

**Mellon National Leasing Company**

Suite 3829  
Mellon Bank Building  
Pittsburgh, Pennsylvania 15219

412/232-5061

No. **9-0000010**

Date **FEB 10 1979**

Fee \$ **110.00**

**10106**  
RECORDATION NO. Filed 1425

**10106**  
RECORDATION NO. Filed 1425

**FEB 12 1979 -4 55 PM**

INTERSTATE COMMERCE COMMISSION

February 12, 1979

ICC Washington, D.C. **FEB 12 1979 -4 55 PM**

INTERSTATE COMMERCE COMMISSION

Secretary of the Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

**10106**  
RECORDATION NO. Filed 1425

**FEB 12 1979 -4 55 PM**

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Please find enclosed three multiple originals of each of the following:

1. Lease dated as of February 1, 1979 between Mellon National Leasing Company, a Pennsylvania corporation ("Mellon"), as lessor, and Early & Daniel Industries, Inc., an Indiana corporation ("EDI"), as lessee, of 100 new covered hopper railroad cars bearing identification numbers TWGX 2000 to 2099 inclusive and the name of Mellon (the "Equipment").
2. Sublease dated as of February 1, 1979 between EDI, as sublessor, and Tidewater Grain Company ("Tidewater"), Pennsylvania corporation, as sublessee, of the Equipment.
3. Assignment and Security Agreement dated as of February 1, 1979 among EDI, as debtor, Mellon, as secured party, and Tidewater covering all of EDI's right, title and interest in and to the Sublease.

Also enclosed is a check in the amount of \$110 for recording said documents. Please record the documents in the following order: Lease, Assignment and Security Agreement, Sublease.

FEE OPERATION BR. I.C.C.

FEB 12 4 42 PM '79

RECEIVED

**Mellon National Leasing Company**

Secretary of the Interstate  
Commerce Commission

-2-

February 12, 1979

The addresses of the parties to the documents are  
as follows:

Mellon National Leasing Company  
3629 Mellon Bank Building  
Pittsburgh, Pennsylvania 15219

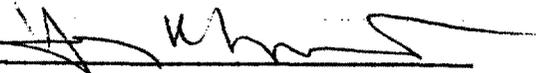
Early & Daniel Industries, Inc.  
902 Washington Avenue  
Indianapolis, Indiana 46204

Tidewater Grain Company  
346 Public Ledger Building  
Philadelphia, Pennsylvania 19106

Please return one copy of each document and official  
recording receipt to the undersigned at Mellon's address.  
Thank you.

Very truly yours,

By

  
Harry R. Leggett, President

Interstate Commerce Commission  
Washington, D.C. 20423

3/6/79

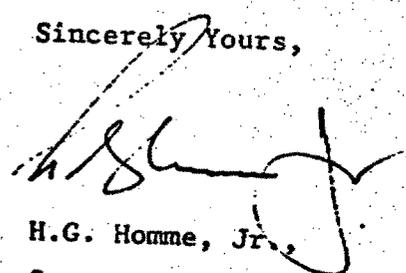
OFFICE OF THE SECRETARY

Harry K. Leggett, Pres.  
Mellon National Leasing Co.  
5629 Mellon Bank Building  
Pittsburgh, PA. 15219

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 2/12/79 at 4:55pm, and assigned recordation number(s) 10106, 10106-A & 10106-B

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

10106  
RECORDATION NO. .... Filed 1425

AGREEMENT AND SUBLEASE

FEB 12 1979 -4 55 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT AND SUBLEASE dated as of February 1, 1979, by and between EARLY & DANIEL INDUSTRIES, INC., an Indiana corporation ("EDI") and TIDEWATER GRAIN COMPANY, a Pennsylvania corporation ("Tidewater")

W I T N E S S E T H:

Concurrently with the execution hereof, EDI, as lessee, has made and entered into an Agreement and Lease with Mellon National Leasing Company ("Mellon"), as lessor, for one hundred (100) railroad hopper cars (the "units"; individually, a "unit") as and when delivered and accepted under such lease. A copy of such lease is attached hereto as Exhibit A and made a part hereof. Tidewater desires to sublease the units from EDI and EDI desires to sublet the units to Tidewater upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the covenants herein contained and intending to be legally bound hereby, the parties agree as follows:

1. EDI hereby lets the units to Tidewater and Tidewater leases the units from EDI as and when EDI shall lease the same from Mellon.

2. Tidewater is designated an authorized representative of EDI to inspect, to determine whether to accept and to accept delivery of each unit from the vendor thereof, and to execute and deliver to Mellon on behalf of EDI a certificate of acceptance with respect to each unit determined to be acceptable.

3. The term of this Sublease shall be coextensive with the term of EDI's lease with Mellon.

4. Tidewater shall pay to EDI, at EDI's principal office in Indianapolis, Indiana, or at such other place as EDI may designate, rent in an amount equal to the Rent which shall be payable by EDI to Mellon as provided in the lease attached as Exhibit A, at such times as shall permit EDI to make payment of the Rent payable under its lease with Mellon.

5. EDI authorizes Tidewater to assert all rights of Mellon under any manufacturer's, vendor's or dealer's warranty

or patent indemnity with respect to the units to the same extent as the same can be asserted by EDI. Tidewater shall apply any amounts received as payment under any such warranty as provided in EDI's lease with Mellon.

6. Tidewater shall furnish such information to EDI as will permit EDI to comply with the provisions of Sections 7.2, 7.3, 7.4, 7.5, 11.1, 12.1 and Article XVII of its lease with Mellon.

7. Tidewater shall take (or refrain from taking) such actions with respect to the units as EDI is required to take (or refrain from taking) under Articles VIII, IX, X, Section 11.1, Article XII, Article XIII and Article XVI of its lease with Mellon.

8. Without limiting the generality of the preceding section 7, Tidewater agrees that it will not assign this sublease or sublet any unit or permit any unit to be operated except as permitted under Section 8.6 of EDI's lease with Mellon.

9. The terms and conditions of the following provisions of EDI's lease with Mellon shall be applicable between EDI and Tidewater as if the references therein to "lessor" were to EDI and to "lessee" were to Tidewater: Articles I, X, XIV, XVII and XVIII and Sections 4.5, 5.1 and 11.1.

10. This Agreement and Sublease is made subject, and Tidewater's rights hereunder are subordinate in all respects, to EDI's lease with Mellon and the rights and remedies of Mellon contained therein.

IN WITNESS WHEREOF, the parties have caused this Agreement and Sublease to be executed by their respective duly authorized officers this day of February, 1979, as of the date first above set forth.

Attest:

Ronald S. Newman  
ASST. SECRETARY

[Corporate Seal]

EARLY & DANIEL INDUSTRIES, INC.

By: [Signature]

Attest:

Ronald S. Newman  
ASST. SECRETARY

[Corporate Seal]

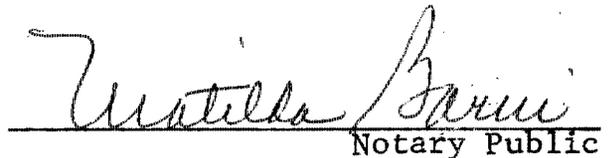
TIDEWATER GRAIN COMPANY

By: [Signature]

COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF ALLEGHENY ) ss:

On this, the 9<sup>th</sup> day of February, 1979, before me, A Notary Public, the undersigned officer, personally appeared SAMUEL M. HARRELL, who acknowledged himself to be the President of EARLY & DANIEL INDUSTRIES, INC., a corporation, and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

  
Notary Public

(Notarial Seal)

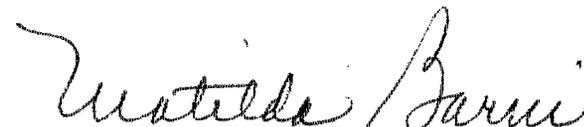
My Commission Expires:

MATILDA BARINI, Notary Public  
Pittsburgh, Allegheny County, Pa.  
My Commission Expires  
October 21, 1980

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF ALLEGHENY ) ss:

On this, the 9<sup>th</sup> day of February, 1978, before me, a Notary Public, the undersigned officer, personally appeared SAMUEL M. HARRELL, who acknowledged himself to be the Chairman and Chief Executive Officer of TIDEWATER GRAIN COMPANY, a corporation, and that he as such Chairman and Chief Executive Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chairman and Chief Executive Officer.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

(Notarial Seal)

My Commission Expires: MATILDA BARNI, Notary Public  
Pittsburgh, Allegheny County, Pa.  
My Commission Expires  
October 21, 1980

AGREEMENT AND LEASE

dated as of February 1, 1979

between

MELLON NATIONAL LEASING COMPANY,  
Lessor

and

EARLY & DANIEL INDUSTRIES, INC.,  
Lessee

---

---

## TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE I. Certain Definitions</u> .....	1
<u>ARTICLE II. Agreement to Lease</u> .....	3
<u>ARTICLE III. Delivery and Acceptance</u>	
3.1. Delivery and Acceptance of Equipment .....	3
3.2. Certificate of Acceptance .....	4
<u>ARTICLE IV. Term and Rent</u>	
4.1. Term .....	4
4.2. Basic Rent and Interim Rent.....	4
4.3. Additional Rent.....	4
4.4. Payment of Rent.....	5
4.5. No Set-Off.....	5
<u>ARTICLE V. Representations and Warranties</u>	
5.1. Lessor's Representations and Warranties .....	5
5.2. Lessee's Representations and Warranties .....	6
<u>ARTICLE VI. Conditions to Lessor's Obligations</u> .....	7
<u>ARTICLE VII. Reports</u>	
7.1. Financial Reports .....	8
7.2. Annual Certificate .....	9
7.3. Additional Reports .....	9
7.4. Accidents.....	9
7.5. Tax Liens .....	10
<u>ARTICLE VIII. Maintenance, Use and Operation</u>	
8.1. Maintenance and Operation.....	10
8.2. Insignia .....	11
8.3. Supplies .....	11
8.4. Accessories .....	11
8.5. Personal Property .....	11
8.6. Sublease and Assignment.....	12
8.7. Permitted Use .....	12
<u>ARTICLE IX. Liens</u> .....	12

ARTICLE X. Insurance

10.1.	Physical Damage Insurance .....	13
10.2.	Liability Insurance .....	13
10.3.	General Insurance Provisions .....	13
10.4.	Payment of Premium by Lessor .....	13

ARTICLE XI. Assumption of Risk; Indemnification

11.1.	General .....	13
11.2.	Federal Income Tax Matters .....	14
11.3.	Survival of Obligations .....	17

ARTICLE XII. Damage to Property

12.1.	Duty to Notify .....	18
12.2.	Stipulated Loss Value .....	18
12.3.	Optional Replacement of Property .....	18
12.4.	Insurance and Condemnation Proceeds .....	19

ARTICLE XIII. Return of Property .....

ARTICLE XIV. Defaults; Remedies

14.1.	Default; Remedies .....	20
14.2.	Remedies Cumulative; Waiver of Requirements ...	22

ARTICLE XV. Assignment by Lessor .....

ARTICLE XVI. Quiet Possession .....

ARTICLE XVII. Further Assurances .....

ARTICLE XVIII. Miscellaneous .....

ARTICLE XIX. Notices .....

Attachments:

- Lease Supplement
- Lease Schedule (with Annex 1)
- Exhibits -
  - A. Form of Certificate of Acceptance
  - B. Form of vendor's Bill of Sale
  - C. Form of Investment Tax Credit Election

AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, dated as of February 1, 1979 between  
MELLON NATIONAL LEASING COMPANY, a Pennsylvania corporation ("Lessor"), and  
EARLY & DANIEL INDUSTRIES, INC., an Indiana corporation ("Lessee")

W I T N E S S E T H   T H A T :

WHEREAS, Lessee has requested that Lessor purchase and lease to Lessee the personal property described in the Lease Schedule (attached hereto), and Lessor is willing to do so upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants hereinafter set forth and intending to be legally bound hereby, agree as follows:

ARTICLE I. Certain Definitions

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly otherwise requires:

"Additional Rent" shall mean any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder pursuant to Section 4.3 of this Agreement, other than Basic Rent and Interim Rent.

"Agreement" shall mean this Agreement and Lease, as amended or supplemented from time to time, and shall include the Lease Schedule, the Lease Supplement and each Certificate of Acceptance executed and delivered from time to time pursuant to this Agreement. Each reference herein to "this Agreement", "herein", "hereunder", "hereof" or other like words shall include this Agreement, the Lease Schedule, the Lease Supplement, each such Certificate of Acceptance and any annex, exhibit or schedule attached hereto or thereto.

"Assignment" shall mean the Assignment and Security Agreement dated as of February 1, 1979 among Lessee, Lessor and Sublessee.

"Basic Rent" shall mean the amount payable as Basic Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Certificate of Acceptance" shall mean the certificate of Lessee substantially in the form of Exhibit A hereto executed and delivered from time to time under this Agreement.

"Consolidated Tangible Net Worth of Lessee" shall mean (i) the sum of the par value (or stated value, in the case of stock without par value) of the capital stock of all classes of Lessee, plus (or minus in the case of a surplus deficit) the amount of the consolidated surplus, whether capital or earned, of Lessee and its Subsidiaries, less (ii) the sum of treasury stock, unamortized debt discount and expense, goodwill, trademarks, brand names, patents, deferred charges and other intangible assets and any write-up of the value of any assets after November 18, 1978; all determined on a consolidated basis for Lessee and its Subsidiaries in accordance with generally accepted accounting principles.

"Default" and "Event of Default" shall mean any of the events described in Section 14.1 hereof.

"Equipment" shall mean all the Units described in the respective Certificates of Acceptance executed and delivered from time to time under this Agreement.

"Final Delivery Date" shall mean the date identified as such in the Lease Schedule.

"Interest Payment Rate" shall mean the lesser of 12% per annum or the maximum rate permitted by law.

"Interim Rent" shall mean the amount, if any, payable as Interim Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Lease Schedule" shall mean the Lease Schedule executed and delivered by Lessor and Lessee as of the date hereof, attached hereto and hereby incorporated herein.

"Lease Supplement" shall mean the Lease Supplement attached hereto and hereby incorporated herein.

"Lessee's Right to Contest" shall mean, when used herein to modify Lessee's obligation to make payments to a governmental authority or other third party (other than payments required to be made pursuant to Section 11.2 hereof) or to take any action with respect to the Equipment imposed by law or by governmental authority, that Lessee shall have the right to contest such obligation by appropriate proceedings diligently conducted in good faith by Lessee so long as (i) Lessee shall first notify Lessor of its intention to exercise such right and shall supply Lessor with all such information with respect thereto as Lessor shall reasonably request, (ii) such contest does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create any danger of Lessor incurring criminal liability or other liability for which indemnification, satisfactory to Lessor and its counsel, of Lessor, its successors, assigns, representatives, directors, officers, employees, agents and servants by Lessee is not provided, and (iii) no Event of Default (or other event which with notice or lapse of time or both would be an Event of Default) has occurred and is continuing.

"Lessor's Cost" shall mean the purchase price of each Unit to Lessor (which shall not exceed the amount set forth in the Lease Schedule), plus any excise, sales and use taxes paid or payable by Lessor with respect to the purchase thereof, and plus any costs and expenses approved and paid by Lessor in connection with the delivery and installation thereof.

"Rent" shall mean Additional Rent, Basic Rent and Interim Rent, collectively.

"Rental Payment Date" shall mean each date on which Basic Rent (and Interim Rent, if any) is payable hereunder.

"Stipulated Loss Value" shall mean with respect to each Unit the amount equal to the applicable percentage of Lessor's Cost determined in accordance with the table set forth on Annex 1 to the Lease Schedule.

"Sublease" shall mean the Sublease dated as of February 1, 1979 from Lessee to Sublessee of the Equipment.

"Sublessee" shall mean Tidewater Grain Company, a subsidiary of Lessee.

"Subsidiaries" of Lessee shall mean General Grain, Inc., The Early & Daniel Company, Inc., The Early & Daniel International Sales Company, Tidewater Grain Company and any other subsidiary, more than 50% of the voting stock of which is owned by Lessee or any Subsidiary of Lessee.

"Term" shall mean the period of time for which any one or more of the Units is leased hereunder.

"Unit" shall mean each individual item of personal property described in any Certificate of Acceptance executed and delivered under this Agreement.

## ARTICLE II. Agreement to Lease

Lessor and Lessee agree that, from time to time on or before the Final Delivery Date, Lessor shall accept title to the respective Units (provided the purchase price therefor shall not exceed individually or collectively the amount of Lessor's Cost assigned to such Units in the Lease Schedule), and simultaneously therewith Lessor shall lease the Units to Lessee and Lessee shall hire same from Lessor, all upon the terms and subject to the conditions of this Agreement.

## ARTICLE III. Delivery and Acceptance

3 1. Delivery and Acceptance of Equipment. Lessee (or at its request, Lessor) has contracted or will contract with the vendor of each Unit for delivery at the location set forth in the Lease Schedule. Lessor shall not be liable for any failure or delay in obtaining, or in delivery of, any of the Units.

Forthwith upon delivery of each Unit, Lessee shall inspect and determine whether to accept same from the vendor. Lessor hereby appoints Lessee, as the authorized representative of Lessor, to accept delivery of each Unit from the vendor thereof. Acceptance of delivery by Lessee shall, without further act, irrevocably constitute acceptance by Lessee and Lessor of such Unit for all purposes of this Agreement.

Lessee hereby acknowledges and represents and warrants to Lessor with respect to each Unit so accepted that (i) such Unit is of a size, design, capacity and manufacture approved by Lessee, (ii) such Unit conforms to the applicable description set forth in the Lease Schedule, and (iii) Lessee is satisfied that such Unit is suitable for its purposes; provided, however, that nothing contained in this Agreement or in any Certificate of Acceptance shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor of such vendor or manufacturer.

3.2. Certificate of Acceptance. Lessee shall promptly complete, execute and deliver to Lessor a Certificate of Acceptance with respect to each Unit so determined acceptable, and in conjunction shall take such other action as may be necessary to fulfill the applicable conditions specified in Article VI hereof.

#### ARTICLE IV. Term and Rent

4.1. Term. The Term shall commence on the date of acceptance by Lessee of the first Unit accepted for lease hereunder, as evidenced by the execution and delivery by Lessee of the Certificate of Acceptance with respect thereto. Unless earlier terminated or extended in accordance with the express provisions hereof, the Term shall expire on the date determined in accordance with the Lease Schedule.

4.2. Basic Rent and Interim Rent. Lessee shall pay to Lessor Basic Rent for each Unit, in the aggregate amount and in the installments and on the Rental Payment Dates as specified in the Lease Schedule and in the Certificate of Acceptance covering such Unit, and if so provided in the Lease Schedule, Lessee shall pay to Lessor Interim Rent in the amount determined as therein provided and on the Rental Payment Dates therein specified.

4.3. Additional Rent. The lease created pursuant to this Agreement is a "net" lease. Lessee shall pay as Additional Rent all amounts (in addition to Basic Rent and Interim Rent, if any) required to be paid under this Agreement and (except as expressly provided herein and subject to Lessee's Right to Contest) all costs, taxes, assessments and other expenses of every character (whether seen or unforeseen and whether or not expressly provided for herein) relating to or arising in connection with the use, occupancy, ownership, maintenance, repair, replacement or reconstruction of any Unit during the Term and, to the extent expressly provided herein, thereafter. Lessee shall also pay to Lessor as Additional Rent interest at the Interest Payment Rate on each overdue installment of Basic Rent (and Interim Rent, if any) and on each overdue payment of Additional Rent.

4.4. Payment of Rent. Each installment of Basic Rent (and Interim Rent, if any) shall be paid to Lessor at its office at 3629 Mellon Bank Building, Pittsburgh, Pennsylvania 15219, or as directed by Lessor, and all Additional Rent shall be paid directly to the person entitled thereto and if such person is Lessor at its office or as it directs as aforesaid. All payments of Rent shall become due at 12:00 noon Pittsburgh time on the Rental Payment Date when due.

4.5. No Set-Off. Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off, counterclaim, recoupment or defense against Rent, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever; nor except as otherwise expressly provided herein, shall this Lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in the title, condition, design, operation or fitness for use of any Unit or damage to or loss of possession or loss of use or destruction of all or any of such Units from whatsoever cause and of whatever duration or any presently existing or hereafter created liens, encumbrances or rights of others with respect to any Unit (provided that such defect in title or such liens, encumbrances or rights of others, if resulting from acts of Lessor, do not interfere with the right of quiet enjoyment granted Lessee under Article XVI hereof) or the prohibition of or other restriction against Lessee's use of all or any of such Unit or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any combination of such cause or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of Rent made by Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

#### ARTICLE V. Representations and Warranties

5.1. Lessor's Representations and Warranties. Lessor represents and warrants to Lessee that Lessor has received whatever title was conveyed to it by the vendor from which title to each Unit was received and that the Equipment is free of liens and encumbrances which may result from any claims against Lessor not related to Lessor's ownership of the Equipment. Lessor further represents and warrants that it has full power and authority to lease the Equipment to Lessee in accordance with the terms hereof. THE WARRANTIES OF LESSOR SET FORTH IN THIS SECTION 5.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF LESSOR WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT

MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE EQUIPMENT PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE EQUIPMENT, but Lessor authorizes Lessee, at Lessee's expense, to assert during the Term, so long as no Event of Default and no event which with notice or lapse of time or both would be an Event of Default shall have occurred and be continuing, all of Lessor's rights under any manufacturer's, vendor's or dealer's warranty or patent indemnity with respect to the Equipment, and Lessor agrees to cooperate with Lessee in asserting such rights. Any amount received by Lessee as payment under any warranty pursuant to the above authorization shall be applied to restore the Equipment to as good a condition as it was or should have been (but for defects giving rise to such payment under warranty) when delivered to Lessee hereunder, ordinary wear and tear excepted, with the balance of such amount, if any, to be paid over to Lessor. The provisions of this Section 5.1 have been negotiated and agreed to by the parties hereto and, except to the extent otherwise expressly provided in this Section 5.1, are intended to be a complete negation and exclusion of any representations or warranties by Lessor, express or implied, whether arising pursuant to the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise.

5.2. Lessee's Representations and Warranties. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business in those jurisdictions where such qualification is necessary;

(b) Lessee has full power, authority and legal right to execute, deliver and perform in accordance with this Agreement, the Sublease and the Assignment. This Agreement, the Sublease and the Assignment have been duly authorized by all necessary corporate action on the part of Lessee; do not require the approval of, or the giving of notice to, any federal, state, local or foreign governmental authority (except such as has already been given or obtained); do not contravene any law, governmental regulation or judicial or administrative order or decree binding on Lessee; and do not contravene Lessee's charter or by-laws or any indenture or agreement to which Lessee is a party or by which it or its property is bound;

(c) This Agreement, the Sublease and the Assignment constitute legal, valid and binding obligations of Lessee, enforceable in accordance with their respective terms;

(d) Except as disclosed in a letter furnished by Lessee to Lessor at or before the time of execution of this Agreement, there are no pending or threatened actions or proceedings against Lessee or any of its affiliates before any court,

administrative agency or other tribunal or body in which the amount in controversy is in excess of \$50,000 and is not covered by insurance or which question the legality or validity of this Agreement, the Sublease or the Assignment or which may affect Lessee's ability to perform its obligations hereunder or thereunder; and

(e) The balance sheet of Lessee as of the close of its most recent fiscal year and the earnings statement of Lessee for the fiscal year then ended have been furnished to Lessor and fairly present Lessee's financial condition as of such date and the results of its operations for such year, in accordance with generally accepted accounting principles consistently applied, and since such date there has been no material adverse change in such condition or operations.

(f) Neither the execution and delivery by Lessee of this Agreement, the Sublease and the Assignment nor any of the transactions by Lessee contemplated hereby or thereby require any notice, consent or approval which has not been obtained except for filing, registering or recording this Agreement in the United States pursuant to 49 U.S.C. § 11303 and in Canada pursuant to the laws thereof.

#### ARTICLE VI. Conditions to Lessor's Obligations

Lessor's duties and obligations under this Agreement shall be and remain subject to the fulfillment of the following conditions precedent, in each case in form and substance and in a manner satisfactory to Lessor and its counsel:

(a) Prior to or simultaneously with delivery of the first Certificate of Acceptance, Lessee and Sublessee shall have executed and delivered to Lessor the Sublease and the Assignment.

(b) Prior to acceptance by Lessee of each of the respective Units, there shall have been tendered to Lessor an executed bill of sale for such Unit in substantially the form of Exhibit B attached hereto, together with evidence satisfactory to Lessor that the person or persons signing each such bill of sale on behalf of the vendor is or are duly authorized to do so;

(c) Simultaneously with the acceptance by Lessee of each of the respective Units, Lessee shall have furnished to Lessor a Certificate of Acceptance with respect to such Unit duly completed and executed by Lessee;

(d) Prior to or simultaneously with delivery of the first Certificate of Acceptance, Lessee shall have furnished to Lessor a copy of the resolutions of the Board of Directors (and if applicable the shareholders) of Lessee, certified by the Secretary or an Assistant Secretary of Lessee, duly authorizing the lease of the Equipment hereunder and the execution, delivery and performance of this Agreement, together with an incumbency certificate as to the person or persons authorized to execute and deliver this Agreement (and the other documents contemplated hereby) on behalf of Lessee;

(e) Prior to or simultaneously with delivery of the first Certificate of Acceptance, Lessee shall have furnished to Lessor an opinion of counsel for Lessee (i) as to the matters set forth in Section 5.2 (other than paragraph (e) thereof), (ii) to the effect that (x) Sublessee is a corporation duly organized and existing in good standing under the laws of its state of incorporation, and is qualified to do business in those jurisdictions where such qualification is necessary, (y) the Sublease constitutes a legal valid and binding obligation of Sublessee, in accordance with its terms, and (z) the Assignment grants to and creates in favor of Lessor a first and senior security interest in the Sublease which has been duly perfected, and (iii) as to such other matters as Lessor may reasonably request. Such opinion in respect of the absence of contravention with any judicial or administrative order or decree or any indenture or agreement referred to in Section 5.2(b) and in respect of the matters referred to in Section 5.2(d) may be qualified with the words "to the best of our knowledge", provided such counsel has discussed such matters with an executive officer of Lessee and the opinion so states;

(f) Simultaneously with delivery of each Certificate of Acceptance, Lessee shall have furnished to Lessor (i) evidence satisfactory to Lessor as to the due compliance by Lessee with the provisions of Article X hereof, and (ii) a certificate signed by its chief executive or financial officer dated the date of such Certificate of Acceptance to the effect that the representations and warranties in Section 5.2 hereof are true and correct as though the same were made on such date and that no Default (and no condition, act or event which with notice or lapse of time would become a Default) has occurred and is continuing;

(g) This Agreement shall have been duly filed, recorded and deposited in the United States in conformity with 49 U.S.C. § 11303 and in Canada in conformity with the laws of Canada; and

(h) All other legal proceedings and details relative to this Agreement shall be reasonably satisfactory to Lessor and its counsel, and Lessor shall have been furnished with original or certified copies of such other documents as it or its counsel may reasonably request.

#### ARTICLE VII. Reports

7.1. Financial Reports. So long as Lessee is subject to reporting requirements under the Securities and Exchange Act of 1934, Lessee will furnish copies of its annual financial reports and quarterly financial reports required to be filed with the Securities and Exchange Commission within 15 days after the same have been filed with said Commission. If Lessee shall cease to be subject to such reporting requirements, Lessee shall, within 105 days after the end of each fiscal year, furnish to Lessor duplicate copies of Lessee's most recent financial reports, including Lessee's most recent annual report and balance sheet and profit and loss statement, certified by a recognized firm of certified public accountants, and shall furnish to Lessor quarterly statements, certified by the chief financial or accounting officer of Lessee, within fifteen days after their preparation by Lessee.

7.2. Annual Certificate. Lessee shall furnish to Lessor, concurrently with the delivery of the annual financial statements of Lessee required by Section 7.1 hereof, a certificate with respect to subparagraphs (a) through (d) signed on behalf of Lessee by a vice president of Lessee and a certificate with respect to subparagraph (e) signed on behalf of Lessee by the chief financial or accounting officer of Lessee stating as of a recent date (but not more than three months prior thereto):

(a) The make, model and manufacturer's serial number of each Unit;

(b) The manufacturer's serial number of any Unit that has become lost, destroyed, irreparably damaged or otherwise permanently rendered unfit or unavailable for use since the date of the previous report delivered pursuant to this Section 7.2 (or since the commencement of the Term in the case of the first such report);

(c) That the Equipment has been kept in good order and repair or is then being repaired in accordance with Section 8.1 hereof;

(d) That the location and identification requirements of Sections 8.7 and 8.2 hereof have been complied with in the case of each Unit; and

(e) That the signer of the certificate has made, or caused to be made by persons under his authority and direction, a reasonable investigation concerning the Equipment and Lessee's compliance with its obligations hereunder, and that, on the basis thereof, to his knowledge no Default has occurred and is continuing or, if such Default has occurred and is continuing, the nature thereof and the steps which Lessee has taken or is taking to cure the same.

7.3. Additional Reports. Upon the written request of Lessor at any time and from time to time, Lessee will also deliver to Lessor, within thirty (30) days of such request, a certificate executed on behalf of Lessee by a duly authorized officer containing the information, as of a date not earlier than the date of such request, called for by Section 7.2(e). Lessee shall also furnish to the Lessor such additional information concerning the location, condition, use and operation of the Equipment and the financial condition of Lessee as Lessor may reasonably request from time to time, and Lessee shall permit any person designated by Lessor to visit and inspect the Equipment and the records maintained in connection therewith and to discuss the financial condition of Lessee with the chief financial officer or chief executive officer of Lessee, all at such reasonable times and as often as Lessor may reasonably request.

7.4. Accidents. In the event of an accident arising out of alleged or apparent defective design or manufacture or out of the use or operation of any Unit, Lessee shall promptly file with the appropriate governmental agencies all notices required by law and shall promptly deliver to its insurance carriers all notices called for under each policy of insurance relating to such Unit. Concurrently with such filing or delivery, Lessee shall deliver to Lessor a copy of the notice so filed or delivered. Lessee shall also deliver to Lessor any additional information with respect to such accident which Lessor shall reasonably request and shall promptly make available to Lessor all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to any such accident.

7.5. Tax Liens. Lessee shall notify Lessor in writing, within ten days after any day on which any tax lien shall attach to any Unit, of such lien and of the location of such Unit on such day.

#### ARTICLE VIII. Maintenance, Use and Operation

8.1. Maintenance and Operation. Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair, ordinary wear and tear excepted. The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including when applicable the rules of the Interstate Commerce Commission, the Department of Transportation and the current Interchange Rules, or supplements thereto, of the Association of American Railroads) with respect to the use, maintenance and operation of each Unit. In case any equipment or appliance on any Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on any Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense.

If at any time during the Term it shall be determined by the Interstate Commerce Commission, the Department of Transportation, the Association of American Railroads or any other governmental body that any Units do not conform to their respective standards, specifications and requirements, Lessor may, at its option, upon 30 days' notice to Lessee, declare terminated the lease of such nonconforming Unit if Lessee does not agree in writing within said 30-day period to correct such non-conformity at its sole cost and expense. If the Lessee so agrees, it shall effect such correction within 120 days from the date of such notice or such longer period as may be permitted by the Interstate Commerce Commission, the Department of Transportation, the Association of American Railroads or such other governmental body, but in any event prior to the expiration of the term of this Agreement. If Lessee does not so agree to correct such non-conformity, Lessee shall pay to Lessor on the Rental Payment Date next following the expiration of said 30-day period an amount equal to the higher of the Stipulated Loss Value for such Unit as of such Rental Payment Date or the "fair market value" of such Unit determined in accordance with the provisions of the Lease Supplement (the "Termination Value") together with all Basic Rent due on and prior to such Rental Payment Date. The obligation of Lessee to pay Basic Rent for such Unit shall cease when such Termination Value and Basic Rent payment has been made and such Unit shall cease to be part of the Equipment leased hereunder effective as of such payment. Upon request of Lessee, Lessor will execute and deliver an appropriate document cancelling or amending the Certificate of Acceptance pursuant to which such Unit was leased under this Agreement, but Lessor's failure so to do shall not affect Lessee's obligations under this Agreement, and Lessor will transfer to Lessee good and marketable title to the Units free of all liens, claims and encumbrances but without any other warranty.

Any readily removeable freight car parts installed by the Lessee or any sublessee upon any Unit which are not required in order to maintain the Unit in good working condition (reasonable wear and tear excepted) or in order to conform with the requirements of the Interstate Commerce Commission, the Department of Transportation,

the Association of American Railroads or other governmental body shall be the property of the Lessee or any sublessee and title thereto shall remain in the Lessee or such sublessee. All other freight car parts installed or replacements made by the Lessee or any sublessee upon any Unit shall be considered accessories to such Unit and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

8.2. Insignia. Lessee will cause the Units to be kept numbered with the identifying numbers set forth in the Certificates of Acceptance and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each such Unit, in letters not less than one inch in height, the words "Property of and leased from Mellon National Leasing Company subject to an agreement filed with the Interstate Commerce Commission" or other appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit and its rights under this Agreement. The Lessee will not permit any Unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except with the consent of the Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been obtained from the Lessor by the Lessee; provided, however, that, in addition to such identifying number, the Lessee may cause to be placed on each Unit in such position as not to be confused with the identifying number thereon a reporting number identifying such Unit for reporting and operating purposes, which reporting number may be changed by the Lessee from time to time without the consent of the Lessor or the filing, recording, registering and depositing of any instrument.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership. Subject to the foregoing, the Lessee may cause the Units to be lettered with the names or initials or other insignia used by the Lessee or any sublessee on railroad equipment of the same or similar type for convenience of identification of the right of the Lessee or any sublessee to use the Unit under this Agreement.

8.3. Supplies. Lessee shall pay for and provide all power, fuel and supplies consumed by and required for each Unit and all repairs, parts and supplies necessary therefor.

8.4. Accessories. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory, equipment or device on any Unit if such addition will impair the value or the originally intended function or use of such Unit.

8.5. Personal Property. Lessee shall not, without the prior written consent of Lessor and subject to such conditions as Lessor may impose for its protection, affix or install any Unit to or in any real property, it being the mutual intention of the parties

that the Equipment at all times shall be and remain personal property of Lessor. Lessee shall take such steps as may be necessary to prevent any person from acquiring any rights in any Unit by reason of such Unit being claimed or deemed to be real property.

8.6. Sublease and Assignment. Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld (it being understood that written consent in one instance shall apply only in the given instance and shall not constitute a waiver of any of the terms of this Agreement), (i) assign this Agreement or sublease or let any Unit (excepting the Sublease), (ii) permit Sublessee to sublease or let any Unit for more than 12 consecutive months to anyone other than Lessee's Subsidiaries, or (iii) permit any Unit to be operated by anyone other than Lessee, Lessee's Subsidiaries or the sublessee of a sublease permitted under this Section 8.6 or their respective employees or persons under their supervision, except during periods when Units have been delivered to a railroad for movement by any of the foregoing. If (pursuant to any assignment or sublease required or permitted hereby, whether by consent of Lessor or otherwise) Lessee assigns this agreement or subleases any Unit, (i) Lessee shall remain liable for all obligations of Lessee hereunder, whether or not Lessor accepts or acquiesces in substituted performance of those obligations by the assignee or sublessee and (ii) such sublease shall be made expressly subject, and the sublessee's rights thereunder subordinate in all respects, to this Agreement and the rights and remedies of Lessor contained herein.

8.7. Permitted Use. Lessee shall not use, operate, maintain or store any Unit improperly, carelessly or in violation of this Agreement, or of any applicable regulatory laws and bodies whatsoever, or of any instructions therefor furnished by Lessor or the manufacturer thereof, or at any location outside the continental United States (except that Lessee may properly use, operate, maintain or store the Units in Canada for not more than 30 days in any one calendar year); nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof.

#### ARTICLE IX. Liens

Lessee will not permit any Unit to be subject to any lien, charge or encumbrance whatsoever except (i) the respective rights of Lessor and Lessee as herein provided and any sublease permitted hereby, (ii) liens asserted by any person claiming by, through or under Lessor and resulting from acts or omissions of Lessor, except to the extent that such liens, charges or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder, (iii) liens for taxes either not yet due or which are subject to Lessee's Right to Contest, (iv) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and not delinquent and (v) liens arising out of judgments or awards against Lessee which are subject to Lessee's Right to Contest.

## ARTICLE X. Insurance

10.1. Physical Damage Insurance. At its own expense, Lessee shall maintain physical damage insurance on each Unit against fire, collision and such other perils and casualties and in such amounts as are usually carried by corporations engaged in the same or a similar business and similarly situated to Sublessee; provided, however, that in no event shall the amount of such insurance, plus such deductible, if any, as shall be set forth in the Lease Schedule, at any time be less than the lesser of the aggregate Stipulated Loss Value of all Units then leased hereunder and \$3,750,000.

10.2. Liability Insurance. At its own expense, Lessee shall maintain insurance protecting the interests of both Lessor and Lessee against liability for property damage to third persons and personal injury or death arising out of the maintenance, use, operation and ownership of the Equipment, in such amounts as are usually carried by corporations engaged in the same or similar businesses and similarly situated to Sublessee; provided, however, that in no event shall the amount of such insurance per person and per occurrence (subject to such deductible, if any, as shall be set forth in the Lease Schedule) be less than the amount set forth in the Lease Schedule.

10.3. General Insurance Provisions. All insurance required by Sections 10.1 and 10.2 of this Agreement shall name the Lessor and Lessee as insured parties, shall be maintained with responsible insurance companies meeting such reasonable standards as may from time to time be established by Lessor and shall provide that the coverage thereunder may be altered or cancelled only after not less than 30 days' prior written notice to Lessor. At all times during the Term, Lessee shall keep Lessor provided with evidence satisfactory to Lessor as to the due compliance by Lessee with the provisions of this Article X.

10.4. Payment of Premium by Lessor. In the event that Lessee shall fail to obtain or maintain insurance in accordance with the provisions of this Agreement, Lessor shall have the right to obtain, and pay the premiums on, such insurance as Lessor deems necessary and Lessee shall, upon demand, reimburse Lessor in an amount equal to the amount of such premiums paid plus interest at the Interest Payment Rate from the date of such payment to the date of such reimbursement.

## ARTICLE XI. Assumption of Risk; Indemnification

11.1. General. Lessee does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants from and against, and, subject to Lessee's Right to Contest, does hereby agree to pay, when due, as Additional Rent, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs,

expenses and disbursements, including legal fees and expenses, of whatsoever kind or nature, whether seen or unforeseen, imposed upon, incurred by or with respect to or asserted against any Unit, the Lessor or its successors, assigns, representatives, directors, officers, employees, agents or servants, in any way relating to or arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, operation, condition, repair, replacement, reconstruction, return or other disposition of any Unit, including without limitation those in any way relating to or arising out of or alleged to arise out of (i) any latent or other defects whether or not discoverable by Lessor or Lessee, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim based on strict liability in tort and (iv) any and all license fees, assessments and sales, use, rent, property and other taxes now or hereafter imposed by any federal, state or local government upon any Unit or its use or payments hereunder, or upon this Agreement (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), whether the same shall be payable by or billed or assessed to Lessor or Lessee, together with any penalties or interest in connection therewith; provided, however, that nothing in this Section 11.1 shall be construed so as to require Lessee to indemnify Lessor for its own gross negligence or willful misconduct. Lessee shall be obligated under this Section 11.1 irrespective of whether Lessor or any of its successors, assigns, representatives, directors, officers, employees, agents or servants shall also be indemnified with respect to the same matter under any other agreement by any other person. To the extent Lessor or any other person indemnified hereunder in fact receives indemnification payments from Lessee, Lessee shall be subrogated to the extent of such payments to Lessor's rights with respect to the transaction or event requiring such indemnification, provided, however, that Lessee shall not be subrogated to any right against Lessor or any right against such of Lessor's successors, assigns, representatives, directors, officers, employees, agents or servants as have a right to indemnification from Lessor with respect to such transaction or event. In the event Lessee is required to make any payment under this Section 11.1, Lessee shall pay to Lessor an amount which after deduction of all taxes required to be paid by Lessor or any other person indemnified hereunder in respect of the receipt of such payment (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of such other taxes) shall be equal to the amount of such payment. Lessee and Lessor each agree to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereunder indemnified against; provided, however, that the failure to give such notice shall not in any way affect, impair or diminish Lessee's obligations hereunder.

#### 11.2. Federal Income Tax Matters.

(a) As between Lessor and Lessee, Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including, without limitation, an allowance for depreciation as provided by Section 167 of the Code, it being understood and agreed, however, that (as between Lessor and Lessee) any claim for investment tax credit relative to the Equipment under Section 46 of the Code shall be allowed to Lessee.

(b) Lessee acknowledges that the anticipated availability to Lessor of an annual allowance for depreciation is fundamental to the economics of this Agreement. Lessee further acknowledges that certain factors affecting such allowance for depreciation are within the knowledge, control and experience of Lessee. Accordingly, the basis upon which the allowance for depreciation will be determined are set forth on the Lease Schedule.

(c) As used in this Agreement: (i) the term "Depreciation Deductions" shall mean an allowance for depreciation calculated under the criteria set forth in the Lease Schedule; and (ii) the term "Code" shall mean the Internal Revenue Code of 1954, as amended to the date hereof and as in effect on the date hereof.

(d) If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part, of Depreciation Deductions for any Unit, Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield in respect of such Unit to equal the net yield that Lessor had expected to receive if Lessor had not suffered a Loss with respect to the Depreciation Deductions. Such Additional Rent shall be payable over the then remaining Term commencing with the first Rental Payment Date occurring more than ten days after Lessor notifies Lessee of the required Additional Rent.

(e) Notwithstanding the provisions of paragraph (d) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the Depreciation Deductions due solely to (i) the failure to properly claim the Depreciation Deductions in the tax returns filed by Lessor or (ii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee.

(f) In the event the Internal Revenue Service proposes adjustments to the Depreciation Deductions which, if successful, could result in a Loss for which Lessee would be required to indemnify Lessor pursuant to this Section 11.2, Lessor hereby agrees to notify Lessee promptly of such proposed adjustment, to withhold payment of the tax claimed to be due for a period of 30 days after giving such notice, and to exercise in good faith its best efforts (determined by Lessor in Lessor's sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessor and its affiliated companies and not requiring administrative or judicial proceedings beyond the level of the Internal Revenue Service Appeals Division) to avoid requiring Lessee to pay such indemnity, provided that Lessee shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustments and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustments including without limitation reasonable attorneys', accountants', engineers' and like professional fees and disbursements.

(g) In the event that Lessor shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, Lessee shall pay to Lessor an amount equal to the Interest Payment Rate on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such interest to be payable in equal installments within each calendar year on each Rental Payment Date. Upon receipt by Lessor of a refund of any federal income tax paid by it in respect of which Lessee has paid interest as set forth above while such tax payment was contested by Lessor, any interest on such refund paid to Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by Lessor.

(h) Reference in this Section 11.2 to Lessor shall include any affiliated group of which Lessor is a member for purposes of filing consolidated tax returns, provided that only Lessor shall be obligated with respect to the covenants and duties imposed herein on Lessor.

11.2.1(i) Lessor acknowledges that the anticipated availability to Lessee of the investment tax credit for the Equipment under Section 38 of the Code is fundamental to the economics of this Agreement. Lessor further acknowledges that certain factors affecting such investment tax credit are within the knowledge and control of Lessor. Accordingly, Lessor agrees, represents and warrants as follows:

(1) It is not a person described in Section 46(e)(1) of the Code;

(2) On or before July 31, 1979, Lessor shall provide to Lessee a statement, signed by a duly authorized officer of Lessor and in the form attached hereto as Exhibit C, to treat the Lessee as having purchased each Unit of Equipment as provided in Section 48(d) of the Code. Lessor further agrees to timely file with its federal income tax return and maintain as part of its records the information and statements required on its part under Section 48(d) of the Code and the regulations promulgated thereunder.

(ii) If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part, of investment tax credit for any Unit resulting solely from (a) a breach by Lessor of its representation and warranty under Section 11.2.1(i)(1), (b) Lessor's failure to perform its obligations under Section 11.2.1(i)(2) or (c) the sale or other disposition of the Equipment, any Unit or this Agreement by Lessor (except as provided in Section 8.1 of this Agreement with respect to a declaration of termination or Paragraph D of the Lease Supplement attached hereto) prior to any Default by Lessee, Lessor shall pay to Lessee, after written request of Lessee, an amount which, after deduction of federal, state and local income taxes and interest and penalties required to be paid by Lessee with respect to the receipt of such payment, will equal such Loss of the investment tax credit. Such payment shall be payable no more than ten days after Lessee notifies Lessor of the required payment.

(iii) In the event the Internal Revenue Service proposes adjustments to the investment tax credit claimed by Lessee with respect to the Equipment or any Unit under circumstances which, if successful, could result in a Loss for which Lessor would be required to indemnify Lessee pursuant to this Section 11.2.1, Lessee hereby agrees to notify Lessor promptly of such proposed adjustment, to withhold payment of the tax claimed to be due for a period of 30 days after giving such notice, and to exercise in good faith its best efforts (determined by Lessee in Lessee's sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessee and its affiliated companies and not requiring administrative or judicial proceedings beyond the level of the Internal Revenue Service Appeals Division) to avoid requiring Lessor to pay such indemnity, provided that Lessor shall have agreed to indemnify Lessee in a manner satisfactory to Lessee for any liability or loss which Lessee may incur as a result of contesting such adjustments and shall have agreed to pay Lessee on demand all costs and expenses which Lessee may incur in connection with contesting such adjustments including without limitation reasonable attorneys', accountants', engineers' and like professional fees and disbursements.

(iv) In the event that Lessee shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, Lessor shall pay to Lessee an amount equal to the Interest Payment Rate on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such interest to be payable in equal installments within each calendar year on each Rental Payment Date. Upon receipt by Lessee of a refund of any federal income tax paid by it in respect of which Lessor has paid interest as set forth above while such tax payment was contested by Lessee, any interest on such refund paid to Lessee by the United States Government shall be paid to Lessor forthwith upon receipt by Lessee.

(v) Reference in this Section 11.2.1 to Lessee shall include any affiliated group of which Lessee is a member for purposes of filing consolidated tax returns, provided that only Lessee shall be obligated with respect to the covenants and duties imposed herein on Lessee.

**11.3. Survival of Obligations.** This Article XI shall become and be effective and in full force and effect from the date of this Agreement (even though no Equipment may have been accepted by Lessee and even though the Term may not have commenced) and shall remain in effect notwithstanding the expiration or other termination of the Term insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed prior to such expiration or termination.

## ARTICLE XII. Damage to Property

12.1. Duty to Notify. In the event any Unit shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (herein referred to as an "Event of Loss"), Lessee shall promptly notify Lessor as to the circumstances and time of such event.

12.2. Stipulated Loss Value. Upon the happening of an Event of Loss with respect to any Unit, unless Lessee shall have exercised the option granted in Section 12.3 hereof, Lessee shall become obligated, without demand or notice, to pay to Lessor (i) on the Rental Payment Date next following such Event of Loss all Basic Rent due on and prior to such Rental Payment Date and (ii) within 60 days next following such Rental Payment Date an amount equal to the Stipulated Loss Value for such Unit as of such Rental Payment Date together with interest thereon at the Interest Payment Rate from such Rental Payment Date to the date of payment of the Stipulated Loss Value. The obligation of Lessee to pay Basic Rent for such Unit shall cease when such Basic Rent payment has been made and such Unit shall cease to be part of the Equipment leased hereunder effective as of such payment. Upon request of Lessee, Lessor will execute and deliver an appropriate document cancelling or amending the Certificate of Acceptance pursuant to which such Unit was leased under this Agreement, but Lessor's failure so to do shall not affect Lessee's obligations under this Agreement, and Lessor will transfer to Lessee by bill of sale good and marketable title thereto, free of all claims, liens and encumbrances but without any other warranty.

12.3. Optional Replacement of Property. Upon the happening of an Event of Loss with respect to any Unit and so long as an Event of Default hereunder shall not have occurred and be continuing, Lessee shall have the option to promptly replace such Unit at its own cost and expense. Any replacement Unit shall be free and clear of all liens, encumbrances and rights of others and shall be in as good condition as, and shall have a value and utility at least equal to, the replaced Unit, as if such replacement Unit were in the condition and repair required to be maintained by the terms hereof. All such replacement Units shall become the property of Lessor and shall immediately become subject to this Agreement and shall be deemed part of the Equipment for all purposes hereof, to the same extent as the property originally comprising the Equipment; whereupon such replaced Unit shall no longer be deemed part of the Equipment leased hereunder, and Lessor will transfer by bill of sale to Lessee good and marketable title thereto free of all claims, liens and encumbrances but without any other warranty.

If Lessee desires to exercise such option to replace, Lessee shall notify Lessor in writing within 39 days after the Rental Payment Date next following the Event of Loss and advise Lessor of the particulars of the proposed replacement Unit. Within ten (10) days after receipt of Lessee's notice, Lessor shall advise Lessee in writing, of any Additional Rent which may be payable by Lessee if it exercises its option to replace.

Such Additional Rent shall be any amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent may be necessary (in the reasonable opinion of Lessor) to cause Lessor's net yield in respect of such replacement Unit to equal the net yield that Lessor had expected to receive if Lessee had not exercised its option to replace, taking into account any additional tax credits or deductions to which Lessor may be entitled as a result of receiving the replacement Unit, but excluding from such calculation any deductions, credits or tax attributes not arising out of the transaction contemplated by this Agreement. Such Additional Rent shall be payable over the then remaining Term commencing with the first Rental Payment Date occurring after Lessee replaces the replaced Unit.

Within ten (10) days after Lessee's receipt of Lessor's calculation of any such Additional Rent or such additional time as the parties agree, Lessee shall notify Lessor in writing of its decision either to replace the Unit and pay the Additional Rent set forth in Lessor's notice or pay to Lessor the applicable Stipulated Loss Value and interest thereon in accordance with the terms of Section 12.2 hereof. If Lessee exercises its option to replace the Unit, it shall replace such Unit within 60 days after the Rental Payment Date next following the Event of Loss, provided, however, that if Lessee is unable to effect such replacement within said period, it may pay to Lessor the applicable Stipulated Loss Value and interest thereon within said period, which payment shall be returned to Lessee upon delivery to Lessor of a bill of sale transferring good and marketable title to such replacement Unit free of all claims, liens and encumbrances.

12.4. Insurance and Condemnation Proceeds. Any insurance or other payments received by Lessor or Lessee (except under any insurance policy maintained pursuant to Section 10.2 hereof) as a result of any Event of Loss of a Unit shall be paid to or retained by Lessor and applied against Lessee's obligation to pay the Stipulated Loss Value of such Unit unless Lessee shall have exercised the option provided in Section 12.3 hereof, in which case such payments shall be paid to or retained by Lessee. The portion, if any, of any such payment in excess of the amount necessary to cover such Stipulated Loss Value shall be retained by or paid to Lessee.

#### ARTICLE XIII. Return of Property

At the expiration or sooner termination of the Term, Lessee shall return the respective Units to Lessor, free of all Lessee advertising or insignia placed thereon by Lessee, in a condition which complies with all governmental laws, regulations, requirements and rules as required by Section 8.1 hereof, and in the same operating order, repair, condition and appearance as when originally received by Lessee, excepting only for reasonable wear and tear and damage by any cause covered by collectible insurance. Lessee shall pay or reimburse Lessor for the cost of all repairs necessary to restore each Unit to such condition. Lessee shall cause possession of each Unit to be delivered to the Lessor upon any storage tracks, as the Lessor may reasonably designate, within 500 miles of Pittsburgh, Pennsylvania, or such other place as the parties may mutually agree, and permit the Lessor to store such Unit on such tracks for a period not exceeding thirty

(30) days from the day the final Unit is so delivered, provided, however, that if Lessee operates all the Units as a single unit train for the last 120 days of the Base Term and makes the Units available for inspection by Lessor during such period as provided below, the maximum period of storage after delivery of the Units shall be reduced to fifteen (15) days. The movement and storage of such Units is to be at the expense and risk of the Lessee. Upon expiration of the Lease, the Lessee shall pay to Lessor for each day thereafter until the Units are available on such storage track an amount equal to the daily equivalent of the Basic Rent for such Units. During any such storage period and, if the above proviso is applicable, at reasonable times during the 120 day period described therein, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect, at its sole cost and expense, the same. During all such inspections the representatives of the Lessor shall be entitled to the standard of care owed a business invitee and shall be entitled to recover from the Lessee for any injury or damage caused by the negligence or willful misconduct of the Lessee or, to the extent not otherwise covered in full by a sublessee's insurance, of any sublessee. The assembling, delivery and storage of the Units as hereinbefore provided are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver and store the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Article, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

#### ARTICLE XIV. Defaults; Remedies

14.1. Defaults; Remedies. If during the Term of this Agreement one or more of the followings events ("Events of Default") shall occur:

- (a) Default shall be made in the payment when due of any Rent herein provided and such default shall continue for a period of five days; or
- (b) Lessee shall attempt to remove, sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Unit; or
- (c) Lessee shall default in the observance or performance of its duty under Section 10.3 hereof to keep Lessor provided with evidence satisfactory to Lessor as to the due compliance by Lessee with the provisions of Article X hereof; or
- (d) Lessee shall default in its obligations with respect to use, maintenance and operation provided in Section 8.1 hereof and shall not have undertaken efforts

in good faith to cure such default within 15 days after written notice from the Lessor to the Lessee specifying the Default and demanding the same to be remedied; or

(e) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of Lessee contained herein and such Default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the Default and demanding the same to be remedied; or

(f) A decree or order by a court having jurisdiction in the premises shall have been entered and not discharged or dismissed within 45 days thereafter (i) adjudging the Lessee a bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Lessee under the Bankruptcy Act or any other state or federal law relating to bankruptcy or insolvency, (iii) for the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of the Lessee or of its property, or (iv) for the winding up or liquidation of the affairs of the Lessee; or

(g) The Lessee shall (i) institute proceedings to be adjudged a voluntary bankrupt, or (ii) consent to the filing of a bankruptcy proceeding against it, or (iii) file a petition or answer or consent seeking reorganization or readjustment under the Bankruptcy Act or any other state or federal law, or otherwise invoke any law for the aid of debtors, or consent to the filing of any such petition, or (iv) consent to the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of it or of its property or any substantial portion of its property, or (v) make an assignment for the benefit of the creditors, or shall admit in writing its inability to pay its debts generally as they become due, or (vi) take any corporate action looking to its dissolution or liquidation or in furtherance of any of the aforesaid purposes; or

(h) Lessee shall have knowledge of the existence of circumstances which it reasonably believes to constitute a Default under this Agreement, and shall fail promptly to notify Lessor of such facts; or

(i) Any representation or warranty made by Lessee in this Agreement, any Certificate of Acceptance or any instrument, certificate or other document delivered pursuant thereto or hereto shall prove to be false and misleading in any material respect;

then, in any such case, the Lessor at its option may:

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement or to recover from Lessee any and all damages or expenses, including reasonable attorneys' fees, which Lessor shall have sustained by reason of Lessee's Default or on account of Lessor's enforcement of its remedies hereunder; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Agreement had never been made, but Lessee shall deliver possession of the Equipment to Lessor in accordance with Article XIII hereof and Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Units may be located and take possession of all or any such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purpose whatever.

Upon such termination, Lessor shall have the right to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty and as reasonable rent for the use of the Equipment and for the depreciation thereof, the sum of the following:

- (1) an amount with respect to each Unit which represents the excess of the Stipulated Loss Value of such Unit over one of the following, as Lessor may in its sole discretion elect: (x) in the event Lessor shall sell such Unit, the net proceeds of such sale, (y) in the event Lessor shall re-lease such Unit, the net rents payable under the terms of such re-leasing for a period equal to the remaining term of this Agreement, discounted to the time of computation at the Interest Payment Rate, or (z) the fair market value of such Unit at the time of such termination;
- (2) all due and unpaid Rent for the Equipment to the date of termination;
- (3) an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Equipment;
- (4) all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such Default; and
- (5) interest at the Interest Payment Rate on each of the foregoing from the date upon which such amounts were first payable which date, in the case of the amounts payable pursuant to clause (1) above, shall be the date upon which the Event of Default which results in the termination of this Agreement first occurs.

If on the date of such termination or repossession, any Unit be damaged, lost, stolen or destroyed, or be subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the Stipulated Loss Value pertaining to such Unit less the amount of any insurance recovery received by Lessor in connection therewith.

14.2. Remedies Cumulative; Waiver of Requirements. The remedies in this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or

in equity. TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW, LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, INCLUDING WITHOUT LIMITATION ANY RIGHT WHICH LESSEE MAY HAVE TO NOTICE AND HEARING PRIOR TO THE REPOSSESSION AND SALE OR LEASING OF ANY UNIT.

#### ARTICLE XV. Assignment by Lessor

Lessee acknowledges and understands that the terms and conditions of this Agreement have been agreed to by Lessor in anticipation of its being able to assign its interest under this Agreement and in and to the Equipment leased hereunder to a bank or other lending institution or to others having an interest in the Equipment or this transaction, all or some of which will rely upon and be entitled to the benefit of the provisions of this Article XV. Lessee agrees with Lessor and with such bank or other lending institution or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (i) to recognize any such assignment, (ii) to accept the directions or demands of such assignee in place of those of Lessor, (iii) to surrender the Equipment only to such assignee, (iv) to pay all Rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any Default by Lessor or the existence of any offset as between Lessor and Lessee or the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee whether or not arising hereunder, and (v) not to require any assignee of this Agreement to perform any duty, covenant or condition (other than the duty not to interfere with Lessee's right to quiet possession under Article XVI hereof) required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection being hereby waived as to any and all of such assignees; provided, however, that nothing contained in this Article XV shall relieve Lessor from its obligations to Lessee hereunder.

#### ARTICLE XVI. Quiet Possession

So long as no Event of Default hereunder shall have occurred and be continuing, Lessor shall not do (nor suffer to be done by any person claiming by, through or under Lessor with respect to matters not related to the ownership of the Equipment or the transactions contemplated by this Agreement) any act which will interfere with the right of Lessee peaceably and quietly to hold, possess and use the Equipment during the Term and in accordance with the provisions of this Agreement.

#### ARTICLE XVII. Further Assurances

Lessee and Lessor will promptly and duly execute and deliver to the other party hereto such further documents and assurances and take such further action as Lessor or Lessee may from time to time reasonably request in order to carry out more

effectively the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor or Lessee hereunder, including, without limitation, if requested by Lessor or Lessee, in either case at the expense of Lessee, the execution and delivery of supplements or amendments hereto, in recordable form subjecting to this Agreement any replacement property and the recording or filing of counterparts hereof, or of financing statements with respect thereto in accordance with the laws of such jurisdiction as Lessor or Lessee may from time to time deem advisable.

#### ARTICLE XVIII. Miscellaneous

Nothing herein contained shall give or convey to Lessee any right, title or interest in and to any Unit leased hereunder except as a lessee. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the Term, and should Lessor permit the use of any Unit beyond such Term, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the Term hereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time after the Term upon demand after five days' notice. Any cancellation or termination by Lessor pursuant to the provisions of this Agreement shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement constitutes the entire agreement between the parties and there are no warranties (in respect of the Equipment or otherwise), express or implied, or collateral or contemporaneous agreements that affect its import other than such as are contained herein. This Agreement may be modified, amended or mutually rescinded only by a written instrument executed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and, subject to Section 8.6 and Article XV hereof, their respective successors and assigns. Time is of the essence of this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania. Any document required to be delivered hereunder in executed form or otherwise may be delivered by telecopier.

#### ARTICLE XIX. Notices

Any notices required or permitted under this Agreement, or by law in respect of this Agreement, shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class, postage prepaid, or when sent by telex or prepaid telegraph, addressed to the party required to receive the same at the address set forth below such party's signature hereto, or to such other address as such party shall specify by like notice.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

MELLON NATIONAL LEASING COMPANY  
Lessor

By \_\_\_\_\_

Title \_\_\_\_\_

Attest:

Address 3629 Mellon Bank Building  
Pittsburgh, Pennsylvania 15219

\_\_\_\_\_

[CORPORATE SEAL]

EARLY & DANIEL INDUSTRIES, INC.  
Lessee

By \_\_\_\_\_

Title \_\_\_\_\_

Attest:

Address: 902 Washington Ave.  
Indianapolis, Indiana 46204

\_\_\_\_\_

[CORPORATE SEAL]





EXHIBIT A

CERTIFICATE OF ACCEPTANCE

No. \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_,  
1979, to Agreement and Lease (the "Agreement")  
dated as of February 1, 1979 between MELLON  
NATIONAL LEASING COMPANY and EARLY  
& DANIEL INDUSTRIES, INC.

THIS CERTIFICATE OF ACCEPTANCE is executed pursuant to the Agree-  
ment and the terms herein shall have the meanings ascribed to them in the Agreement.

Lessor and Lessee do hereby confirm and agree that (i) the Units described  
in Schedule 1 hereto, having an aggregate Lessor's Cost of \$ \_\_\_\_\_, have been  
delivered as of the date hereof at the location or locations indicated on said Schedule  
1, (ii) such Units have been duly accepted by Lessee as part of the Equipment for leasing  
under the Agreement, (iii) such Units are hereby made subject to, and the rights and  
duties of the parties with respect thereto shall be governed by, the Agreement, and (iv)  
Lessee has become obligated to pay Interim Rent, if any, and Basic Rent in the amounts  
set forth in the Lease Schedule attached to the Agreement.

Lessee confirms that, as required by the Agreement, it has caused to be  
affixed to each Unit described in Schedule 1 hereto the identification indicating Lessor's  
ownership of such Unit and the identifying number assigned to such Unit in said Sche-  
dule.

WITNESS the due execution hereof as of the day and year first above written.

LESSEE:

LESSOR:

EARLY & DANIEL INDUSTRIES, INC.

MELLON NATIONAL LEASING COMPANY

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT B

BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and intending to be legally bound hereby, ITEL CORPORATION, EQUIPMENT FINANCE DIVISION, (the "Vendor") has bargained, sold, conveyed, transferred and assigned and by these presents does hereby bargain, sell, convey, transfer and assign to MELLON NATIONAL LEASING COMPANY ("Lessor"), its successors and assigns, forever, good and marketable title to the personal property described in Schedule 1 attached hereto (the "Units") together with all of Vendor's rights under any manufacturer's warranty and patent indemnity covering the Units.

The Vendor hereby covenants and warrants to the Lessor, its successors, assigns and the Lessor's Lessee that (i) the Vendor is the lawful owner of the Units and has full power and authority to sell the same as aforesaid, (ii) the Units are on the date hereof free and clear of all claims, liens, encumbrances and claims of any nature, (iii) the Units are newly manufactured within the United States and at least 50% of the cost of the Units is attributable to value added within the United States and (iv) none of the Units have been used so as to preclude "the original use of such property" from commencing with Lessor.

IN WITNESS WHEREOF the Vendor has caused this Bill of Sale to be executed and delivered this \_\_\_\_\_ day of February, 1979.

ITEL CORPORATION, EQUIPMENT  
FINANCE DIVISION

By \_\_\_\_\_  
[Name]

Title \_\_\_\_\_

EXHIBIT C

INVESTMENT TAX CREDIT ELECTION

Mellon National Leasing Company ("Lessor") hereby elects, under the provisions of section 48(d)(1) of the Internal Revenue Code of 1954, as amended (the "Code") and §1.48-4(f) of the Income Tax Regulations, to treat Early & Daniel Industries, Inc. ("Lessee") as the purchaser of the Property herein described for purposes of the investment tax credit provided by Section 38 of the Code and provides the following information required by said regulation with respect to such election:

- |       |  |  |
|-------|--|--|
| (i)   | LESSOR   | LESSEE   |
|       | Mellon National Leasing<br>Company<br>3629 Mellon Bank Building<br>Pittsburgh, PA 15219<br>25-1287002  | Early & Daniel Industries, Inc.<br>902 Washington Avenue<br>Indianapolis, IN 46204<br>35-1262042 |
| (ii)  | Philadelphia Service Center<br>Pittsburgh District   | Memphis Service Center<br>Indianapolis District  |
| (iii) | One hundred 100-ton covered hopper railroad cars manufactured by Pullman Incorporated (Pullman Standard Division) and bearing identifying numbers TWGX 2000 to 2099, inclusive (the "Property"). |  |
| (iv)  | Possession of the Property was transferred to Lessee on February __, 1979.   |  |
| (v)   | The estimated useful life of the Property in the hands of Lessor is 7 years or more.   |  |
| (vi)  | The fair market value of the Property on February __, 1979 was \$3,750,000.  |  |

Lessor  
MELLON NATIONAL LEASING COMPANY

Date: By \_\_\_\_\_

The Lessee hereby consents to the above election:

Lessee  
EARLY & DANIEL INDUSTRIES, INC.

Date: By \_\_\_\_\_

LEASE SCHEDULE  
to  
AGREEMENT AND LEASE  
dated as of February 1, 1979  
MELLON NATIONAL LEASING COMPANY, Lessor  
and EARLY & DANIEL INDUSTRIES, INC., Lessee

1. Description of Equipment: One hundred 100-ton covered hopper railroad cars manufactured by Pullman Incorporated (Pullman Standard Division) and bearing identifying numbers TWGX 2000 to 2099 inclusive.
2. Location of Equipment:  
Continental United States and Canada
3. Final Delivery Date:  
April 1, 1979.
4. Term:
  - a. Interim Term. From the date as of which the parties execute and deliver a Certificate of Acceptance with respect to a Unit until the first day of the Base Term.
  - b. Base Term. A period of 240 consecutive months beginning on the date as of which the parties execute and deliver a Certificate of Acceptance with respect to the final Unit or on the Final Delivery Date, whichever is earlier.
5. Lessor's Cost: Not to exceed \$37,500 per Unit or \$3,750,000 in the aggregate.
6. Rent:
  - a. Interim Rent. On the Interim Rental Payment Date, Lessee shall pay to Lessor by wire transfer Interim Rent with respect to each Unit determined as follows:

$$C \times \frac{1.2 \times P}{360} \times D$$

As used in this formula, "C" means the Lessor's Cost of the Unit; "D" means the number of days in the Interim Term of the Unit, and "P" means the average during the Interim Term of the Prime Rate of interest per annum (expressed as a decimal) announced from time to time by Mellon Bank, N.A. at its principal office in Pittsburgh, Pennsylvania.

- b. Basic Rent. On the first Basic Rental Payment Date and on each of the 239 succeeding Basic Rental Payment Dates Lessee shall pay to Lessor by wire transfer Basic Rent equal to 0.865835% of the Lessor's Cost of the Units. Each installment of Basic Rent shall be for the month immediately preceding the Basic Rental Payment Date on which such installment is due and payable.

7. Rental Payment Dates:
- a. Interim Rental Payment Date: The first day of the Base Term.
  - b. Basic Rental Payment Dates: The thirtieth day of the Base Term and the same calendar day of each succeeding month during the Base Term (or in case there is no such day in a month, on the last day of such month).
8. Insurance: The insurance required to be carried by Lessee pursuant to Section 10.1 of the Agreement may be subject to a deductible of not more than \$1,000 per occurrence per car. The insurance required to be carried by Lessee pursuant to Section 10.2 of the Agreement shall be in an amount of not less than \$5,000,000 per occurrence and may be subject to a deductible of not more than \$50,000.
9. Bases for Computation of Depreciation Deductions: Double declining balance switching to sum of the years digits over the ADR Asset Guideline Class 00.25 twelve year lower limit per Rev. Proc. 77-10. Salvage value 10% of Lessor's Cost. 10% ignored per Section 167(f) of the Code.
10. Stipulated Loss Values: The amounts payable as Stipulated Loss Value shall be determined for the several periods comprising the Term by reference to the table set forth in Annex 1 hereto.

APPROVED AND AGREED TO this      day of                      , 19      as the Lease Schedule to and forming a part of the above-mentioned Lease and Agreement.

MELLON NATIONAL LEASING COMPANY  
Lessor

By \_\_\_\_\_

Title \_\_\_\_\_

EARLY & DANIEL INDUSTRIES, INC.  
Lessee

By \_\_\_\_\_

Title \_\_\_\_\_

LEASE SUPPLEMENT  
to  
AGREEMENT AND LEASE  
dated as of February 1, 1979  
between  
MELLON NATIONAL LEASING COMPANY, Lessor  
and  
EARLY & DANIEL INDUSTRIES, INC., Lessee

A. Option to Lease. Unless an Event of Default has occurred and is continuing, Lessee shall have the right to extend the Term in respect of all, but not fewer than all, of the Units then covered by this Agreement, for a term of five years commencing on the expiration of the Term, at a Rent equal to the then "fair market rental value" (as hereinafter defined) of the Units. Lessee shall give Lessor written notice 120 days prior to the end of the Term of its election to exercise such option. Rent shall be paid in equal installments monthly in arrears. The "fair market rental value" of the Units shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction relating to the Units as then located between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to sell, and, in such determination, costs of removal from the location of current use shall not be a deduction from such value, but any other transportation costs shall be deducted. If on or before 60 days prior to the expiration of the Term, Lessor and Lessee are unable to agree upon a determination of the fair rental value of the Units, such value shall be determined in accordance with the foregoing definition by American Appraisal Company.

B. Purchase Option. If Lessee is not in default hereunder, Lessee shall have the right to purchase all, but not less than all, Units at the expiration of the Base Term at a price equal to their then "fair market value" (as hereinafter defined). Lessee shall give Lessor written notice 120 days prior to the end of the Base Term of its election to exercise such option. Payment of the option price shall be made on or before the later of the expiration of the Base Term and the tenth day next following the determination of the "fair market value" of the Units at the place of payment specified in Section 4.4 by wire transfer against delivery of a bill of sale to Lessee transferring good and marketable title to the Units, free of all claims, liens and encumbrances but without any other warranty. The "fair market value" of each such Unit shall be determined by an appraiser selected by mutual agreement of Lessor and Lessee. If Lessor and Lessee are not able to agree upon an appraiser, the fair market value shall be determined by American Appraisal Company. The fair market value as finally determined shall bear interest for the period, if any, from the expiration of the Base Term to the date of payment at the Interest Payment Rate.

C. Assignment of Sublease. Lessee shall grant to and create in favor of Lessor, as security for Lessee's obligations under this Agreement, a duly perfected first and senior security interest in the Sublease and any sublease for which Lessor's consent is required pursuant to Section 8.6 and any sublease to anyone other than Lessee or its Subsidiaries with a term of more than six months; and to that end shall execute and deliver an assignment and security agreement, UCC financing statements and such other

documentation executed by Lessee as Lessor or its counsel may reasonably request, the same to be furnished concurrently with the execution and delivery of each such sublease, but nothing in any such assignment and security agreement (other than as may be provided in such assignment) or other documentation in connection therewith shall limit or restrict the right of Lessee or any sublessee to vary, modify or cancel an assigned sublease so long as no Event of Default exists under this Agreement.

D. Termination.

(1) Payout election to terminate

(a) For purposes of this subparagraph (1) "Payout" shall mean the payment of a dividend (other than a stock dividend) or other distribution on account of any shares of capital stock, whether now or hereafter outstanding, or the purchase, redemption or retirement of any such shares.

(b) Lessee shall give Lessor written notice at least 30 days prior to the payment of a Payout by Lessee which notice shall be given at least five days after a Rental Payment Date and not less than ten days before a Rental Payment Date if (x) such Payout when aggregated with other Payouts made during the Lessee's fiscal year exceeds \$1,500,000 and (y) after giving effect to such Payout, Lessee's Consolidated Tangible Net Worth would be less than \$10,000,000. Such notice shall constitute an election by Lessee to terminate this Agreement effective with the Rental Payment date next falling due.

(c) If Lessor within 10 days after receipt of Lessee's notice gives Lessee written notice that Lessor elects to have this Agreement continue, Lessee's election shall be deemed a nullity and this Agreement shall continue in full force and effect.

(d) If Lessor within 10 days after receipt of Lessee's notice does not give the notice provided in subparagraph (c) Lessee shall pay to Lessor on the Rental Payment Date on which this Agreement is to terminate (as specified in paragraph (b)) an amount equal to the sum of the respective Termination Values (as defined in Section 8.1) of the Units together with all Basic Rent due on such Rental Payment Date. The obligation of Lessee to pay Basic Rent for the Units shall cease when such Termination Value and Basic Rent payment has been made and this Agreement shall terminate effective as of such payment. Upon request of Lessee, Lessor will transfer to Lessee by bill of sale good and marketable title to the Units, free of all claims, liens and encumbrances but without any other warranty.

(2) Voluntary termination by Lessee

In the event that the Equipment shall have become obsolete or surplus to Lessee's requirements, Lessee shall have the right at its option at any time and from time to time, upon not less than 60 days' prior written notice to Lessor designating the termination date, which shall be a Rental Payment Date, to terminate this Lease, provided that no Event of Default shall have occurred and be continuing. During the period from

the giving of such notice until such termination date, Lessee, as agent for Lessor, shall use its best efforts to obtain bids for the purchase of the Equipment. Lessee shall certify to Lessor in writing the amount of each bid received by Lessee and the name and address of the party (who shall be a principal only and who shall not be Lessee or any corporation affiliated with Lessee) submitting each bid. Unless Lessee shall notify Lessor at least 30 days prior to such termination date that Lessee considers the highest bid certified by Lessee or otherwise obtained by Lessor to be below the fair market value, Lessor, on such termination date, shall sell the Equipment against receipt in Pittsburgh clearing house funds of the full amount of the purchase price, to the bidder submitting such highest bid and shall transfer to such purchaser good and marketable title, free of all claims, liens and encumbrances to the Equipment but without any other warranty. The total sale price realized at such sale shall be retained by Lessor and, in addition, on the date of sale, Lessee shall pay to Lessor as liquidated damages for loss of bargain and not as a penalty the amount, if any, by which the Stipulated Loss Value of the Equipment as set forth in the Schedule exceeds such sale price, after deducting any reasonable expenses incurred by Lessor in selling the Equipment and transferring title thereto, whereupon the obligation of Lessee to pay Rent hereunder due and payable after, but not on or before, the date of such sale shall terminate. If no sale shall be made pursuant to such notice of termination, this Lease shall continue in full force and effect with respect to the Equipment.