary consents to such use by carrier, AAR, or any other approval now or hereafter required by tariff, AAR rules, or applicable laws and regulations.

Rider No. ....1.... consisting of ...1..... pages attached to and made a part of Lease dated .....May...28....., 19.70..... by and between United States Railway Leasing Company ("United") and ...Kellogg...Company..... ("Lessee").

Option to Extend:

Unless United is notified in writing no less than thirty (30) days prior to the end of the original term by lessee, or lessee is in default under the provisions of this lease, this lease will automatically extend for an additional five (5) year period at a rental rate of

Two hundred and seventy dollars ($270.00) per car per month.

Lessee ..... United .....