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INTERSTATE COMMERCE COMMISSION

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**AGREEMENT TO ACQUIRE AND LEASE**

Dated as of May 15, 1974

Between

**UNITED STATES LEASING CORPORATION**  
as Lessor

and

**HAMMERMILL PAPER COMPANY**  
as Lessee

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AGREEMENT TO ACQUIRE AND LEASE

RE: HAMMERMILL PAPER COMPANY

AGREEMENT TO ACQUIRE AND LEASE dated as of May 15, 1974 between UNITED STATES LEASING CORPORATION, a California corporation, as Lessor (the "Lessor") and HAMMERMILL PAPER COMPANY, a Pennsylvania corporation, as Lessee (the "Lessee")

RECITALS:

A. The Lessee has agreed to lease fifty-two (52) used 50 ton Gondola Cars, (the "Equipment" and individually, "Item of Equipment"), lettered and numbered TPPX 30101 to 30152, inclusive;

B. The Lessor is willing to purchase for a total purchase price of \$297,200.00 (the "Purchase Price"), the Equipment and lease it to the Lessee on the terms and conditions of Section 4 of this Agreement (the "Interim Lease").

THE LESSOR AND THE LESSEE HEREBY AGREE:

Section 1. Purchase of Equipment. Subject to the conditions set forth in Section 3 hereof, the Lessor agrees to purchase the Equipment from North Western Leasing Company for the Purchase Price and on the Delivery Date as specified in the Notice of Acceptance and to pay for the Equipment in accordance with the invoices for the Equipment delivered to the Lessor with the Notice of Acceptance pursuant to Section 3 hereof.

Section 2. Acceptance of Equipment. The Lessee shall immediately inspect each Item of Equipment upon delivery thereof and will accept the Items of Equipment as specified in Recital A herein. Such acceptance shall be for the account of the Lessor

and thereupon title to the Equipment so accepted shall vest in the Lessor, and the Lessor shall own each such Item of Equipment, subject, however, to a lease of each such Item of Equipment to the Lessee on the terms and conditions of the Interim Lease.

Section 3. Conditions of Purchase. The obligations of the Lessor to purchase the Equipment are subject to the following express conditions precedent: (a) the Lessee shall agree to the terms and conditions of this Interim Lease (b) the Lessee shall have given invoices from the North Western Leasing Company addressed to the Lessor for the number of cars and in the aggregate purchase price stated in the Notice, together with a Certificate of Acceptance covering the Equipment; (c) the Lessor shall have received such other evidence as it may reasonably require of its title to the Equipment, the purchase price thereof and as to such other matters as it or its counsel may reasonably require.

Section 4. Interim Lease. Upon payment for the Equipment by the Lessor, (Delivery Date) the Lessor shall thereupon lease the Equipment to the Lessee and the Lessee shall lease the Equipment from the Lessor upon the terms and conditions of this Section 4. The term of the Interim Lease shall expire on the earlier of (a) the purchase by the Lessee of the Equipment as provided in Section 5 hereof or (b) the execution and delivery of a long term equipment lease with respect to the used equipment ("Equipment Lease") in conformity with the terms and conditions contained in that letter agreement dated May 3, 1974 between Lessee and U.S. Steel Leasing, Co., Inc. ("Steel") attached as Exhibit A hereto (the "Agreement"). The date such Equipment Lease is entered into by Steel and the Lessee shall be herein called the "Closing Date".

The Lessee shall pay the Lessor an Interim Daily Rental for the Term of the Interim Lease beginning with the Delivery Date. Such Interim Daily Rental shall be computed daily and be an amount equal to the daily Prime Rate plus 1% ("Prime Rate" being that daily rate of interest per annum in effect at Morgan Guaranty Trust Company, New York, New York) multiplied by the Purchase Price for the Equipment paid by Lessor pursuant to Recital B hereof ("Lessor's Cost") for thirty (30) days from and including the Delivery Date or the Closing Date whichever date first occurs (which Rental is herein called "First Interim Daily Rental"). If the Equipment Lease is not entered into in the thirty (30) days following the Delivery Date the Lessee shall pay Interim Daily Rental for the next thirty (30) days or until the Closing Date whichever date first occurs (which Rental is herein called the "Second Interim Daily Rental"). Such Second Interim Daily Rental shall commence from the thirty-first (31st) day following the Delivery Date, and shall be computed daily using the Prime Rate multiplied by Lessor's Cost. The First Interim Daily Rent amount and any Second Interim Daily Rent amounts due hereunder shall be paid to Lessor on the Closing Date or as provided in Section 5 herein. Such amounts shall be paid to Lessor at 633 Battery Street, San Francisco, California, 94111 or such other place as designated by Lessor. In any event, this Interim Lease shall expire sixty (60) days after the Delivery Date.

The Lessee shall pay the Interim Daily Rental without abatement, set-off or counter claim. The Lessee assumes full risk for any loss or damage to the Equipment, and will repair, maintain and make replacements of said Equipment, and all parts and related equipment thereto, transferring to the Lessor, at the expense of the Lessee, title to any such replacements, at which time title to the corresponding parts and equipment replaced shall be transferred by the Lessor to the Lessee. The Lessor makes no warranty or representation, either expressed or implied,

as to the fitness or merchantability of the Equipment, but the Lessor does hereby assign to the Lessee, and appoint the Lessee as its agent to enforce against the North Western Leasing Company and any other person in the name of and for the account of the Lessor and the Lessee, as their interest may appear, whatsoever claims and rights the Lessor may have as the owner of the Equipment against the former owner and such other persons. The Lessee shall comply with all applicable governmental laws, regulations, requirements and rules, and shall maintain the ~~property insurance and~~ public liability insurance protecting the Lessor and the Lessee. Lessee shall also be liable for any and all sales and/or use taxes and property taxes arising out of this Interim Lease. The Lessee shall indemnify and hold harmless the Lessor as provided in Section 6 hereof during the term of this Interim Lease. If the Lessee shall breach any of the obligations provided in this Section 4, the Lessor may, at its selection, by written notice to the Lessee, terminate this Interim Lease, whereupon the Lessee shall within five (5) days purchase the Equipment for a Purchase Price equal to Lessor's Cost plus Interim Daily Rental accrued to the date such Purchase Price is paid to the Lessor. This Interim Lease shall terminate upon such purchase. The Lessor may further take all such action at law or in equity to recover all damages suffered by it as a result of such breach, including its cost and reasonable attorneys' fees.

Section 5. Equipment Lease. The Lessor and the Lessee acknowledge and agree the Equipment has been purchased by the Lessor on the basis that Steel will purchase the Equipment from Lessor and will lease the Equipment to the Lessee and the Lessee will lease the Equipment from Steel on the terms and conditions (including any additional or modified terms and conditions contained in the Agreement) and that the parties will use their best efforts to cause the Lease provided for in the Agreement to be executed and delivered on or before sixty (60) days after the Delivery Date. In the event that the Equipment Lease is not

executed and delivered on or before the termination of such 60-day period, the Interim Lease shall terminate and the Lessee shall pay the Lessor an amount equal to the Lessor's Cost of the Equipment plus all First and Second Daily Interim Rental accrued to the date of such payment and the Lessor shall transfer to the Lessee all right, title and interest of the Lessor in the Equipment free of liens and encumbrances created by the Lessor. Lessee will be liable for any and all sales and/or use taxes arising out of its purchase of said Equipment and any such taxes that may arise out of the sale of the Equipment by Lessor. In the event the Equipment Lease is executed and delivered the Interim Lease shall thereupon terminate and the Interim Daily Rental accrued to the date of termination shall become due and payable on the Closing Date.

Section 6. Indemnity. The Lessee hereby agrees to indemnify and hold the Lessor and its respective successors, assigns, directors, officers and agents, harmless from and against any and all losses, claims, liabilities and expenses which arise out of or relate to the purchase, acceptance, ownership and delivery of the Equipment (including claims for patent, trademark or copyright infringement and including claims arising out of the doctrine of strict liability in tort). During the term of Interim Lease period provided for herein Lessee will indemnify, defend and hold harmless Lessor from any and all liabilities including but not limited to any death, accident or bodily injury to any person or persons or damage to the Equipment, all claims, demands, costs and expenses (including legal fees and expenses) of any kind and nature that arise out of Lessee's use of the Equipment.

This Agreement to Acquire and Lease may be executed in any number of counterparts, each executed counterpart

constituting an original, but all together only one Agreement to Acquire and Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to Acquire and Lease as of the day and year first above written.

UNITED STATES LEASING CORPORATION

Lessor

By Charles D. Van Sickle  
Its Vice President

HAMMERMILL PAPER COMPANY

Lessee

By [Signature]  
Its Executive Vice President

STATE OF CALIFORNIA, CITY )  
AND COUNTY OF SAN FRANCISCO ) ss.

On this 15th day of May, 1974, before me personally appeared Charles Van Sickle, to me personally known, who being by me duly sworn says that he is the Vice President of UNITED STATES LEASING CORPORATION, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Signature]  
Notary Public

STATE OF PENNSYLVANIA )  
COUNTY OF ERIE ) SS.

On this 17th day of May, 1974, before me personally appeared D. S. Leslie, Jr., to me personally known, who being by me duly sworn says that he is the Executive Vice President of HAMMERMILL PAPER COMPANY, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Suzanne E. Schaller  
Notary Public

SUZANNE E. SCHALLER, NOTARY PUBLIC  
ERIE, ERIE COUNTY, PENNSYLVANIA  
MY COMMISSION EXPIRES JULY, 21, 1975



**U. S. Steel  
Leasing Co., Inc.**

a Subsidiary of United States Steel Corporation

71 BROADWAY  
NEW YORK, NEW YORK 10006  
212/558-4444

May 3, 1974

Hammermill Paper Company  
P. O. Box 1440  
Erie, Pennsylvania 16512

Attention of Mr. D. C. Wright, Jr.  
Assistant Treasurer

Gentlemen:

We hereby agree to enter into a leasing transaction with you, and you agree to enter into a leasing agreement with us under the following terms and conditions.

**Lessor:** U. S. Steel Leasing Co., Inc.

**Lessee:** Hammermill Paper Company.

**Equipment:** A. Fifty-two (52) used gondola railroad cars to be purchased from United States Leasing Corporation, all of which must be acceptable to Lessor.

B. Fifty (50) new North American gondola railroad cars, all of which must be acceptable to Lessor.

**Lessor's Cost:** A. The aggregate total amount paid by Lessor for the equipment is not to exceed \$297,200.00.

B. The aggregate total amount paid by Lessor for the equipment is not to exceed \$1,006,750.00 plus applicable taxes.

**Lease Term:** A. Eight (8) years from each scheduling date.

B. Fifteen (15) years from each scheduling date.

**Rental Payments:** A. Thirty-two (32) quarterly payments, each in arrears, and each equal to 4.4967 per cent of Lessor's cost.

B. Sixty (60) quarterly payments, each in arrears, and each equal to 2.9645 per cent of Lessor's cost.

**Filing and Recording:** Lessee shall pay all costs of filing and recording with the Interstate Commerce Commission, including without limitation, fees of special counsel as to such filing and recording.

**Interim Payments to Suppliers:** In the event you shall request us to purchase certain items of equipment covered by this Commitment Letter and pay the purchase price to the Supplier(s) thereof prior to the execution and delivery of a completed Schedule under the terms of the Lease, we shall do this subject to the terms and conditions as set forth in "Agreement Regarding Interim Payments to Suppliers".

**Scheduling:** No more than five (5) Schedules shall be executed, and said Schedules shall cover equipment of not less than \$250,000.00 total cost.

**Investment Tax Credit:** To the extent the equipment qualifies and to the extent it is permissible under the Internal Revenue Service Code and Regulations, the Lessor will pass on to Lessee the Investment Tax (Job Development) Credit.

**Purchase Option:** At the expiration of the original term of the lease, you may purchase the equipment for its then fair market value.

**Commitment Fee:** .6135 of 1 per cent of Commitment, \$8,000.00; receipt of which is hereby acknowledged.

**Expiration Date of the Offer:** February 28, 1975.

May 3, 1974

The form, substance, and enforceability of all documents required by us in completing the transaction proposed in this Letter shall be satisfactory to our legal counsel. You further agree to give us such further documents as our counsel may consider necessary to protect our interest in the equipment.

We may, at our option, terminate our obligations under this Letter as to any portion of the equipment not subject to a specific Schedule executed and delivered by us and you if (a) Such portion of the equipment has not been delivered to and accepted by you prior to the Expiration Date of this Offer, or (b) There is (prior to said Expiration Date), in our opinion, an adverse change in your financial condition. You agree to give us immediate notice of any such adverse change. If we elect to terminate our obligations hereunder, you agree to purchase from us at our cost such excluded portions of the equipment as we have purchased or have become obligated to purchase hereunder and to indemnify us for any loss, cost, damage, or liability, incurred or suffered by us in connection with this transaction.

You certify by signing a copy of this Letter and returning it to us that the financial data which you have submitted to us constitute a true and complete statement of your financial condition and that there has been no material change to date in your financial condition as evidenced by the financial data you have submitted and upon which this Offer is based. You agree to provide us upon written request such other financial reports as we may require during the term of this commitment.

It is understood and agreed that, if and when we purchase and schedule equipment under this commitment with a total cost of \$1,303,950.00, the full Commitment Fee shall be returned to you as a credit against your liability for rent. In the event the Total Cost of the equipment we purchase and schedule under this commitment is for any reason less than \$1,303,950.00, we shall return to you at the time of scheduling as a credit against your liability for the rent that portion of the Commitment Fee which is equal to .6135 of 1 per cent of the cost of the equipment purchased and scheduled. Any portion of the Commitment Fee, which we are not specifically required to return to you in accordance with the foregoing, will be retained by us in consideration of our agreements herein. For example, if the Total Cost of the equipment purchased and scheduled by us is \$651,975.00, we will return to you the sum of \$4,000.00 as a credit against your liability for rent, and we will retain the sum of \$4,000.00.

May 3, 1974

We have arranged to have United States Leasing Corporation (USLC), 633 Battery Street, San Francisco, California 94111, assist us in the preparation and review of the documentation and in management of various matters in respect of the closings. You are invited to contact Mr. John G. Nobrega of USLC with any questions or comments on the transaction. His telephone number is (415) 445-7521.

If the terms of this Offer are acceptable to you, please sign the enclosed copy of this Letter at the foot hereof, and return it to us within ten (10) days of your receipt thereof.

Very truly yours,

U. S. STEEL LEASING CO., INC.

Joseph L. Brady  
Assistant Treasurer

The terms of this Letter  
are acceptable and agreed  
to this \_\_\_\_\_ day of  
\_\_\_\_\_, 1974.

HAMMERMILL PAPER COMPANY

By \_\_\_\_\_

Its \_\_\_\_\_

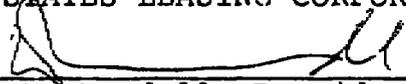
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JUL 22 1974

DEED OF RELEASE INTERSTATE COMMERCE COMMISSION

KNOW ALL MEN BY THESE PRESENTS, that United States Leasing Corporation, a California corporation as Lessor under an Agreement to Acquire and Lease (the "Agreement") dated as of May 15, 1974 between it and Hammermill Paper Company, a Pennsylvania corporation, as Lessee, for and in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby release all of the right, title and interest, and every claim and demand whatever, which UNITED STATES LEASING CORPORATION may now have or claim to have acquired under the Agreement or otherwise in and to fifty-two (52) used gondola cars lettered and numbered TPPX 30101 to 30152, inclusive, all as identified and described on the list marked Annex "A", attached hereto and made a part hereof.

IN WITNESS WHEREOF, said UNITED STATES LEASING CORPORATION, as Lessor as aforesaid, has caused its name to be signed to this Deed of Release by its President thereunto duly authorized and its corporate seal to be affixed hereunto and attested by one of its Assistant Secretaries this 22nd day of July, 1974.

UNITED STATES LEASING CORPORATION

By   
D. E. Mundell, President

ATTEST:

  
Joanne L. Miller, Assistant Secretary

WITNESSES:

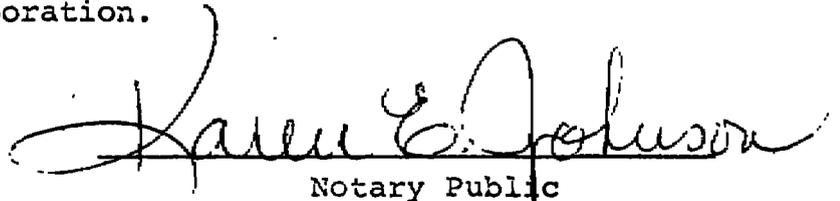
TO THE SIGNATURES OF THE OFFICERS OF  
UNITED STATES LEASING CORPORATION:

D. E. Mundell

Joanne L. Miller

STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

On this 22nd day of July, 1974 before me personally appeared D. E. Mundell and Joanne L. Miller, to me personally known, who, being by me duly sworn, say that they are the President and Assistant Secretary of UNITED STATES LEASING CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation and 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.

  
Notary Public

(NOTARIAL SEAL)



ANNEX "A"

52 - 50-Ton Used Gondola Cars

TPPX 30101	TPPX 30127
TPPX 30102	TPPX 30128
TPPX 30103	TPPX 30129
TPPX 30104	TPPX 30130
TPPX 30105	TPPX 30131
TPPX 30106	TPPX 30132
TPPX 30107	TPPX 30133
TPPX 30108	TPPX 30134
TPPX 30109	TPPX 30135
TPPX 30110	TPPX 30136
TPPX 30111	TPPX 30137
TPPX 30112	TPPX 30138
TPPX 30113	TPPX 30139
TPPX 30114	TPPX 30140
TPPX 30115	TPPX 30141
TPPX 30116	TPPX 30142
TPPX 30117	TPPX 30143
TPPX 30118	TPPX 30144
TPPX 30119	TPPX 30145
TPPX 30120	TPPX 30146
TPPX 30121	TPPX 30147
TPPX 30122	TPPX 30148
TPPX 30123	TPPX 30149
TPPX 30124	TPPX 30150
TPPX 30125	TPPX 30151
TPPX 30126	TPPX 30152