

10510-B  
RECORDATION NO. 10510  
Filed 1425  
JUN 18 1979 - 10 00 AM  
INTERSTATE COMMERCE COMMISSION

UNITED STATES TRUST COMPANY  
OF NEW YORK  
Corporate Trust and Agency  
Division  
130 John Street  
New York, New York 10038

10510  
RECORDATION NO. 10510  
Filed 1425  
JUN 18 1979 - 10 00 AM  
INTERSTATE COMMERCE COMMISSION

June 15, 1979  
9-169A010

Interstate Commerce Commission  
12th and Constitution Avenue  
Washington, D.C.

10510-A  
RECORDATION NO. 10510  
Filed 1425  
JUN 18 1979  
JUN 18 1979 - 10 00 AM  
100<sup>00</sup>

Gentlemen: INTERSTATE COMMERCE COMMISSION

Enclosed herewith are three copies of the following documents:

1. Trust Indenture dated as of November 1, 1977 between First Security Bank of Utah, N.A., and Thomas C. Cuthbert, as Owner Trustees, and the United States Trust Company of New York, as Trustee.
2. Supplemental Indenture dated as of March 15, 1979 between First Security Bank of Utah, N.A., and Thomas C. Cuthbert, as Owner Trustees, and United States Trust Company of New York, as Indenture Trustee.
3. Equipment Lease dated as of March 15, 1979 between First Security Bank of Utah, N.A., and Thomas C. Cuthbert, as Lessor, and Early & Daniel Industries, Inc., as Lessee.

The enclosed pertain to twenty-five 4,750 cubic foot covered hopper cars manufactured by Richmond Tank Car Company (the "Richmond Cars") and one hundred 4,750 cubic foot covered hopper cars manufactured by Pullman Incorporated (the "Pullman Cars"). The AAR mechanical designation of each is "EO". The serial numbers of each of the cars are-as follows:

The Richmond Cars carry numbers TWGX 2125-2149, inclusive and the Pullman Cars carry serial numbers TWGX, 2150-2249, inclusive.

I am an Assistant Vice President of United States Trust Company of New York, a party to the transaction described above, having knowledge of the matters set forth in this letter. Each original document should be returned to the undersigned at the address appearing at the top of this letter.

Very truly yours,  
UNITED STATES TRUST COMPANY  
OF NEW YORK

By George Boswell  
George Boswell

Its Assistant Vice President

RECEIVED  
JUN 18 9 58 AM '79  
I.C.C.  
FEE OPERATION BR.

*Vertical handwritten signature: Daniel Cuthbert*

10510-13

RECORDATION NO. .... Filed 1425

JUN 18 1979 - 10 00 AM

INTERSTATE COMMERCE COMMISSION

THE RIGHTS OF LESSOR UNDER THIS LEASE AND IN ALL EQUIPMENT COVERED HEREBY  
HAVE BEEN ASSIGNED AND ARE SUBJECT TO A SECURITY INTEREST. THIS LEASE  
HAS BEEN EXECUTED IN COUNTERPARTS. SEE SECTION 23(e) CONCERNING THE  
RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS.

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EQUIPMENT LEASE

Dated as of March 15, 1979

between

FIRST SECURITY BANK OF UTAH, N.A. and THOMAS C. CUTHBERT,  
not in their individual capacities, except as  
expressly provided herein, but solely as trustees  
under a Master Trust Agreement dated as of November 1, 1977  
between them and Itel Corporation, Leasing Division,  
as Lessor

and

EARLY & DANIEL INDUSTRIES, INC.,  
as Lessee

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## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of the date set forth in Exhibit C (the Lease) between the entity named as Lessor on the signature page hereof (Lessor) and the entity named as Lessee on the signature page hereof (Lessee).

### SECTION 1. Definitions.

The following terms have the following meanings in this Lease and include the singular as well as the plural:

Authorization and Direction means that certain document dated as of March 15, 1979 among Itel Corporation, Equipment Finance Division, Beneficiary and Lessor, pursuant to which the Trust is created.

Balance Sheet Date, Basic Lease Rate Factor, Basic Rent Dates, Daily Lease Rate Factor, Depreciable Life, Depreciation Method, Equipment Marking, Expiration Date, Final Delivery Date, First Basic Rent Date, First Delivery Date, First Termination Date, Interim Rent Date, Last Basic Rent Date, Late Payment Rate, Maximum Financing Cost, and Rent Commencement Date have the meanings, with respect to each Group of Equipment, set forth in Exhibit C.

Beneficiary means NEMLC Leasing Associates No. 1, a Massachusetts Limited Partnership, whose general Partner is NEMLC Leasing Corporation, a Massachusetts corporation, and whose Limited Partner is New England Merchants National Bank, a national banking organization.

Casualty Value and Termination Value have the meanings, with respect to each Group of Equipment, set forth in Exhibit D.

Certificate of Acceptance means a certificate substantially in the form of Exhibit B.

Closing Date for any Leased Item means the date, if any, set forth in Exhibit C or such other date as Lessee shall establish upon seven business days notice to Lessor.

Code means the Internal Revenue Code of 1954, as amended.

Default means any event which, after notice or the lapse of time, or both, would be an Event of Default as defined in Section 18 hereof.

Indenture shall mean the Trust Indenture dated as of November 1, 1977 between the Trustee, as defined herein, and the Lessor.

Items mean the equipment described in Exhibit A.

Group of Equipment has the meaning set forth in the Certificate of Acceptance for each Leased Item.



Lender means The Paul Revere Variable Annuity Insurance Company, The Paul Revere Protective Life Insurance Company, and The Paul Revere Life Insurance Company.

Lessor's Cost means the amount set forth in Schedule 1 to the Certificate of Acceptance for each Leased Item.

Master Trust Agreement means that certain Agreement, dated as of November 1, 1977, between ITEL Corporation, Leasing Division, and Lessor.

Participation Agreement shall mean the Participation Agreement dated as of March 15, 1979 among the Lessor, the Trustee, the Lender and the Beneficiary which relates to Early & Daniel Industries, Inc. (1979) Equipment Trust No. 1.

Person means any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

Purchase Documents mean, for any Leased Item, such documents, in form and substance satisfactory to Lessor and Lender, as they shall consider necessary to convey to Lessor title to such Leased Item.

Supplement shall mean Supplemental Indenture No. 88 to the Indenture between the Lessor and the Trustee.

Trust means the trust created by the Authorization and Direction, and Trust Estate means all the estate, right, title and interest in such Trust.

Trustee means United States Trust Company of New York, located at 130 John Street, New York, New York 10038.

## SECTION 2. Lease of Equipment.

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, such Items as Lessee, as Lessor's agent for such purpose, accepts pursuant to this Section 2 (Leased Equipment, and individually an Item of Leased Equipment or Leased Item). Lessor appoints Lessee as its agent to accept delivery of each Leased Item from the seller thereof on or after the First Delivery Date, but on or before the Final Delivery Date. Upon delivery of each Leased Item, Lessee will inspect the same and (a) if it is in good order, accept such Item and, on its own behalf and as Lessor's agent, execute and deliver a Certificate of Acceptance for it, or (b) if Lessee, acting in good faith, finds that such Item is not in good order, return the same to the seller thereof. Each Item will be subject to this Lease from the date it becomes a Leased Item hereunder.

## SECTION 3. Conditions Precedent to Obligations.

(a) Lessee shall not accept and Lessor will not purchase any Item for lease hereunder (i) if the amount that would constitute Lessor's Cost

of such Item would, when added to Lessor's Cost of all Leased Equipment, cause the Maximum Financing Cost to be exceeded; (ii) after the Final Delivery Date; (iii) before a duly executed Bill of Sale from the seller of the Leased Equipment to the Lessor, in the form attached hereto as Exhibit E, has been received in escrow by the Lessor; or (iv) if any of Lessee's representations or warranties made in Section 6 hereof shall be incorrect on the day on which payment for any Leased Item is to be made to the seller thereof.

(b) Subject to the foregoing, Lessor will purchase each Leased Item and lease the same to Lessee provided that the closing documentation specified in section 6(j) hereof has been furnished to Lessor, and, provided further, that, on a mutually agreeable date before the first Item becomes a Leased Item (the Document Closing Date) the following conditions have been satisfied:

(1) Lessor and Lender have received (i) an opinion of Lessee's counsel, addressed and satisfactory to them and dated the Document Closing Date, to the effect set forth in paragraphs (a) through (d) of Section 6; (ii) an Incumbency Certificate of Lessee, duly executed by an officer of Lessee; (iii) a Certificate of Good Standing under the laws of the state of Lessee's incorporation; and (iv) evidence that Lessee has procured and is maintaining insurance of the type and amount required by Section 14 of this Lease.

(2) Lessor has received the Original of this Lease and appropriate evidence of Lessee's authorization of this Lease and of all documents incidental hereto.

(3) There shall have been duly filed and recorded with each proper governmental authority including, without limitation, the Interstate Commerce Commission and the provincial government of each Canadian Province in which the Leased Items may be used, this Lease and all other documents necessary to create, preserve, protect and maintain the Lessor's title to the Leased Equipment and the Lender's security interest therein, with evidence of such filing and recordation being furnished to Lessor. Such filing and recordation will be performed by Lender, all at Lessee's expense.

(4) Lessor and Lender have received such other documents as either of them has reasonably requested.

#### SECTION 4. Term and Rent.

(a) Unless otherwise terminated pursuant hereto, the term of this Lease with respect to each Leased Item commences on the date such Item becomes a Leased Item, and ends, with respect to each Group of Equipment, on the Expiration Date of such Group, unless earlier terminated pursuant hereto.

(b) Lessee agrees to pay Lessor as basic rent (Basic Rent) for each Leased Item: (1) on the Interim Rent Date, an amount equal to the

Daily Lease Rate Factor multiplied by Lessor's Cost of such Item, for each day elapsed from and including the Rent Commencement Date for such Item to but excluding the Interim Rent Date; and (2) on the First Basic Rent Date and each Basic Rent Date thereafter, to and including the Last Basic Rent Date, an amount equal to the Basic Lease Rate Factor multiplied by Lessor's Cost of such Item.

(c) Lessee also agrees to pay (Supplemental Rent and, together with all Basic Rent, Rent): (1) on demand, any amount (other than Basic Rent, Casualty Value or Termination Value) which Lessee agrees to pay hereunder to Lessor or others; (2) on the date provided herein, any amount payable hereunder as Casualty Value or Termination Value; and (3) on demand, to the extent permitted by applicable law, interest (based upon a 360-day year of actual days elapsed) at the Late Payment Rate on any payment owing hereunder not paid when due for any period during which the same is overdue.

(d) All payments of Rent must be made, in immediately available funds for receipt no later than 1:00 p.m. local time at the location where payment is to be received, on the date payable hereunder, to such address or to such Person as Lessor may direct.

(e) The Lessee shall not be responsible for the application by Lessor of payments made by Lessee pursuant to this Section 4.

#### SECTION 5. Net Lease.

This Lease is a net lease, and Lessee agrees that (a) its obligation to pay all Rent, and the rights of Lessor in and to such Rent, are absolute and unconditional and are not subject to any abatement, reduction, set-off, defense, counterclaim or recoupment for any reason whatsoever, any present or future law, rule or regulation to the contrary notwithstanding, and (b), except as otherwise expressly provided herein, this Lease will not terminate nor will Lessee's obligations be affected for any reason whatsoever, it being the intention of the parties that all Rent is, and will continue to be, payable in all events.

#### SECTION 6. Lessee's Representations, Warranties and Agreements.

Lessee represents, warrants and agrees as follows:

(a) Due Organization. Lessee is duly organized and validly existing in good standing under the laws of its jurisdiction of incorporation, is duly qualified to do business in each jurisdiction where such qualification is necessary, and has the power and authority to hold property under lease and to enter into and perform its obligations under this Lease, and any other document to which Lessee is a party and which Lessee delivers at the Document Closing or any subsequent closing as provided herein.

(b) Due Authorization; Enforceability; No Violation. This Lease and any documents required by this Lease to be delivered by Lessee to which Lessee is a party have been or will be upon their execution and delivery, duly authorized, executed and delivered by Lessee and, assuming due authorization, execution and delivery by the Lessor, are legal, valid and binding obligations of the Lessee, enforceable in accordance with their terms. The execution and delivery of this Lease and any related documents to which it is a party are not, and the performance by it of its obligations under each will not be, inconsistent with Lessee's charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it, and do not and will not constitute a default under any agreement to which it is a party or by which it is bound.

(c) Governmental Approval. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of or by, any Person is required in connection with Lessee's execution, delivery and performance of this Lease or any related documents to which it is a party, or if the same is required, it has been duly given or obtained.

(d) Litigation. Except as set forth in Exhibit C, there are no actions, suits or proceedings of any nature pending or, to its knowledge, threatened which, if adversely determined, will have a material adverse effect on Lessee's performance hereunder.

(e) Condition of the Equipment. Each Item is and will remain personal property. If any Leased Item is identified in a Certificate of Acceptance as new, it will not have been used by Lessee prior to the acceptance date set forth in such Certificate.

(f) Financial Statements. The balance sheet, dated the Balance Sheet Date, and the related statements of income and changes in financial position of Lessee, or the consolidated group of companies of which Lessee is a member (the Consolidated Group), previously delivered to Lessor and Lender, have been prepared in accordance with generally accepted accounting principles and fairly present the financial position of Lessee or the Consolidated Group on and as of the date thereof and the results of its operations for the periods covered thereby. Since the Balance Sheet Date, there has been no material adverse change in such financial condition or results of operations, except as disclosed in Lessee's Form 10-Q, for the 12-week and 36-week periods ending February 10, 1979.

(g) No Existing Defaults. On the date of Lessee's execution of this Lease, it is not in default under any agreement pursuant to which Lessee has incurred an obligation for the payment of money.

(h) Payment of Taxes: Lessee has filed all required income, franchise and property tax returns in all jurisdictions in which such returns were required to be filed and has paid all taxes shown to be due and

payable on such returns and all other taxes and assessments which are payable by it, to the extent the same have become due and payable and before they have become delinquent, or is duly contesting the same.

(i) Access to or Furnishing of Information. Lessee agrees that, if so requested, Lessor and the Trustee will have access to such information as the Lessor or the Trustee may reasonably require concerning the financial condition of the Lessee or the Consolidated Group. Lessee will also furnish Lessor and the Trustee:

(1) within 120 days after the close of each fiscal year, an audited balance sheet and statement of changes in financial position of Lessee or the Consolidated Group as of the end of such fiscal year, together with an audited statement of income for such fiscal year and a certificate of an authorized officer of Lessee stating that he has reviewed Lessee's activities and that, to the best of his knowledge, there exists no Default or Event of Default.

(2) within 60 days after the close of each of the first three quarters of each fiscal year, an unaudited balance sheet and statement of changes in the financial position of Lessee or the Consolidated Group as of the end of such quarter, together with an unaudited statement of income for such quarter.

(3) simultaneously with the distribution thereof to its shareholders, or those of its parent, copies of any materials distributed by Lessee, or such parent, to such shareholders.

(j) Closing Documentation. On the applicable Closing Date for each Leased Item, Lessee will provide Lessor and Lender with (1) a duly executed Certificate of Acceptance for such Item, (2) a certificate of Lessee dated such Date, to the effect that Lessee's representations and warranties hereunder are true and correct in all material respects on such Date with the same effect as though made on such Date, no Default or Event of Default has occurred and is continuing, and all requirements of Lessee herein to be satisfied on such Date have been satisfied; (3) an opinion of Lessee's counsel dated such Date in form and substance as specified in Section 3(b)(1) (provided, however, that for any Closing Date after the Document Closing Date, such opinion need state only that following reasonable inquiry, counsel has no knowledge of any fact that affects the accuracy of the opinion previously rendered as of the Document Closing Date); and (4) such other documents as either of them has reasonably requested.

#### SECTION 7. Return of Equipment.

Upon expiration or termination of this Lease with respect to a Group of Equipment, Lessee, at its risk and expense, will return the Leased Equipment in such Group to Lessor by delivering possession thereof to Lessor upon any storage tracks owned or leased by Lessee within 700 miles of Pittsburgh, Pennsylvania or, if Lessee owns or leases no such

storage tracks, at any site as Lessor may reasonably designate within 700 miles of Pittsburgh, Pennsylvania, and permit Lessor to store the Leased Equipment on such tracks for a period not exceeding two months and transport the same upon disposition of the Leased Equipment at any time within such two-month period, to the closest connecting carrier for shipment, all as directed by Lessor, such movement and storage of such Leased Equipment to be at the expense and risk of Lessee. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Leased Item, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Leased Item returned to Lessor pursuant to this Section 7 shall (i) be in the same operating order, repair and condition as when originally delivered to Lessee, reasonable wear and tear from proper use only excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. During any such storage period Lessee shall (i) maintain the Leased Equipment in such manner as Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances, and (ii) continue to carry and maintain insurance as required pursuant to Section 14 hereof. The assembling, delivery, storage and transporting of the Leased Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Leased Equipment. Upon redelivery, the Leased Equipment will be free of all liens or other encumbrances of any nature whatsoever (Liens), except Liens (a) granted by Lessor or Beneficiary, or (b) resulting from claims against Lessor or Beneficiary not caused by Lessee's acts or omissions or related to Lessor's legal, or Beneficiary's beneficial, ownership of the Leased Equipment (Liens described in (a) and (b) above being Lessor's Liens). If Lessee has installed any Improvement, or affixed any insignia or advertising, on any Leased Item, Lessee will, prior to redelivery and at its own expense, remove such Improvement, insignia or advertising, if so requested by Lessor.

**SECTION 8. Representations, Warranties and Agreements of Lessor.**

(a) Lessor warrants that during the term hereof, if no Event of Default or Event of Loss has occurred, Lessee's use of the Leased Equipment will not be interrupted by Lessor or anyone claiming solely through Lessor or Beneficiary; provided, however, that breach of the foregoing shall not be deemed to modify Lessee's obligations under Section 5, which are absolute and unconditional. LESSEE AGREES TO LEASE EACH LEASED ITEM IN THE CONDITION IN WHICH IT IS ACCEPTED. LESSEE ACKNOWLEDGES THAT LESSOR MAKES NO OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR

IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE LEASED EQUIPMENT, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF ITS MATERIAL OR WORKMANSHIP OR ITS CONFORMITY TO THE SPECIFICATIONS OF ANY PURCHASE ORDERS RELATING THERETO. LESSOR SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT).

(b) This Lease has been duly authorized, executed and delivered by the Lessor. Assuming due authorization, execution and delivery by the Lessee, it is under the laws of the State of Utah and Federal banking law a legal, valid and binding obligation of the Lessor, enforceable in accordance with its terms.

(c) Thomas C. Cuthbert is the duly authorized and legally constituted Individual Trustee, and has the rights, powers and duties conferred upon the Individual Trustee by the Master Trust Agreement.

(d) The Lessor has the legal right and power to own the Leased Equipment and to act as Lessor as provided herein.

(e) The Lessor will receive and maintain whatever title is conveyed to it by the seller of the Leased Equipment pursuant to the Bill of Sale attached hereto as Exhibit E, free of liens other than (i) liens granted by Lessor to the Trustee in connection with the financing contemplated by this Lease and (ii) liens arising out of or resulting from acts or omissions of the Lessee or any Default or Event of Default hereunder.

(f) The representations and warranties set forth in the first sentence of paragraph (b) and in paragraphs (c), (d) and (e) of this Section 8 are made in the individual capacities that comprise the Lessor.

#### SECTION 9. Liens.

Lessee will not permit any Liens to exist on or with respect to the Leased Equipment (and Lessee will promptly, at its own expense, discharge any such Lien), except (a) the rights of the parties hereunder, including the possessory rights of any sublessee permitted under Section 16 hereof, (b) Lessor's Liens, (c) Liens for taxes not yet due or being diligently contested in good faith and by appropriate proceedings, if the nonpayment of such tax or the contest of such payment does not, in the reasonable opinion of Lessor, Beneficiary, Lender and the Trustee, adversely affect or present the risk of adverse affect to the rights and interests of such parties, (d) inchoate mechanics' or similar Liens arising in the ordinary course of Lessee's business and not delinquent, and (e) Liens created by any judgment against Lessee which is being properly contested or appealed, provided Lessee shall have agreed to indemnify Lessor, Beneficiary, Lender and the Trustee, in a manner satisfactory to such parties for any liability or loss which they may incur as a result of such contest or appeal.

SECTION 10. Taxes.

Lessee agrees to pay, and to indemnify and hold Lessor and Beneficiary harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon (Impositions), howsoever imposed, whether levied or imposed upon Lessor, Beneficiary, Lessee, Lender, the Trustee, the Leased Equipment or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any Canadian or Provincial government or governmental subdivision or by any other foreign country or subdivision thereof, upon or with respect to: any Leased Item or part thereof; or the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage, transfer of title or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Master Trust Agreement, the Trust created by the Authorization and Direction, the Participation Agreement, the Indenture or Supplement thereto, or any document referred to herein or therein or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the administration of the Trust and the Trust Estate or the action or inaction of any indemnified person hereunder; (excluding, however United States (including state and local), taxes on, or measured solely by, the net income of Lessor) unless, and only to the extent that, the Lessee shall have given to the Lessor written notice of any such Imposition, which notice shall state that such imposition is being contested by the Lessee in good faith with due diligence and by appropriate proceedings and counsel for the Lessor, Beneficiary, the Trustee and Lender shall have determined that the nonpayment of any such tax or the contest of any such payment in such proceedings does not, in the opinion of such counsel, adversely affect the title, property or rights of such parties. If a claim is made for any Imposition, the party receiving notice thereof shall promptly notify the other. If any report or return must be made with respect to the foregoing obligations, Lessee will either (after notice to Lessor) make the same in a manner showing Lessor's ownership of the Leased Equipment, and send a copy thereof to Lessor, or notify Lessor of such requirement and make such report or return in a manner satisfactory to Lessor. Lessor agrees to cooperate fully with Lessee in the preparation of any such reports or returns. Notwithstanding the foregoing, no party to be indemnified hereunder shall be directly or indirectly indemnified by Lessee in regard to Impositions attributable to (a) the consequences of the breach by such indemnified party of any representation, warranty or covenant by such indemnified party in this Lease, the Master Trust Agreement, the Trust created by the Authorization and Direction, the Participation Agreement, the Indenture or Supplement thereto, unless such breach is caused by, arises out of, or results from any act or omission of Lessee, or breach of any representation, warranty or covenant by Lessee or (b) Defaults or Events of Default under the Master Trust Agreement, the Participation Agreement, the Indenture or Supplement thereto which are not caused by, arise out of or result from a Default or Event of Default under this Lease (except that this clause (b) shall not restrict the rights of the Lender or the Trustee to indemnification hereunder), or (c) acts which constitute the willful misconduct or gross negligence of such indemnified party.

SECTION 11. Use of Leased Equipment.

(a) The possession, use and maintenance of each Leased Item is at Lessee's sole risk and expense. Lessee agrees to use and maintain each Leased Item in compliance with all laws and governmental rules or regulations applicable thereto (including, when applicable, the rules of the Interstate Commerce Commission, the Department of Transportation and the then current Interchange Rules, or supplements thereto, of the Association of American Railroads and all applicable Canadian or provincial rules or regulations).

(b) Lessee must maintain the Leased Equipment so that it will at all times be suitable for transporting grain, and in as good condition as when delivered hereunder, ordinary wear and tear from proper use only excepted. All replacement parts installed in maintaining a Leased Item will be considered accessions and title thereto will, upon installation, automatically vest in Lessor. Lessee may make improvements or additions (Improvements) if the same are separately identifiable, will not impair the usage of the Leased Equipment as described in the first sentence of this paragraph (b), and are readily removable without causing irreparable material damage, or are required to be made pursuant to the second sentence of paragraph (a) of this Section 11. Any other improvement or addition may be made only with Lessor's prior consent and will become an accession as aforesaid.

(c) Lessee agrees, at its expense, to (1) maintain the reporting marks and car numbers specified in the Certificate of Acceptance for each Leased Item, (2) maintain the Equipment Marking on each Leased Item and such other markings as may be required by law or otherwise deemed necessary by Lessor to protect Lessor's rights hereunder and the rights of Lessor or Lender in such Item, and (3) take such action as Lessor may reasonably require to protect its interests and those of Lender in such Item and Lessor's right to remove the same.

(d) Lessee may use any Leased Item in one or more Provinces of Canada for a period not to exceed 4 months in any calendar year (and 2 months in 1979), provided such Leased Item is at all times duly registered and recorded with the appropriate Canadian or provincial authority, and provided further that Lessee may not use or permit the use of any Leased Item predominantly outside the United States within the meaning of Section 48(a) of the Code. Other than as expressly permitted by this paragraph, Lessee will not use or permit the use of any Leased Item outside of the 48 contiguous United States.

(e) So long as no Default or Event of Default has occurred and is continuing, Lessee shall during the term of this Lease (as may be extended pursuant to Section 20C hereof), be authorized to enforce, at its own expense, any and all warranties and patent indemnities provided by the manufacturer of any Leased Item, and Lessor hereby acknowledges Lessee's authority to exercise such rights.

SECTION 12. Inspection.

Lessor has the right, but not the duty, to inspect the Leased Equipment. At Lessor's request, Lessee will confirm the location of each Leased Item and will, at any reasonable time, permit the Lessor to visit and inspect the Leased Equipment, and make Lessee's records pertaining thereto available for inspection where such Leased Equipment or records may be located at the time.

SECTION 13. Loss or Destruction.

(a) If any Leased Item is damaged, lost, stolen or permanently rendered unfit for use for any reason whatsoever (Loss), or title thereto or use thereof is requisitioned, confiscated, commandeered or otherwise taken by any Person (Requisition of Use), or any Leased Item is returned to the manufacturer or seller thereof under the patent indemnity or warranty provisions of the Purchase Documents (Return to Manufacturer), Lessee will promptly report such fact to Lessor; provided, however, that Lessee's duty to report to Lessor any damage to any Leased Item shall apply only to damage of which Lessee has knowledge, and which may materially impair the value or operability of such Leased Item.

(b) If, following a Loss, such Item cannot be repaired or replaced, or if there is a Return to Manufacturer, other than for modification, repair or replacement, or a Requisition of Use (any such Loss, Return or Requisition being an Event of Loss, and the date thereof being the date the same actually occurred), Lessee will notify Lessor of such Event of Loss within 15 days after Lessee has knowledge thereof. On the Basic Rent Date next following the Event of Loss, Lessee will pay Lessor the Casualty Value of such Item, determined as of such Date. If such Item can be repaired or replaced, Lessee will continue to pay Basic Rent for such Item and will (1) cause such Item to be repaired or replaced within 120 days (the Repair Period) after the Event of Loss (provided, however, that if no repair facility is available to Lessee and capable of performing the necessary repairs within 120 days, the Repair Period will be extended, but in no event beyond one year from the Event of Loss), and (2) in the event of replacement, take such action as may be required to perfect the title of Lessor and the security interests of Lender in the Item; provided, however, that if such Item is not repaired or replaced within the Repair Period Lessee will, on the Basic Rent Date next following the end of the Repair Period, pay Lessor the Casualty Value of such Item, determined as of such Date. Upon payment of the Casualty Value, Lessee's obligation to pay further Basic Rent for such Item will cease, but the obligation to pay Supplemental Rent, if any, for such Item, and to pay Rent for all other Leased Equipment, will remain unchanged. If no more Basic Rent for any Leased Item is then payable, the Casualty Value shall be paid within 30 days following, as appropriate, the Event of Loss or the Repair Period. Lessee's obligation to pay Rent during the Repair Period will remain in full force and effect. Upon replacement, any replacement item (a Replacement Item) will be considered a Leased Item for all purposes of this Lease, and Lessee's obligation to pay Basic Rent for such Replacement Item

will be computed on the basis of Lessor's Cost of the Leased Item replaced. Any Replacement Item must be in as good operating condition as, and have a value and utility at least equal to, the Leased Item replaced, and no Leased Item may be modified upon Return to Manufacturer unless, after modification, such Item has a value and utility at least equal to the value and utility of the Item before modification, assuming such Item was in the condition required to be maintained by the by the terms hereof. Except in the case of loss, theft, destruction or Return to Manufacturer, Lessor will be entitled to (i) recover possession of the Item, unless possession must be delivered to an insurance carrier (other than Lessee) in order to settle an insurance claim arising out of the Event of Loss, and (ii) receive any salvage value in excess of the amount paid to Lessor by such insurance carrier. Lessee shall be entitled to retain any insurance proceeds paid by reason of an Event of Loss up to the amount of the Casualty Value paid by Lessee and, should the insurance proceeds be so designated, for Lessee's actual expenses arising from such Event of Loss. Any excess proceeds shall be for Lessor's account.

(c) Following payment of the Casualty Value of a Leased Item, and any Supplemental Rent owing with respect to such Leased Item, Lessee will dispose of such Item, as Lessor's agent, for the highest offer received therefor, on an as is, where is basis to a buyer not affiliated with Lessee, without recourse to, or representation or warranty, express or implied by Lessor (except that the Leased Item is free of all Lessor's Liens). As to each Item so disposed of, Lessee may, after paying Lessor the sums specified in paragraph (b) hereof, retain all amounts of such price up to the Casualty Value thereof and Lessee's reasonable costs of disposition, plus damages incurred by Lessee as a result of such Event of Loss, and the excess, if any, will be remitted to Lessor. In the event of a Return to Manufacturer, Lessee will receive all amounts payable to Lessor by the manufacturer or seller of such Item, up to the amount, if any, of the Casualty Value paid by Lessee hereunder, and any excess will be paid to Lessor. With respect to a Requisition of Use, Lessee will receive all amounts paid by any Person, up to the Casualty Value paid by Lessee hereunder plus damages actually incurred by Lessee by reason of such Requisition of Use, and any excess will be paid over to Lessor.

(d) Should an Event of Loss be caused by the act or omission of any Person other than the parties to this Lease, then, provided that (a) Lessee has paid the Casualty Value of the Leased Item(s) as to which such Event of Loss has occurred, plus any Supplemental Rent then owing with respect to such Leased Item(s) and (b) no Default or Event of Default has occurred and is continuing, Lessee shall be subrogated to Lessor's rights against such Person arising out of such Event of Loss.

(e) Except as provided in this Section, Lessee will not be released from its obligations under this Lease if any Leased Item is damaged or there is an Event of Loss relating thereto.

#### SECTION 14. Insurance.

(a) At its own expense, Lessee will maintain insurance for each Leased Item, in amounts and against risks comparable to those it insures

on any other rail cars leased or owned by it, but in no event in amounts less than those set forth under Insurance in Exhibit C. All insurance policies must (a) name Lessor, the Trustee, Lender, Beneficiary and Lessee as assureds and loss payees, as their interests may appear, and (b) provide for at least 30 days' prior notice to Lessor, the Trustee, Lender and Beneficiary in the event of cancellation, expiration, material modification or reduction in coverage. In addition, to the extent Lessee's policy of casualty insurance on the Leased Equipment contains any warranty by the Lessee, such policy shall contain a Breach of Warranty clause applicable thereto. Lessee will furnish appropriate evidence of such insurance on the Document Closing Date and on each anniversary thereof.

(b) If, no less than 5 years from the commencement of the term of this Lease, Lessee has a tangible net worth in excess of \$20,000,000, Lessee may modify the insurance coverage set forth in paragraph (a) of this Section 14 to subject such coverage to deductibles consistent with prudent industry standards. As used herein, tangible net worth 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, brandnames, patents, deferred charges and other intangible assets and any write-up of the value of any assets after February 10, 1979; all determined on a consolidated basis for Lessee and its subsidiaries in accordance with generally accepted accounting principles.

#### SECTION 15. Indemnification.

Lessee agrees to assume liability for, and to indemnify Lessor, Beneficiary, Lender and the Trustee from and against, all liabilities, losses, damages (including any attorney's fees recovered by claimant), penalties, claims (including, without limitation, claims involving strict liability in tort), actions, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any nature whatsoever (Claims) which may be imposed on, incurred by or asserted against Lessor, Beneficiary, Lender or the Trustee, in any way relating to this Lease, the Master Trust Agreement, the Trust created by the Authorization and Direction, the Participation Agreement, the Indenture or Supplement thereto, or any document referred to herein or therein or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Leased Equipment or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust and the Trust Estate or the action or inaction of any indemnified person hereunder; provided, however, that no party to be indemnified hereunder shall be directly or indirectly indemni-

fied by Lessee in regard to the foregoing with respect to (a) the consequences of the breach by such indemnified party of any representation, warranty or covenant by such indemnified party in this Lease, the Master Trust Agreement, the Trust created by the Authorization and Direction, the Participation Agreement, the Indenture or Supplement thereto, unless such breach is caused by, arises out of, or results from any act or omission of Lessee, or breach of any representation, warranty or covenant by Lessee or (b) Defaults or Events of Default under the Master Trust Agreement, the Participation Agreement, the Indenture or Supplement thereto which are not caused by, arise out of or result from a Default or Event of Default under this Lease (except that this clause (b) shall not restrict the rights of the Lender or the Trustee to indemnification hereunder), or (c) charges or compensation for the administration of any Trust or Trust Estate created under such documents except as provided for in Sections 19 and 19A hereof (and except that this clause (c) shall not restrict the rights of the Lender or the Trustee to indemnification hereunder relating to or arising out of the administration of the Trust Estate); and provided, further, that Lessee shall not indemnify Lessor for (a) Claims in respect of any Leased Item arising from events occurring after expiration of the storage periods and delivery of the Leased Equipment to a connecting carrier, all as provided in Sections 7 and 19A hereof, as may be applicable, or (b) Claims resulting from acts which constitute the willful misconduct or gross negligence of such indemnified party. To the extent Lessor 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. Lessor, the Lender or the Trustee will give prompt written notice to Lessee of any Claim, and Lessee will promptly, at his own expense, assume the defense of any claim, suit or action as to which Lessee has an obligation to indemnify under this Section 15, retaining counsel reasonably acceptable to Lessor and the Trustee.

SECTION 16. Sublease.

(a) Upon prior written notice to Lessor and the Trustee, and provided no Default or Event of Default shall have occurred and be continuing, Lessee may sublease any Leased Item: (i) to any corporation validly existing under the laws of one of the United States, for a sublease term not to exceed 12 months, inclusive of extensions; (ii) to Tidewater Grain Company of Philadelphia, Pennsylvania, or to any other subsidiary of Lessee (being any corporation validly existing under the laws of the United States, more than 50% of whose voting stock is owned by Lessee or a subsidiary of Lessee) for a sublease term not to exceed the term of this Lease; or (iii) solely in connection with the use permitted by, and subject to the provisions and restrictions of, Section 11(d) hereof, to any corporation validly existing under the laws of Canada, or to the Canadian Wheat Board. If, during the term of a sublease under the provisions of clause (ii) of this paragraph (a), the sublessee ceases to be a subsidiary of Lessee as therein defined, such sublease shall terminate no more than 12 months after such sublessee ceases to be a subsidiary of Lessee. No other sublease may be entered into by Lessee without the prior written consent of Lessor, which consent shall not unreasonably be withheld.

(b) The Lessee shall promptly notify the Lessor of the identity of any sublessee and of any sublet Leased Equipment and shall execute such

documents as may reasonably be requested by Lessor to create, perfect, protect or maintain the Lessor's title to and the Trustee's security interest in such Leased Equipment. No sublease shall be permitted hereunder unless (a) the rights of the sublessee thereunder are expressly subject and subordinate to the rights of the Lessor and any security assignee of the Lessor, and (b) subject to the provisions of Section 11(d) hereof, the Items of Leased Equipment to be subleased shall be located only in the continental United States. No sublease or other relinquishment of the possession of any Item of Leased Equipment shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder, which shall at all times remain primary and direct. The Lessee agrees to pay any costs (including reasonable legal fees and expenses) of the Lessor or the Lender incurred in connection with the sublease or relinquishment of possession of any Item of Leased Equipment, except for any such cost incurred at the time an Item becomes an Item of Leased Equipment under this Lease. Lessee expressly disclaims any right to assign its leasehold interest, or any part thereof, to any Person, but nothing herein contained shall be construed to limit the right of Lessee to sublease the Leased Equipment as herein provided.

SECTION 17. Tax Indemnification

(a) This Lease has been entered into on the basis that the Beneficiary, as the beneficial owner of each Leased Item, 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 under the Code for accelerated depreciation based upon the Depreciable Life, Depreciation Method and Net Salvage Value set forth in Exhibit C, and a deduction under the Code, to the extent permitted therein, for any interest paid or accrued by Beneficiary using Beneficiary's method of tax accounting, for any indebtedness incurred by Beneficiary in financing each Leased Item (the deductions specified in this paragraph (a) being collectively referred to as the Tax Benefits). It is understood and agreed, however, that (as between Lessor and Lessee) any claim for investment tax credit relative to the Leased Equipment under Section 46 of the Code shall be allowed to Lessee. With respect to such investment tax credit, Lessor agrees to execute and maintain in its files election statements in the forms attached hereto as Exhibits F-1 and F-2; provided, however, that Lessor makes no representation or warranty, express or implied, as to the availability of any investment tax credit or the eligibility of any Leased Item for such credit.

(b) Lessee acknowledges that the anticipated availability to Beneficiary of the Tax Benefits is fundamental to the economics of this Lease. Lessee further acknowledges that certain factors affecting the Tax Benefits are within the knowledge and control of Lessee.

(c) If, by reason of (i) any act or omission of Lessee (including, but not limited to, the occurrence of any Default or Event of Default hereunder and the sale or other disposition of any Leased Item after any such Event of Default) or (ii) the inaccuracy of any statement in any

letter or document furnished to the Lessor or the Beneficiary by the Lessee, or (iii) the breach by Lessee of any of its representations, warranties or covenants contained in this Lease, the Beneficiary shall lose, shall not have or shall lose the right to claim, or there shall be disallowed, recaptured, reduced or disqualified any or all of the Tax Benefits, or if for foreign or federal, state or local income tax purposes any item of income, loss or deduction with respect to any Leased Item is treated as derived from, or allocable to, sources outside the United States for a period of more than two months in calendar year 1979 or of more than four months in any subsequent calendar year during the term of this Lease with respect to any such Leased Item (whether or not any foreign income taxes imposed as a result thereof may be credited against the federal, state or local income taxes of the Beneficiary), or if there shall be included in the Beneficiary's gross income for federal, state or local income taxes any amount on account of any addition, modification or improvement made by the Lessee to any Leased Item (any such loss, disallowance, recapture, treatment or inclusion being referred to hereinafter as a Tax Loss) then, after written notice to Lessee by the Beneficiary that a Tax Loss has occurred, the Basic Lease Rate Factor applicable to each such Leased Item shall, on and after the next succeeding Basic Rent Date, be increased by such amount as will, after deduction of all taxes, fees and other charges, however imposed, required to be paid by the Beneficiary as a result of its receipt of such amount, cause the Beneficiary's after-tax economic and accounting return over the term of this Lease (taking into account any future tax benefits Beneficiary reasonably anticipates it will derive as a result of any Tax Loss) to equal the after-tax economic and accounting return that would have been realized by the Beneficiary had it not suffered such Tax Loss with respect to such Leased Item. In the event a Tax Loss occurs after the Last Basic Rent Date, Lessee will, within 30 days of notice from the Beneficiary, pay Beneficiary an amount which will, after deduction of all taxes, fees and other charges, however imposed, required to be paid by the Beneficiary as result of its receipt of such amount, cause the Beneficiary's after-tax economic and accounting return to equal that return that would have been realized by the Beneficiary (taking into account any future tax benefits Beneficiary reasonably anticipates it will derive as a result of any Tax Loss) had it not suffered such Tax Loss. Lessee shall in addition forthwith pay the Beneficiary an amount which, after deduction of all taxes, fees and other charges, however imposed, in respect of the receipt of such amount, shall be equal to the amount of any interest or penalty assessed against the Beneficiary attributable to such Tax Loss.

(d) If any Tax Loss with respect to any Leased Item results from the inclusion, during the term of this Lease as to such Leased Item, in the Beneficiary's gross income for federal, state or local income taxes of any amount on account of any addition, modification or improvement made by the Lessee to any Leased Item, then, in computing the Beneficiary's after-tax economic and accounting return for purposes of determining the amount of the indemnity payable to the Beneficiary under paragraph (c) of this Section 17 with respect to such income inclusion, the Beneficiary will take into effect any tax benefits (other than any applicable investment tax

credit, as to which (and subject to the disclaimer contained in the last sentence of paragraph (a) hereof) Lessor agrees to execute and maintain in its files one or more election statements substantially similar to those attached hereto as Exhibits F-1 and F-2) that the Beneficiary, in its sole and absolute discretion, anticipates it will derive in respect of any such addition, modification or improvement.

(e) Notwithstanding the provisions of paragraph (c) of this Section 17 and without increasing the obligations of Lessee thereunder, Lessee shall not be required to make any payment on account of any Tax Loss due solely to one or more of the following events: (i) the failure of the Beneficiary to properly claim the Tax Benefits in the tax returns filed by the Beneficiary, or (ii) the sale or other disposition of the Leased Equipment by Lessor, other than any sale or other disposition arising out of or resulting from a Voluntary Termination pursuant to Section 20A, or an Event of Loss, or a Default or Event of Default, or mandated by law.

(f) In the event the Internal Revenue Service proposes adjustments to the Beneficiary's tax returns which, if successful, could result in a Tax Loss for which Lessee would be required to indemnify the Beneficiary pursuant to this Section 17, the Beneficiary hereby agrees to notify Lessee of such proposed adjustments, promptly upon being advised of such proposed adjustments by the Internal Revenue Service, 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 the Beneficiary in the Beneficiary's sole discretion to be reasonable, proper and consistent with the overall tax interests of the Beneficiary 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 the Beneficiary in a manner satisfactory to the Beneficiary for any liability or loss which the Beneficiary may incur as a result of contesting such adjustments and shall have agreed to pay the Beneficiary on demand all costs and expenses which the Beneficiary 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 the Beneficiary shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, Lessee shall pay to the Beneficiary interest in an amount equal to the Late 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 Basic Rent Date (or on the first day of each calendar month if the last Basic Rent Date has passed). Upon receipt by the Beneficiary 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 the Beneficiary, any interest on such refund paid to the Beneficiary by the United States Government shall be paid to Lessee forthwith upon receipt by the Beneficiary.

(h) In the event that the Basic Lease Rate Factor is increased pursuant to the provisions of paragraph (c) of this Section 17, the Casualty Values and Termination Values set forth in Exhibit D to this Lease shall be adjusted accordingly.

(i) This Section 17 shall become and be effective and in full force and effect from the date of this Lease (even though no Leased 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 this Lease or the Term of any Leased Item insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed at the time of or prior to such expiration or termination.

SECTION 18. Events of Default.

The term Event of Default, wherever used in this Lease, means any of the following events (whatever the reason for such Event of Default and whether it is voluntary, involuntary, effected by operation of law, or pursuant to any judgment, decree, order, rule or regulation of any court or administrative or governmental body):

(a) Lessee fails to make any payment of Rent within 10 days after the same shall become due.

(b) Lessee fails to perform any of its other agreements hereunder or under any agreement, document or certificate delivered in connection herewith or therewith, and such failure continues for 30 days after notice thereof to Lessee; provided, however, that with respect only to Lessee's undertakings properly to maintain the Leased Equipment pursuant to Section 11(a) and (b) hereof, no Event of Default will exist if Lessee is diligently attempting to comply with such provisions, and such failure to maintain the Leased Equipment continues no more than one year following notice of non-compliance.

(c) Any representation or warranty made by Lessee in this Lease or any agreement, document or certificate delivered in connection herewith or therewith proves to have been incorrect in any material respect when the same was made.

(d) A petition in bankruptcy or for reorganization or arrangement is filed by Lessee; or Lessee makes an assignment for the benefit of creditors or consents to the appointment of a trustee or a receiver, or a trustee or a receiver is appointed for Lessee, for any Leased Item or for a substantial part of Lessee's property without its consent and such trustee or receiver is not dismissed within a period of 60 days; or bankruptcy, reorganization or insolvency proceedings are instituted against Lessee and are not dismissed within a period of 60 days; or Lessee admits in writing its inability to discharge its financial obligations as and when the same fall due.

(e) Lessee fails to maintain insurance coverage pursuant to the provisions of Section 14 hereof.

SECTION 19. Remedies.

(a) Upon the occurrence of an Event of Default and so long as the same is continuing, Lessor may, at its option, declare this Lease to be in default by notice to Lessee, and thereafter exercise one or more of the following remedies, as Lessor in its sole discretion lawfully elects:

(1) Proceed by court action, either at law or in equity, to enforce performance by Lessee of this Lease or to recover damages for the breach thereof.

(2) By notice terminate this Lease, whereupon all rights of Lessee in the Leased Equipment will absolutely cease but Lessee will remain liable as hereinafter provided; and thereupon Lessee, if so requested by Lessor, will forthwith deliver possession of the Leased Equipment to Lessor pursuant to Section 19A hereof, or Lessor, at its option, may enter the premises where the Leased Equipment is located and take immediate possession of and remove the same by summary proceedings or otherwise. Lessee will, without further demand, forthwith pay Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which Lessor has declared this Lease to be in default, together with any accrued obligations under Sections 10, 15 or 17, and all costs, fees and expenses, including reasonable legal fees and disbursements, incurred by Lessor, Beneficiary, Lender and the Trustee as a result of the default and the exercise of their remedies with respect thereto, plus, as damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value of the Leased Equipment then subject to this Lease, computed as of such Basic Rent Date. In the event of a sale of any of the Leased Equipment following its return to Lessor pursuant to Section 19A hereof, or its repossession by Lessor, the proceeds of such sale will be applied by Lessor (A) first, to pay Lessor an amount equal to any unpaid Rent due and payable, plus the aforesaid accrued obligations, costs and expenses, plus the Casualty Value, to the extent not previously paid by Lessee, and (B) second, to reimburse Lessee for the Casualty Value all to the extent previously paid as liquidated damages. Any surplus remaining thereafter will be retained by Lessor. To the extent Lessee has not paid Lessor, Beneficiary, Lender and the Trustee the amounts specified in this clause (2), Lessee will forthwith pay such amounts to the appropriate party plus interest at the Late Payment Rate on such amounts, computed from the date the Casualty Value is payable hereunder until such amounts are paid.

(b) Lessee is liable for all costs and expenses, including reasonable legal fees and disbursements, incurred by reason of any Event of Default or the exercise of Lessor's remedies with respect thereto.

(c) No remedy referred to above is intended to be exclusive, but each is cumulative and in addition to any other remedy otherwise available at law or in equity. No express or implied waiver of any Default or Event of Default will in any way be, or be construed to be, a waiver of any subsequent Default or Event of Default. Lessor's failure or delay in

exercising its rights hereunder will not constitute a waiver of such rights and any single or partial exercise of any rights will not exhaust or constitute a waiver of any other right.

SECTION 19A. Return of Leased Equipment on Default.

If this Lease shall terminate pursuant to Section 19(a) (2) hereof Lessee shall forthwith deliver possession of the Leased Equipment to Lessor on storage tracks designated by Lessor within 500 miles of New York, New York. Each Leased Item so delivered shall be in the same operating order, repair and condition as when originally delivered to Lessee, reasonable wear and tear by proper use only excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. If Lessee has installed any improvement, or affixed any insignia or advertising, on any Leased Item, Lessee will, prior to such return, and at its own expense remove such improvement, insignia or advertising if so requested by Lessor (unless such improvement, insignia or advertising was required to be made pursuant to the second sentence of Section 11(a) hereof). For the purpose of delivering possession of any Leased Item or Items as above required, Lessee shall at its own cost, expense and risk:

- (a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Leased Item or Items have been interchanged or which may have possession thereof to return such Leased Item or Items) and at the usual speed, place such Items upon such storage tracks as Lessor reasonably may designate;
- (b) permit Lessor to store such Items on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Items have been sold, leased or otherwise disposed of by Lessor; and
- (c) cause the same to be transported to any reasonable place as directed by Lessor.

The assembling, delivery, storage, insurance and transporting of the Leased Equipment as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Items. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Leased Equipment in good order and repair, continue to maintain insurance in the limits and in the manner described in Section 11. The assembling, delivery, storage, insurance and transporting of the Leased Equipment as hereinbefore provided shall be at the expense and risk

of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Items. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Leased Equipment in good order and repair, continue to maintain insurance in the limits and in the manner described in Section 14 hereof, and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Leased Item, to inspect the same. All amounts earned in respect of the Items after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Leased Item is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, Lessee shall in addition, pay to Lessor for each day thereafter an amount equal to the amount, if any, by which that percentage of Lessor's Cost of such Leased Item for each such day, obtained by dividing the Basic Lease Rate Factor for such Leased Item for each payment of Basic Rent for such Leased Item by 30, exceeds the actual earnings received by Lessor on such Leased Item for each such day. Payment shall be made on the 15th day of each month for all moneys due in the preceding sentence.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 19A, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority; at any time while Lessee is obligated to deliver possession of any Leased Item to Lessor, to demand and take possession of such Leased Item in the name and on behalf of the Lessee from whomsoever shall be in possession of such Leased Item at the Item.

SECTION 20. Special Terms and Modifications.

Any special terms or modifications set forth in Exhibit C are applicable to this Lease as though fully set forth herein.

SECTION 21. Notices.

All communications, consents and notices provided for herein must be in writing and are effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed to the appropriate party hereto at its address set forth on the signature page hereof, with copies to (1) ITEL Corporation, Equipment Finance Division, at One Embarcadero Center, San Francisco, California 94111, Attention: Contract Administration, (2) Lender, 1275 King Street, Greenwich, Connecticut 06830, and (3) Beneficiary, c/o NEMLC Leasing Corporation, General Partner, 1 Washington Mall, Boston, Massachusetts 02108, Attention: Vice President-Administration.

SECTION 22. Successors, Assigns and Indemnified Parties.

This Lease is binding upon, will inure to the benefit of and be enforceable by, (1) Lessor, its successors, assigns, agents, servants

and personal representatives, and, where the context so requires, Lender, its successors, assigns, agents, servants and personal representatives, (2) Lessee, its successors and, to the extent permitted hereby, assigns and (3) the Beneficiary and its successors, assigns, agents, servants and personal representatives. With respect to the provisions of Sections 10 and 15, Lender and Trustee and their respective successors, assigns, agents, servants and personal representatives, shall, in addition to the Beneficiary, each be indemnified thereunder and, with respect to clause (b) of the proviso to Section 15, the willful misconduct or gross negligence of Lessor or any such Person will not affect the rights of any other Person indemnified thereunder. As provided therein, with respect to the provisions of Section 17, the Beneficiary will be indemnified thereunder. Whenever the term "Beneficiary" is used in this Lease it shall also include each of said NEMLC Leasing Corporation and New England Merchants National Bank (individually a Partner and collectively the Partners). The term "Beneficiary" shall also, for the purposes of Sections 10, 15 and 17 of this Lease, include any member of an affiliated group of which each Partner, or either Partner, or any successor to, or assignee or transferee of, NEMLC Leasing Associates No. 1 is, are, or may become, a member if consolidated, joint or combined returns are filed for such affiliated group for federal or state or local income tax purposes. The Beneficiary and each Partner, Lender and the Trustee may enforce their respective rights pursuant to Lessee's indemnification and other obligations provided in Sections 10, 15 and 17 of this Lease directly, either collectively or in each of their own names, or such indemnification and other obligations may be enforced directly by the Lessor for the benefit of and on behalf of the Beneficiary.

SECTION 23. Amendments and Miscellaneous.

(a) The terms of this Lease may not be waived, modified, amended, supplemented or terminated in any manner whatsoever except by an instrument signed by Lessor (with the prior written consent of the Beneficiary), Lessee and the Trustee.

(b) All agreements, indemnities, representations and warranties contained herein, or in any agreement or document delivered in connection herewith or therewith will survive the execution, delivery, expiration or other termination of this Lease, and the Lease term of all Leased Items.

(c) Any provision hereof which may be determined by competent authority to be unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability will not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee waives any provision of law which renders any provision hereof unenforceable in any respect.

(d) This Lease constitutes an agreement of lease and nothing herein will be construed as conveying to Lessee any right, title or interest in or to the Leased Equipment, except as lessee only.

(e) This Lease may be executed in counterparts. The single executed original of this Lease marked Original is the Original and all other copies shall be marked and be Duplicates. No security interest in this Lease may be created through the transfer or possession of any copy other than the Original, but any Duplicate shall be valid evidence of this Lease for any other purpose.

(f) This Lease will be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

(g) Although this Lease is dated as of the date first above written, the actual dates of execution by the parties hereto are respectively the dates set forth under their signatures, and this Lease will be effective on the latest of such dates.

[This space intentionally left blank.]

(h) This Lease constitutes the entire agreement of the parties hereto and supercedes all prior understandings and agreements of such parties.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized.

FIRST SECURITY BANK OF UTAH, N.A.  
and THOMAS C. CUTHBERT, not in  
their individual capacities, except  
as expressly provided herein, but  
solely as trustees under a Master  
Trust Agreement dated as of  
November 1, 1977 between them and  
Intel Corporation, Leasing Division,  
as Lessor

EARLY & DANIEL INDUSTRIES, INC.,  
as Lessee

By FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity, except  
as expressly provided herein, but  
solely as Corporate Trustee

By [Signature]  
Title TRUST ADMINISTRATOR  
Date 6-11-79

Corporate Seal

[Signature]  
By THOMAS C. CUTHBERT, not in his  
individual capacity, except as  
expressly provided herein, but  
solely as Individual Trustee

Date 6-11-79

By [Signature]  
Title Chairman & C.E.O.  
Date June 14, 1979

Address: 902 W. Washington Ave  
Indianapolis, IN 46204

Attention: CHAIRMAN

Corporate Seal

[Signature]

STATE OF UTAH )  
 )  
COUNTY OF SALT LAKE)

On this the 11 day of June, 1979 before me personally appeared WILLIAM C. MCGREGOR, to me personally know, who, being by me duly sworn, says that he is an Authorized Officer of First Security Bank of Utah, National Association, that one of the seals affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Verna L. Hill Coia  
Notary Public

(Notarial Seal)  
My Commission Expires November 15, 1981  
My Commission expires

STATE OF New York  
 )  
COUNTY OF New York  
 )

On this the 14<sup>th</sup> day of June, 1979 before me personally appeared Samuel H. Harrell, to me personally know, who, being by me duly sworn, says that he is ~~an~~ the Chairman of the Board of Early & Daniel Industries, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Natalie Thaler  
Notary Public

(Notarial Seal)  
My Commission expires

**NATALIE THALER**  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 41-9310545  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires March 30, 1980

EXHIBIT A  
to Equipment Lease

DESCRIPTION OF EQUIPMENT

<u>Group of Equipment(a)</u>	<u>Quantity</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>	<u>Reporting Marks and Car Numbers</u>	<u>Lessor's Cost Per Item</u>
1	25	4,750 cubic foot Covered Hopper Cars (Richmond Tank Car Company)	LO	TWGX 2125-2149	\$38,575
1	100	4,750 cubic foot Covered Hopper Cars (Pullman Incorporated)	LO	TWGX 2150-2249	\$38,625

---

(a) The terms Group and Group of Equipment refer to the designation described above.



EXHIBIT B  
to Equipment Lease

CERTIFICATE OF ACCEPTANCE NO.

under

EQUIPMENT LEASE dated as of March 15, 1979 (the Lease) between First Security Bank of Utah, N.A. and Thomas C. Cuthbert, solely as Owner Trustees, as lessor (Lessor), and Early & Daniel Industries, Inc., as lessee (Lessee).

1. Items of Equipment

Lessee hereby certifies that the Items set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost of each such Item), constituting Leased Equipment of the Group of Equipment indicated below, have been delivered to the location indicated below, inspected by Lessee, found to be in good order, accepted as Leased Equipment under the Lease, all on the Date of Acceptance set forth below:

Group of Equipment:

Location of Items:

Date of Acceptance:

2. Representations by Lessee

Lessee hereby represents and warrants to Lessor and Lender that on the Date of Acceptance set forth above:

(1) The representations and warranties of Lessee set forth in the Lease are true and correct in all material respects as though made on and as of such Date of Acceptance.

(2) Lessee has satisfied or complied with all requirements set forth in the Lease (including the delivery of any certificate required therein) to be satisfied or complied with on or prior to such Date of Acceptance.



EXHIBIT B  
to Equipment Lease

(3) No Default or Event of Default under the Lease has occurred and is continuing on such Date of Acceptance.

(4) Lessee has obtained, and there are in full force and effect, such insurance policies with respect to each Leased Item accepted pursuant hereto as are required to be obtained under the terms of the Lease.

EARLY & DANIEL INDUSTRIES, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

A handwritten signature in dark ink, appearing to be 'JMS', is located in the bottom right corner of the page.

EXHIBIT B  
to Equipment Lease

SCHEDULE 1 TO  
CERTIFICATE OF ACCEPTANCE NO. \_\_\_\_\_

Description of Items and Lessor's Cost:

<u>Quantity</u>	<u>Manufacturer or Seller</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>	<u>Reporting Marks and Car Numbers</u>	<u>Lessor's Cost</u>
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Total \$           



EXHIBIT C  
to Equipment Lease

(20-year Basic Lease Term)

Date of Lease: As of March 15, 1979

Rent Commencement Date: The Closing Date with respect to each Leased Item.

Basic Rent Dates: The first day of each month (arrears)

First Delivery Date: The Document Closing Date

Final Delivery Date: June 30, 1979

Interim Rent Date: July 1, 1979

First Basic Rent Date: August 1, 1979

First Termination Date: July 1, 1986

Last Basic Rent Date: July 1, 1999

Expiration Date: July 1, 1999 (unless extended pursuant to Section 20C, in which case the Expiration Date shall be the expiration date of the extension period.)

Basic Lease Rate Factor: Payments 1-100: .8864%  
Payments 101-240: .8757%

Daily Lease Rate Factor: .0306%

Late Payment Rate: A rate per annum equal to 12%, but in no event at a rate per annum greater than that permitted by applicable law.

Maximum Financing Cost: \$4,900,000

Closing Dates: Such dates as the parties to the Participation Agreement and the Lessee may provide by mutual agreement.



Balance Sheet Date:

May 31, 1978

Insurance:

Casualty Insurance:

An amount not less than the Casualty Value of each Leased Item, subject to a deductible of \$1,000 per Leased Item.

Public Liability Insurance:

\$5,000,000 per occurrence.

Equipment Marking:

Each Leased Item at all times to be plainly, distinctly, and conspicuously marked on each side, in letters not less than one inch in height, as follows:

"Leased Equipment Subject to a Security Agreement filed under the Revised Interstate Commerce Act, 49 U.S.C. Section 11303"

Depreciable Life:

A 12 year depreciable life pursuant to section 167(m) of the Code for an asset described in Asset Guideline Class No. 00.25.

Depreciation Method:

Double-declining balance method switching to the sum of the years digits method when most beneficial to Lessor and without the prior consent of the Commissioner of Internal Revenue utilizing the modified half-year convention pursuant to Reg. Section 1.167(a) 11(c)(2) and taking into account the Net Salvage Value of the Leased Equipment.

Net Salvage Value:

An amount equal to 0% of Lessor's Cost of the Leased Equipment, which amount reflects the adjustment permitted by section 167(m) of the Code.

Lessee Litigation:

None

Section 20 Special Terms and  
Modifications:

SECTION 20A. Voluntary Termination.

(a) Provided no Default or Event of Default has occurred and is continuing, and in the event the Leased Equipment has become economically obsolete or surplus to Lessee's requirements, Lessee has the right, at any time on or after the First Termination Date and from time to time thereafter, on at least 180 days' prior notice to Lessor (the Notice), to terminate this Lease with respect to no fewer than 25 Leased Items subject to this Lease. Any such termination will be effective on the Basic Rent Date next following the expiration of the 180-day notice period (the Termination Date). During the period from the receipt of the Notice through the Termination Date, Lessor may, and Lessee must, as agent for Lessor, use their best efforts to obtain bids for the purchase of the Items. Lessee will certify to Lessor the amount of each bid received by Lessee and the name and address of the party submitting such bid, and that each bid is from a party other than Lessee or a Person affiliated with Lessee. Lessee may utilize agents to fulfill its obligations under this Section. On the Termination Date, Lessor will sell by Bill of Sale such Leased Items, without recourse or warranty (except that such Leased Items are free of all Lessor's Liens) for cash to the party submitting the highest bid and will transfer to the purchaser Lessor's right, title and interest in the Items. Thereupon Lessee will deliver the Items to Lessor at the location set forth in Exhibit C and in the condition required by Section 7. Lessor will certify to Lessee (i) the amount of the sale price received, (ii) the expenses, if any, incurred by Lessor in connection with the sale, and (iii) that the sale price represents the highest bid received by Lessor for the purchase of such Items. The amount realized at such sale will be retained by Lessor, and, in addition, on the Termination Date, Lessee will pay Lessor the Basic Rent payment payable on such Date, plus any Supplemental Rent then owing in respect of such Items, plus the amount, if any, by which (A) the Termination Value of such Items, computed as of the Termination Date, exceeds (B) the proceeds of the sale less all expenses incurred by Lessor in selling such Items, including, without limitation, reasonable commissions, transportation, installation, reconditioning and refurbishment charges. Upon payment of all amounts required to be paid by Lessee pursuant to this paragraph (a), the obligation of the Lessee for Basic Rent with respect to such items due and payable after, but not on or before, the Termination Date shall cease. If no sale takes place, this Lease shall continue in full force and effect with respect to the Leased Items as if no Notice had been given.

(b) Notwithstanding the foregoing, upon receipt of all bona fide bids for the purchase of such Items, Lessor may, with the prior consent of Lender, elect not to sell the Items to the highest bidder, in which case Lessee will deliver such Items to Lessor at the location set forth in Exhibit C and in the condition required by Section 7. In addition, on the Termination Date Lessee will pay Lessor the Basic Rent due on

SECTION 20A. Voluntary Termination. (Cont'd)

such Termination Date, plus any Supplemental Rent then owing in respect of such Items, plus the amount, if any, by which (A) the Termination Value of such Items computed as of the Termination Date, exceeds (B) the highest bid received less the amount of any expenses incurred by Lessor in connection therewith. Upon redelivery and the payment of such amounts, if any, the obligation of Lessee to pay all Basic Rent accruing hereunder with respect to such Items due and payable after, but not on or before, the Termination Date will cease.

(c) Notwithstanding the foregoing, provided that no Default or Event of Default has occurred and is continuing, Lessee may elect to rescind its notice of termination by notifying Lessor of such election not less than 30 days prior to the Termination Date, in which case this Lease will not terminate as set forth in this Section, but will continue in full force and effect as though no Notice had been given.

SECTION 20B. Right of First Refusal.

(a) Provided no Default or Event of Default has occurred and is continuing, Lessor agrees that during the term of this Lease and for 30 days thereafter (including any extension) for any Leased Item, Lessor will not sell such Item unless it has given Lessee at least 15 business days' prior notice, specifying the sale price and terms of the sale. During said period Lessee will have the right to purchase such Leased Item at the same price and on the same terms as specified in the notice.

(b) If Lessee exercises its rights as set forth above, upon payment of the purchase price in good funds Lessor will, at Lessee's request, execute and deliver to Lessee, or Lessee's assignee or nominee, a bill of sale for such Leased Item (without recourse to, or representation or warranty, express or implied, by Lessor, except that the Leased Item is free of all Lessor's Liens) and any other documents as may be required to release the Item from this Lease and to transfer title thereto to Lessee or, such assignee or nominee, in such form as may reasonably be requested by Lessee, all at Lessee's expense.

(c) In the event Lessee does not exercise its rights as set forth in paragraph (a) above, and Lessor does not consummate the sale of the Leased Items to the prospective buyer, or if the terms of the proposed sale to such buyer are thereafter modified, Lessee's right of first refusal with respect to such Items shall continue as if no earlier notice had been given to Lessee by Lessor.

(d) Lessee's right of first refusal as provided herein shall extend to any and all contemplated sales of Leased Items by Lessor pursuant to paragraph (a) of this Section 20B, and may be exercised on more than one occasion.

SECTION 20C. Lease Extension.

(a) Provided that this Lease has not been terminated and provided that no Default has occurred and is continuing hereunder, the Lessee shall have the option to extend the term of this Lease with respect to any Group of Equipment at the Expiration Date with respect to such Group of Equipment for consecutive Lease Extension Periods of 5 and 2 years, respectively, for a rental equal to the Fair Market Rental Value thereof, determined as of such Expiration Date, and as of the Expiration Date of the first Lease Extension Period, as applicable.

(b) Not less than 210 days prior to the Expiration Date with respect to such Group, or the Expiration Date of the first Lease Extension Period, as the case may be, the Lessee may indicate, by written notice to the Lessor, the Lessee's interest in exercising the Lessee's lease extension option described above, which notice shall set forth the Lessee's

SECTION 20C. Lease Extension. (Cont'd)

estimate of the Fair Market Rental Value of such Group of Equipment as of such Expiration Date. If, on or before a date 180 days prior to such Expiration Date, or the Expiration Date of the first Lease Extension Period, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of such Group of Equipment, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal, as defined in paragraph (c) of this Section 20C. After a determination of the Fair Market Rental Value of such Group of Equipment has been made in accordance with the procedure described above, the Lessee may exercise its option to extend the term of this Lease with respect to such Group of Equipment for the Fair Market Rental Value thereof by delivering written notice of such exercise to the Lessor not less than the later of 30 days following the determination of Fair Market Rental Value, or 120 days prior to the Expiration Date with respect to such Group (or the Expiration Date of the first Lease Extension Period, as the case may be).

(c) Appraisal shall mean a procedure whereby two independent appraisers, neither of whom shall be a manufacturer of the Item of Leased Equipment for which appraisal is required, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the amount in question. The Lessor or the Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraisers or within 15 days after receipt from the other party of a written notice appointing that party's appraiser. If within 15 days after appointment of the two appraisers, as described above, the two appraisers are unable to agree upon the amount in question, a third independent appraiser, who shall not be a manufacturer of such Item of Leased Equipment, shall be chosen within five days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The decision of the third appraiser so appointed and chosen shall be given within 10 days after the selection of such third appraiser and, upon receipt of such decision, the amount in question shall be definitively determined by averaging the respective decisions of all three appraisers and, thereafter such amount shall be binding and conclusive on the Lessor and the Lessee. The Lessor and the Lessee shall pay the fees and expenses of the respective appraisers appointed by them. The fees and expenses of the third appraiser, if any, shall either (A) be added to the purchase price of the Items of Leased Equipment appraised, if such Items should be purchased by the Lessee, or (B) if such Items should not be purchased by the Lessee, be paid by the Lessee as Supplemental Rent hereunder.

EXHIBIT D  
to Equipment Lease

The Casualty Value and Termination Value, if any, of each Leased Item are the percentages of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Basic Rent</u> <u>Payment Number</u>	<u>Casualty Value</u> <u>(a)</u>	<u>Termination Value</u> <u>(a)</u> %
7/1979	112.824239	
8/1979	111.325780	
9/1979	111.589698	
10/1979	111.854799	
11/1979	112.121078	
12/1979	112.388542	
1/1980	112.657202	
2/1980	112.927057	
3/1980	113.085291	
4/1980	113.226604	
5/1980	113.368187	
6/1980	111.571682	
7/1980	111.665415	
8/1980	111.759255	
9/1980	111.840178	
10/1980	111.921108	
11/1980	112.002040	
12/1980	112.069957	
1/1981	112.137778	
2/1981	112.205503	
3/1981	112.260109	
4/1981	112.303854	
5/1981	112.347323	
6/1981	112.379846	
7/1981	112.412002	
8/1981	112.443789	
9/1981	112.464538	
10/1981	112.484832	
11/1981	112.504660	
12/1981	112.513355	
1/1982	112.521497	



The Casualty Value and Termination Value, if any, of each Leased Item are the percentages of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Basic Rent Payment Number</u>	<u>Casualty Value (a)</u>	<u>Termination Value (a) %</u>
2/1982	112.529075	
3/1982	112.525428	
4/1982	112.512077	
5/1982	112.498002	
6/1982	112.474140	
7/1982	112.449472	
8/1982	112.423988	
9/1982	112.388629	
10/1982	112.352371	
11/1982	112.315203	
12/1982	112.268066	
1/1983	112.219937	
2/1983	112.170803	
3/1983	112.111603	
4/1983	112.043908	
5/1983	111.975055	
6/1983	111.897631	
7/1983	111.818972	
8/1983	111.739072	
9/1983	111.650508	
10/1983	111.560622	
11/1983	111.469397	
12/1983	111.369422	
1/1984	111.268028	
2/1984	111.165208	
3/1984	111.053537	
4/1984	110.934631	
5/1984	110.814158	
6/1984	110.686382	
7/1984	-110.556966	
8/1984	110.425900	
9/1984	110.287440	



The Casualty Value and Termination Value, if any, of each Leased Item are the percentages of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Basic Rent Payment Number</u>	<u>Casualty Value (a)</u>	<u>Termination Value (a)</u> %
10/1984	110.147252	
11/1984	110.005325	
12/1984	109.855912	
1/1985	109.704686	
2/1985	109.551625	
3/1985	109.390991	
4/1985	109.224446	
5/1985	109.053949	
6/1985	108.881478	
7/1985	108.704985	
8/1985	108.526454	
9/1985	108.341865	
10/1985	108.155169	
11/1985	107.966348	
12/1985	107.771382	
1/1986	107.574222	
2/1986	107.374848	
3/1986	107.169242	
4/1986	106.959123	
5/1986	106.746689	
6/1986	106.529685	
7/1986	106.310302	99.729158
8/1986	106.088517	99.408508
9/1986	105.862086	99.081583
10/1986	105.594176	98.751186
11/1986	105.286431	98.417286
12/1986	104.972391	98.076993
1/1987	104.654967	97.733116
2/1987	104.334126	97.385618
3/1987	104.006879	97.031610
4/1987	103.675606	96.673531
5/1987	103.340797	96.311706
6/1987	103.001894	95.945739

The Casualty Value and Termination Value, if any, of each Leased Item are the percentages of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Basic Rent Payment Number</u>	<u>Casualty Value (a)</u>	<u>Termination Value (a)</u>
7/1987	102.659385	95.679488
8/1987	102.313240	95.315872
9/1987	101.962899	94.948058
10/1987	101.608849	94.576471
11/1987	101.251060	94.201101
12/1987	100.888968	93.821384
1/1988	100.523064	93.437812
2/1988	100.153314	93.050347
3/1988	99.779152	92.658427
4/1988	99.403054	92.264529
5/1988	99.023016	91.866644
6/1988	98.640985	91.466723
7/1988	98.254953	91.062735
8/1988	97.864885	90.654705
9/1988	97.472730	90.244525
10/1988	97.076479	89.830203
11/1988	96.676093	89.411702
12/1988	96.273523	88.990971
1/1989	95.866756	88.565999
2/1989	95.455759	88.136749
3/1989	95.042475	87.705168
4/1989	94.629447	87.273795
5/1989	94.212113	86.838074
6/1989	93.794990	86.402514
7/1989	93.373515	85.962559
8/1989	92.944245	85.514761
9/1989	92.513776	85.065718
10/1989	92.077544	84.610867
11/1989	91.635504	84.150157
12/1989	91.192158	83.688100
1/1990	90.742944	83.220126
2/1990	90.287814	82.746189
3/1990	89.831272	82.270774

The Casualty Value and Termination Value, if any, of each Leased Item are the percentages of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Basic Rent Payment Number</u>	<u>Casualty Value (a)</u>	<u>Termination Value (a)</u> %
4/1990	89.375604	81.796224
5/1990	88.913958	81.315630
6/1990	88.453138	80.835814
7/1990	87.986295	80.349727
8/1990	87.513380	79.857920
9/1990	87.041194	79.366596
10/1990	86.562890	78.867107
11/1990	86.078416	78.365398
12/1990	85.594574	77.862274
1/1991	85.104511	77.352681
2/1991	84.608183	76.837172
3/1991	84.112383	76.321945
4/1991	83.619393	75.809479
5/1991	83.120099	75.290660
6/1991	82.623578	74.774566
7/1991	82.120717	74.252082
8/1991	81.611462	73.723157
9/1991	81.104894	73.196866
10/1991	80.591896	72.664098
11/1991	80.072414	72.124798
12/1991	79.555530	71.588045
1/1992	79.032126	71.044720
2/1992	78.502145	70.494773
3/1992	77.974668	69.947277
4/1992	77.451184	69.403723
5/1992	76.921106	68.853527
6/1992	76.394988	68.307241
7/1992	75.862248	67.754282
8/1992	75.322833	67.194597
9/1992	74.787294	66.633737
10/1992	74.245049	66.076119
11/1992	73.696036	65.506684
12/1992	73.150814	64.940990

The Casualty Value and Termination Value, if any, of each Leased Item are the percentages of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Basic Rent Payment Number</u>	<u>Casualty Value (a)</u>	<u>Termination Value (a)</u> %
1/1993	72.598796	64.368446
2/1993	72.039923	63.788998
3/1993	71.484748	63.213195
4/1993	70.933969	62.641738
5/1993	70.376328	62.063367
6/1993	69.823054	61.489309
7/1993	69.262886	60.908307
8/1993	68.695768	60.320302
9/1993	68.132927	59.736524
10/1993	67.563105	59.145710
11/1993	66.986241	58.547802
12/1993	66.413563	57.954030
1/1994	65.833813	57.353130
2/1994	65.246930	56.745045
3/1994	64.664139	56.141000
4/1994	64.086197	55.541751
5/1994	63.501116	54.935307
6/1994	62.920848	54.333625
7/1994	62.333408	53.724718
8/1994	61.736658	53.106445
9/1994	61.143824	52.492035
10/1994	60.542915	51.869497
11/1994	59.933870	51.238769
12/1994	59.328639	50.611800
1/1995	58.715229	49.976598
2/1995	58.093376	49.333099
3/1995	57.475633	48.693253
4/1995	56.862011	48.057677
5/1995	56.240132	47.413786
6/1995	55.622539	46.774126
7/1995	54.996645	46.126113
8/1995	54.362387	45.469678
9/1995	53.732313	44.817371

The Casualty Value and Termination Value, if any, of each Leased Item are the percentages of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Basic Rent Payment Number</u>	<u>Casualty Value (a)</u>	<u>Termination Value (a)</u> %
10/1995	53.093828	44.156600
11/1995	52.446875	43.497304
12/1995	51.803993	42.822023
1/1996	51.152596	42.148170
2/1996	50.492617	41.465680
3/1996	49.836597	40.787094
4/1996	49.185178	40.113050
5/1996	48.525156	39.430349
6/1996	47.869692	38.752148
7/1996	47.205587	38.065250
8/1996	46.532774	37.369584
9/1996	45.864405	36.678307
10/1996	45.187286	35.978223
11/1996	44.501344	35.269258
12/1996	43.819734	34.564569
1/1997	43.129260	33.850957
2/1997	42.429848	33.128348
3/1997	41.734650	32.409897
4/1997	41.044380	31.696316
5/1997	40.345156	30.973721
6/1997	39.650816	30.255952
7/1997	38.947476	29.529125
8/1997	38.235067	28.793171
9/1997	37.527425	28.061925
10/1997	36.810672	27.321507
11/1997	36.084732	26.571845
12/1997	35.363443	25.826772
1/1998	34.632917	25.072405
2/1998	33.893083	24.308669
3/1998	33.157779	23.549406
4/1998	32.427832	22.795438
5/1998	31.688561	22.052084
6/1998	30.954602	21.273984

The Casualty Value and Termination Value, if any, of each Leased Item are the percentages of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Basic Rent Payment Number</u>	<u>Casualty Value (a)</u>	<u>Termination Value (a)</u> %
7/1998	30.202602	20.497783
8/1998	29.444295	17.715213
9/1998	28.692393	18.938990
10/1998	27.932223	18.134437
11/1998	27.163709	17.361479
12/1998	26.401497	16.574761
1/1999	25.630904	15.779601
2/1999	24.851859	14.975927
3/1999	24.078994	14.178372
4/1999	23.311255	13.385382
5/1999	22.531288	12.581102
6/1999	21.762506	11.787444
7/1999	20.875702	10.875702
8/1999	20.000000	0

and thereafter,

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(a) In the event the Basic Lease Rate Factor is increased pursuant to the tax indemnification provisions set forth in Section 17 of the Lease, Casualty Value and Termination Value, if any, will be adjusted accordingly.

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 First Security Bank of Utah, N.A., and Thomas C. Cuthbert, as Trustees ("Lessor") their 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 Lessor, its Lessee, successors and assigns 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 entirely of new components, (iv) none of the Units have been used for any purpose prior to their delivery to Lessor at Sheldon, Texas, and (v) Vendor will defend such title as is conveyed hereby.

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

ITEL CORPORATION  
EQUIPMENT FINANCE DIVISION

By \_\_\_\_\_

Title \_\_\_\_\_



INVESTMENT TAX CREDIT ELECTION

First Security Bank of Utah, N.A., and Thomas C. Cuthbert, as Trustees ("Lessor") hereby elect, under the provisions of section 48(d)(1) of the Internal Revenue Code of 1954 as amended (the "Code") and Sl.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

First Security Bank of Utah,  
N.A., and Thomas C. Cuthbert,  
as Trustees  
Corporate Trust Division  
Suite 510, Trust Department  
Deseret Building  
79 South Main Street  
Salt Lake City, Utah 84111  
87-618-0815

Early & Daniel  
Industries, Inc.  
902 Washington, Avenue  
Indianapolis, IN 46204  
35-126-2042

(ii) Ogden Defense Depot  
Ogden, Utah

Memphis Service Center  
Indianapolis District

(iii) Twenty-five 100-ton covered hopper railroad cars manufactured by Richmond Tank Car Company and bearing identifying numbers TWGX \_\_\_\_\_ to \_\_\_\_\_, inclusive (the "Property").

(iv) Possession of the Property was transferred to Lessee on \_\_\_\_\_, 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 \_\_\_\_\_, 1979 was \$ \_\_\_\_\_.

Lessor  
FIRST SECURITY BANK OF UTAH, N.A.  
and THOMAS C. CUTHBERT, as Trustees

Date:

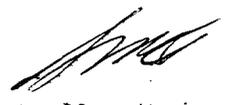
By \_\_\_\_\_

The Lessee hereby consents to the above election:

Lessee  
EARLY & DANIEL INDUSTRIES, INC.

Date:

By \_\_\_\_\_



INVESTMENT TAX CREDIT ELECTION

First Security Bank of Utah, N.A., and Thomas C. Cuthbert, as Trustees ("Lessor") hereby elect, under the provisions of section 48(d)(1) of the Internal Revenue Code of 1954 as amended (the "Code") and S1.48-4(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

First Security Bank of Utah,  
N.A., and Thomas C. Cuthbert,  
as Trustees  
Corporate Trust Division  
Suite 510, Trust Department  
Deseret Building  
79 South Main Street  
Salt Lake City, Utah 84111  
87-618-0815

LESSEE

Early & Daniel  
Industries, Inc.  
902 Washington, Avenue  
Indianapolis, IN 46204  
35-126-2042

(ii) Ogden Defense Depot  
Ogden, Utah

Memphis Service Center  
Indianapolis District

(iii) One hundred 100-ton covered hopper railroad cars manufactured by Pullman Incorporated (Pullman Standard Division) and bearing identifying numbers TWGX \_\_\_\_\_ to \_\_\_\_\_, inclusive (the "Property").

(iv) Possession of the Property was transferred to Lessee on \_\_\_\_\_, 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 \_\_\_\_\_, 1979 was \$\_\_\_\_\_.

Lessor  
FIRST SECURITY BANK OF UTAH, N.A.  
and THOMAS C. CUTHBERT, as Trustees

Date:

By \_\_\_\_\_

The Lessee hereby consents to the above election:

Lessee  
EARLY & DANIEL INDUSTRIES, INC.

Date:

By \_\_\_\_\_

