

UNION-TIDEWATER



11123

RECORDATION NO. Filed 1425
FINANCIAL COMPANY, INC.

NOV 29 1979 - 8 10 PM

INTERSTATE COMMERCE COMMISSION

9-333A027

THOMAS B. HOWARD, JR.
TREASURER

November 28, 1979

No. NOV 29 1979

Date.....
Fee \$ 50.00

ICC Washington, D. C.

The Honorable Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Madam Secretary:

Enclosed for filing with and recording by the Interstate Commerce Commission are the original and three photocopies of a Lease Agreement dated as of September 28, 1979 between Union-Tidewater Financial Company, Inc., 207 East Redwood Street, P. O. Box 2373, Baltimore, Maryland 21203, and the Green Bay & Western Railroad Company covering the following railroad equipment: Five Diesel-Electric Locomotives as follows: Four Alco Model C 424 bearing the identifying marks 319, 320, 321, 322 inclusive and one Alco Model C 420 bearing the identifying mark 323.

Identifying marks on all of the foregoing equipment: The words: "PROPERTY OF UNION-TIDEWATER FINANCIAL COMPANY, INC., OWNER-LESSOR, AND SUBJECT TO A LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION," printed on each side of each unit.

Also enclosed is our check in the amount of \$50.00 payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing document.

Please return all copies of the enclosed that are not required by the Interstate Commerce Commission to David Schwartz, Esq. of Sullivan and Worcester who will be delivering this letter on our behalf.

Sincerely,

TBH:11s

Enclosures

Countersign - Michael Buppala

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

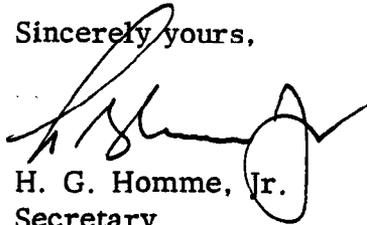
David Schwartz, Esq,
Sullivan and Worcester
Union-Tidewater Financial Company
207 E. Redwood Street
P. O. Box 2373, Baltimore, MD. 21203

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C.

11303, on 11/29/79 at 3:10PM, and assigned recordation number(s). 11123.

Sincerely yours,



H. G. Homme, Jr.
Secretary

Enclosure(s)

SE-30
(3/79)

UNION-TIDEWATER FINANCIAL COMPANY, INC.
-LESSOR-

EQUIPMENT LEASE AGREEMENT
Dated as of September 28, 1979

GREEN BAY AND WESTERN RAILROAD COMPANY
-LESSEE-

Equipment Lease
No. 040-004-001

REGISTRATION NO. 11123
1979 28 1979
RECORDED

TERMS AND CONDITIONS OF LEASE

I. **LEASING; EXTENDED TERMS.** (a) Lessor leases to Lessee and Lessee rents from Lessor the equipment listed in Exhibit A to the form of Schedule A-1 hereto annexed and in each schedule hereto annexed as Schedule "A-2" and made a part hereof (said equipment listed in Schedule A-2 hereafter annexed being hereinafter referred to as the "Equipment") upon the terms and conditions of this Equipment Lease Agreement (this "Lease"). Each item of Equipment (hereinafter referred to as a "Unit") consists of a locomotive hulk which has been purchased by Lessor from General Electric Company pursuant to that certain Hulk Purchase Agreement, dated as of September 18, 1979 (hereinafter referred to as the "Purchase Agreement"), the purchaser's interest in such agreement having been assigned to Lessor, which has been overhauled and remanufactured to original equipment manufacture standards for delivery to Lessor and use by Lessee under this Lease (no hulk in any state of remanufacture shall be Equipment or a Unit until it shall have been accepted by Lessor and Lessee in a Certificate of Acceptance, as hereinafter defined). Lessor, pursuant to the Purchase Agreement, has caused the locomotive hulks that are the subject of this Lease to be inspected by its representative, and Lessee has caused such hulks to be inspected by its representative, and in each case Lessor and Lessee have approved of the condition of such hulks and accepted the same for leasing hereunder by executing a certificate in the form attached hereto as Schedule A-1. Upon the execution of such certificate, such certificate shall be a part of this Lease as Schedule A-1 hereunder and such hulk shall be subject to this Lease. Lessee has entered into a letter agreement, dated as of the date hereof (the "Letter Agreement"), with General Electric Company, as contractor, and concurrently herewith Lessee is assigning its interest thereon to Lessor. General Electric Company shall overhaul and remanufacture the locomotive hulks in accordance with specifications set forth therein, which specifications have been reviewed and approved by Lessee (the "Specifications"). Lessor agrees to make payments to General Electric Company in the amounts and at the times specified therefor in, and in accordance with, the Letter Agreement against invoices of General Electric Company which shall be approved by Lessee. Lessor agrees to amend the Specifications to include any changes to the Equipment that are required by law and approved by Lessee, and Lessor's Cost shall be increased by the amount thereof. Lessor, upon completion of such overhaul and remanufacturing, will cause General Electric Company to tender the Equipment to Lessor and Lessee for acceptance of delivery hereunder at the times and location specified in Schedule B hereto. Upon receipt of notice of the tender of any Unit, Lessee shall cause its authorized representative to inspect such Unit, and Lessee shall accept delivery of such Unit on behalf of Lessor (and Lessor hereby

appoints Lessee its agent for such purpose) and Lessee if such Unit is in compliance with the Specifications. Lessee shall evidence such acceptance by executing and delivering to Lessor a Certificate of Acceptance in substantially the form attached hereto as Schedule A-2 (a "Certificate of Acceptance") which shall describe such Unit, its identifying number and the Lessor's Cost thereof. Upon the execution of such certificate, such certificate shall be a part of this Lease as Schedule A-2 hereto and such Unit will be deemed to have been delivered to and accepted by Lessor and delivered to and accepted by Lessee for use hereunder. Thereupon, Lessee may use the Equipment in its business operations in accordance herewith. If such Unit is found to be not in compliance with the Specifications and with all other laws and regulations applicable thereto (whether of any governmental authority or of the Association of American Railroads or any similar body) or shall not be delivered, Lessor appoints Lessee its agent to enforce the rights of Lessor against General Electric Company to obtain Equipment which complies with the Specifications and such laws and regulations, and Lessee agrees so to do. The Equipment shall be located and maintained at the terminal of Lessee in Green Bay, Wisconsin, and, except in the case of moveable Equipment regularly used in Lessee's business, shall not be removed therefrom without Lessor's prior written consent. Lessee shall certify to Lessor in writing of the date each Unit is "placed in service" by Lessee within the meaning of such phrase under the Internal Revenue Code of 1954, as amended, and the regulations and rulings thereunder within (10) days thereafter.

(b) If Lessee shall have duly performed all terms and conditions of this Lease, Lessee shall have the option, at the expiration of the Base Lease Terms for the Equipment as described in Schedule B and at the expiration of each of the first renewal terms, to extend this Lease under the same terms and conditions hereof for one renewal term of two years (two renewal terms for the Units accepted in 1979, and two renewal terms for any Units accepted in 1980). The rental payable during any such renewal term shall be the fair rental value determined as of the commencement of such renewal term, and shall be payable monthly on the last day of each calendar month occurring during such renewal term. Such fair rental value shall be determined first by agreement between Lessor and Lessee; second, if no such agreement is reached at least sixty (60) days prior to the commencement of such renewal term, Lessor and Lessee shall agree upon an appraiser who shall determine such fair rental value; and third, if Lessor and Lessee are not able to agree upon such an appraiser at least thirty (30) days prior to the commencement of such renewal term, the American Appraisal Company or any corporation succeeding thereto in its business shall determine such fair rental value. Said option shall be exercised as to all and no less than all of the Units by Lessee giving Lessor or its assignee notice in writing not less than ninety (90) days before the expiration of the first Base Lease Term for any Unit to expire or before the expiration of the first renewal term to expire, as the case may be.

2. **WARRANTIES:** LESSOR IS NOT A CONTRACTOR, MANUFACTURER OR SUPPLIER OF THE EQUIPMENT, AND MAKES NO WARRANTIES WITH RESPECT TO THE EQUIPMENT, EITHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. LESSOR AUTHORIZES LESSEE TO ENFORCE IN ITS OWN NAME ANY WARRANTY, REPRESENTATION OR OTHER CLAIM ENFORCEABLE AGAINST ANY CONTRACTOR, MANUFACTURER OR SUPPLIER. LESSOR ASSUMES NO RESPONSIBILITY FOR SHIPMENT, DELIVERY, INSTALLATION OR MAINTENANCE AND ALL CLAIMS OF LESSEE WITH RESPECT THERETO, WHETHER FOR DELAY, DAMAGE OR OTHERWISE, SHALL BE MADE AGAINST GENERAL ELECTRIC COMPANY OR ITS SUB-CONTRACTORS. LESSOR, AT ITS OPTION, MAY PROVIDE IN ITS AGREEMENT THAT GENERAL ELECTRIC COMPANY AGREES THAT ANY OF SUCH CLAIMS MAY BE

For H&W
JH
10/4/79

MADE BY LESSEE DIRECTLY AGAINST IT. THE OBLIGATION OF LESSEE TO PAY THE RENT HEREUNDER SHALL NOT BE ABATED, IMPAIRED OR REDUCED BY REASON OF ANY CLAIMS OF LESSEE WITH RESPECT TO EQUIPMENT CONDITION, QUALITY, WORKMANSHIP, DELIVERY, SHIPMENT, INSTALLATION OR OTHERWISE. LESSOR HEREBY ADVISES LESSEE THAT LESSOR'S CONTRACT WITH GENERAL ELECTRIC COMPANY PROVIDES THAT: in no event, whether as a result of breach of contract, warranty or tort (including negligence), shall General Electric Company or its suppliers or subcontractors be liable for any consequential or incidental damages including, but not limited to, loss of profit or revenues, loss of use of the Equipment or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, service or replacement power, down time costs or claims of customers for such damages. The term "Equipment" as used in this paragraph 2 shall include the locomotive hulks described herein both before and during the remanufacturing process and thereafter as they become Units hereunder.

3. **RENT:** Lessee shall pay the total rent for the Equipment in the periodic installments designated herein. Said rent shall be payable without notice or demand at the office of Lessor (or such other place as Lessor may from time to time designate in writing), as set forth in Schedule B or otherwise herein. If Lessee shall not pay any rental or other amount due hereunder on the date due, then Lessor at its option may charge, and Lessee agrees to pay, a late payment charge in an amount equal to 1½% per month of the amount in default, from the date the same is due until paid, as liquidated damages. This provision does not waive Lessor's right to exercise any other remedy available to it hereunder upon a default in payment.

4. **OWNERSHIP, SURRENDER:** No title or right in the Equipment shall pass to Lessee except as herein expressly granted. Plates or other markings shall be affixed to or placed on the Equipment indicating that Lessor is the owner thereof and Lessee will not remove the same; each such marking shall state that Lessor is the owner-lessor of the Unit and that the Unit is subject to a lease, all as set forth in Schedule A-2 and in the Specifications. Upon the termination of the lease period, Lessee will immediately return the Equipment at Lessee's cost or expense to such location on a connecting active railroad line within the Continental United States as Lessor shall specify, in as good condition as received (subject to a Casualty Occurrence as described below) less normal wear, tear and depreciation. The Equipment shall always remain and be deemed personal property even though attached to realty. All replacements, equipment, repairs or accessories made to or placed in or upon the Equipment shall become an accession thereto and title thereto shall be immediately vested in Lessor and shall be included under the terms hereof. All advances or payments made by Lessor to preserve the Equipment or to pay insurance premium for insurance thereon or to discharge and pay any taxes, liens, or encumbrances thereon shall be added to the unpaid balance of rentals due hereunder and shall be payable by Lessee to Lessor immediately together with interest thereon. Lessee shall not alter the Equipment in any material respect (unless required by law or regulation of any governmental authority or the Association of American Railroads) without the prior written consent of Lessor, which consent shall not be unreasonably withheld. If Lessee shall have altered the Equipment as permitted by the foregoing sentence, Lessee may restore the Equipment to its prior condition at the end of the lease term as long as the Equipment is not thereby put in violation of law or regulation and as long as any damage to the Equipment as a result thereof is repaired at Lessee's expense.

5. **INSURANCE; LOSS AND DAMAGE; INDEMNITIES:** Lessee assumes the entire risk of loss or casualty from hazards with respect to the Equipment, and no such loss shall relieve Lessee of its obligations hereunder, including the obligation to pay rental as set forth herein, except as otherwise provided herein. Lessee agrees to and does hereby indemnify and hold Lessor harmless of, from and against all claims, costs, expenses, damages and liabilities, including reasonable attorneys' fees and court costs, arising out of, connected with or resulting from the Equipment, including without limitation, its manufacture, delivery, possession, installation, use or operation, and without regard as to whether such claim is based upon warranty, negligence, strict liability or otherwise. Lessee shall and hereby agrees to maintain in force, during the term of this Lease, adequate public liability insurance, providing the Equipment with the same coverage provided for other locomotives leased or owned by Lessee and insuring both Lessee and Lessor against any loss, damage, claim, suit, action or liability arising out of the ownership, possession, maintenance, use or operation of the Equipment. Lessee presently maintains public liability and property damage coverage in the amount of \$5,000,000 under a single limit liability policy which provides for a deductible of \$500,000, and Lessee agrees to maintain such coverage with respect to the Equipment unless Lessor shall consent to a lesser limit or a greater deductible, such consent not to be unreasonably withheld. In addition, Lessee agrees to keep the Equipment insured against loss or damage from every cause whatsoever, with insurance company or companies satisfactory to Lessor, and such policies shall contain loss payable clauses in favor of Lessor as its interest may appear, in an amount not less than the full insurable value of said Equipment less a deductible of \$100,000 or such larger deductible as may be acceptable to Lessor, said insurance policy or policies to contain not less than ten (10) day notice of cancellation to Lessor. Lessee shall provide Lessor with certificates of insurance evidencing the insurance coverage required hereunder. In the event of any loss, damage, injury or accident involving the Equipment, Lessee shall promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto. Lessee hereby appoints Lessor as its attorney-in-fact to make claim for and to receive payments of and to execute and endorse all documents, checks or drafts for loss or damage or return premiums under any insurance policy issued. All proceeds of such insurance, whether resulting from loss, damage, return premium or otherwise, shall be applied toward the replacement or repair of the Equipment, and shall be paid by Lessor to Lessee, except that in the case of a Casualty Occurrence Lessor shall credit such proceeds against Lessee's obligation to pay to Lessor the Casualty Value as determined in Schedule C. Lessee agrees to maintain at all times reserves against claims for property damage and personal injury made against it. Such reserves shall be established in accordance with prudent business management and shall be consistent with the practices of similar operating railroads in the same general location. Lessee agrees to advise Lessor, upon request, of the amount of such reserves and of all significant claims, suits or judgments against Lessee.

6. **USE OF EQUIPMENT; REPAIR AND MAINTENANCE:** Lessee agrees to use, operate and maintain the Equipment in accordance with all laws, and not to assign the same; to permit Lessor to inspect the Equipment at any time; to keep it in first class condition (normal wear and tear excepted) and repair at Lessee's expense and house the same in suitable shelter; and not to sell or otherwise dispose of its interest therein or any equipment or accessories attached thereto. Lessee may sublet the Equipment or any Unit without Lessor's consent, provided that Lessor shall be notified in advance of such subletting of the identity of the sublessee (except that Lessor need

not be notified of a sublease of any Unit to General Electric Company commencing on or about the date of the issuance of the Certificate of Acceptance with respect to such Unit), but no such subletting shall relieve Lessee of its remaining obligations hereunder. Notwithstanding the foregoing provisions of this paragraph, Lessee may dispose of any equipment or accessories removed from the Equipment, for its own account, (i) if such equipment or accessories have been removed in connection with the installation of replacement equipment or accessories or (ii) if such equipment or accessories were installed by Lessee during the term hereof as permitted by this Lease and may be removed by Lessee pursuant to this Lease.

7. **TAXES:** During the Base Lease Term and any renewal thereof, Lessee shall keep the Equipment free and clear of all liens and encumbrances and shall pay all license fees, registration and recording fees, assessments, charges and taxes (municipal, state and federal), if any, which may now or hereafter be imposed upon the ownership, leasing, sale, possession or use of the Equipment; and Lessee will furnish to Lessor evidence of payment thereof upon request by Lessor. If Lessee fails to pay any said fees, assessments, charges or taxes, Lessor shall have the right, but shall not be obligated, to pay the same, in which event the cost thereof shall be repayable to Lessor with the next regular payment of rent. Lessee's obligations hereunder shall continue after the expiration of the Base Lease Term and any renewal thereof as to those expenses incurred or accrued during such terms. The foregoing provisions of this paragraph notwithstanding, Lessee shall have no liability for any United States income tax payable by Lessor in consequence of the receipt of rent or other payments provided for herein, except as provided herein under paragraph 18, and no liability for any state or local taxes measured by net income based on such receipts, except that Lessee shall be liable for any state or local taxes imposed by any state other than the State of Maryland or any political subdivision of any state other than the State of Maryland if such taxes imposed by other states or the political subdivisions thereof would increase the state and local tax liability of Lessor to an amount in excess of the state and local taxes which would be payable by Lessor were the Equipment continuously located in Maryland. Furthermore, the foregoing provisions of this paragraph notwithstanding, Lessee shall be entitled to contest the amount or validity of any such fees, assessments, charges and taxes it could otherwise be required to pay pursuant to the terms of this Lease as long as (i) such contest shall be conducted by Lessee with diligence, in good faith and by appropriate legal or administrative proceedings, (ii) such contest shall not subject Lessor to any criminal or civil liability by reason thereof (except for the obligation to pay the same, and any interest or penalty thereon), (iii) Lessee shall indemnify Lessor against any and all liabilities for the payment of such fees, assessments, charges and taxes and any interest or penalties thereon and (iv) the rights or interests of Lessor in this Lease or the Equipment would not be materially endangered or impaired, in the reasonable judgement of Lessor.

8. **ASSIGNMENT:** Lessor may assign, pledge or mortgage all of its rights under this Lease and its assignee may assign the same, all without notice to Lessee. All rights of Lessor hereunder shall be succeeded to by any assignee hereof and said assignee's title to this Lease, to the rental herein provided for to be paid and in and to the Equipment shall be free from all defenses, setoffs, or counterclaims of any kind or character which Lessee may be entitled to assert against Lessor; it being understood and agreed that any assignee of Lessor does not assume any obligations of the lessor herein named. If this Lease is assigned, Lessee agrees to pay Assignee rentals and other monies due or amount equal thereto, irrespective of its terms, termination,

breach or any other circumstances which might otherwise relieve Lessee of such payment. Lessee also agrees to hold the Equipment for said Assignee to extent of Assignee's rights, subject to Lessee's right hereunder. Neither this Lease or any interest therein is assignable or transferable by operation of law by Lessee.

9. **DEFAULT:** Any of the following events or conditions shall constitute an event of default hereunder if Lessor shall notify Lessee in writing upon the occurrence thereof that such event or condition constitutes an event of default: (a) Nonpayment of rent or any other amount due hereunder for fifteen (15) days after the same becomes due, or default by Lessee in the performance of any other obligation, term or condition of this Lease or in the performance of any other material obligation, term or condition of any other agreement between Lessor and Lessee which Lessee shall not cure or which shall not be waived within thirty (30) days after notice and demand to cure from Lessor; (b) The entry of any judgment against Lessee in excess of \$250,000 or the issuance of any garnishment, attachment, distraint, execution, tax lien, levy, charge or other writ or process against the Equipment which is not promptly discharged; (c) Death or legal incompetency of any individual Lessee, or liquidation, dissolution, consolidation or termination of existence of any Lessee which is a corporation, partnership or other business association or entity; (d) Entry of a decree or order by a court having jurisdiction adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization of Lessee under the Federal bankruptcy laws, or any similar applicable Federal or State law, and such decree or order having continued undischarged or unstayed for a period of sixty (60) days; or a decree or order of a court having jurisdiction for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of Lessee or a substantial part of its property, or for the winding up or liquidation of its affairs, having remained in force undischarged or unstayed for a period of sixty (60) days; or (e) Institution by Lessee of proceedings to be adjudicated a voluntary bankrupt, or the consent by Lessee to the filing of a bankruptcy proceeding against it, or the filing by Lessee of a petition or answer or consent seeking reorganization under the Federal bankruptcy laws, or any other similar applicable Federal or State law, or the consent by Lessee to the filing of any such petition, or the consent by Lessee to the appointment of a receiver of liquidator or trustee or assignee in bankruptcy or insolvency of it or of a substantial part of its property, or Lessee's making an assignment for the benefit of creditors, or admitting in writing its inability to pay its debts generally as they become due, or Lessee taking corporate action in furtherance of any of the foregoing actions; (f) Any statement, representation or warranty furnished by or on behalf of Lessee proving to have been false, erroneous or misleading in any material respect at the time such facts set forth were made; or (g) the occurrence of any default or event of default under any other agreement that Lessee may have with a party other than Lessor if, by such occurrence, such other party shall have the right to deprive Lessee of such of its property that Lessee's operations would be materially impaired. If Lessee's obligations hereunder are guaranteed by any individual or entity, reference in this paragraph to "Lessee" shall also be deemed to include separate reference to each such Guarantor, as if the same were expressly set forth in this Lease.

10. **REMEDIES:** Upon the happening of any event of default hereunder, Lessor may, at its sole election and without demand or notice of any kind, (a) Declare all obligations of Lessee under this Lease to be due and payable, as liquidated damages and not as a penalty, and sue for and recover from Lessee all arrears of rent and the balance of all rentals provided for herein, or in any renewal hereof, plus all other

sums which may be payable hereunder, and court costs and attorneys' fees; (b) Take possession of any or all Equipment, wherever located, without court order or other process of law, LESSEE HEREBY WAIVING ALL RIGHTS (CONSTITUTIONAL OR OTHERWISE) TO EITHER NOTICE OF COURT PROCEEDING OR HEARING PRIOR TO SUCH TAKING and also hereby waiving all damages caused by such taking, and Lessee agrees that such taking shall not constitute termination of this Lease or Lessee's obligation hereunder as to any and all Equipment unless Lessor expressly notifies Lessee thereof in writing; (c) Terminate this Lease as to any or all Equipment; and (d) Pursue any other remedy provided by applicable law and the Uniform Commercial Code, whether at law or in equity. In the event Equipment is repossessed by or surrendered to Lessor, Lessor may, in its sole discretion and without obligation so to do, re-lease the Equipment, or may use the Equipment or sell or otherwise dispose of the Equipment at public or private sale, with or without notice, for cash or credit, and Lessor may become a purchaser at any such sale. Lessor, in addition to the foregoing remedies, is entitled to recover on demand (i) unpaid rent accruing prior to repossession or surrender, (ii) any expenses paid or incurred by Lessor in connection with the repossession, holding, repair and subsequent sale, lease or other disposition of the Equipment, including attorneys' fees, (iii) all unpaid rentals due and to become due under this Lease for any item of Equipment which Lessee fails to return to Lessor as provided above or converts or destroys, or which Lessor is unable to repossess, and (iv) as liquidated damages and not as a penalty, an amount equal to the difference between: The Casualty Value, as set forth in Schedule C, less the "Unexpired Rental Value". The Unexpired Rental Value shall mean present value of the fair market rental value of the Equipment for the unexpired term of this Lease, or, if the Equipment is sold, the proceeds of sale, or, if the Equipment is re-leased, the then present value of the rental payments to be received by Lessor for the unexpired term of the Lease, less in each case all expenses of taking, storing, preparing for sale or re-lease, repairs, attorneys' fees, costs or other expenses incurred in connection with the repossession and sale or re-lease of the Equipment. If the Unexpired Rental Value of the Equipment exceeds Lessee's obligations hereunder as of the time of any such repossession, Lessor shall be entitled to the excess. All of the rights and remedies given to Lessor herein or by law are cumulative and not alternative, may be exercised concurrently or separately, and Lessor's bringing of any action for Lessee's obligations hereunder or Lessor's exercise of any other remedy provided herein, shall not be considered as an election of remedies; or a waiver of Lessor's right to possession of the Equipment.

11. **MANAGEMENT:** Lessee understands that Lessor has elected to enter into this Lease with confidence in the integrity, financial responsibility and ability of the present staff of senior management of Lessee, and reliance upon said persons continuing to act in a senior management capacity. Accordingly, Lessee shall use its best efforts to retain said persons in a senior management capacity.

12. **MISCELLANEOUS:** This instrument constitutes the entire lease between the parties hereto. No representation or statement made by any representative of Lessor or supplier not stated herein shall be binding. Whenever the word "Lessor" is used herein, it shall include all assignees of Lessor. If there be more than one lessee named herein, their liability shall be joint and several. The omission by Lessor at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants or provisions hereof by Lessee at any time designated, shall not be a waiver of any such default or right to which Lessor is entitled, nor shall it in any way affect the right of Lessor to enforce such provisions thereafter. This

Lease has been delivered and accepted by Lessor in Maryland and the rights and obligations of the parties hereunder and the interpretation of this Lease shall be in accordance with the laws of the State of Maryland. Lessee agrees that its obligations under this Lease are absolute, and shall continue in force and effect, except as otherwise provided herein, regardless of any disability of Lessee to use the Equipment or any part thereof because of any reason including, but not limited to, war, act of God, government regulations, strike, loss, damage, destruction, obsolescence, failure of or delay in delivery, failure of the Equipment to properly operate, or any other cause, and that its obligations shall not abate due to any claim or setoff against Lessor. Lessee agrees that the application, statements and financial reports submitted by it to Lessor are material inducements to the execution by Lessor of this Lease, and Lessee warrants that such applications, statements and reports are, and all information hereafter furnished by Lessee to Lessor will be, true and correct in all material respects as of the date submitted. Lessee warrants that this Lease has been duly authorized, and that no provision of this Lease is inconsistent with Lessee's charter, bylaws, or any loan or credit agreement or other instrument to which Lessee is a party or by which Lessee or its property may be bound or affected. Lessee agrees to notify Lessor of any claim made against Lessee for an amount in excess of \$250,000 on a quarterly basis.

13. **RECORDING; AGREEMENT OF LEASE:** At request of Lessor, Lessee will join in executing one or more financing statements pursuant to the Uniform Commercial Code. Lessee authorizes Lessor and its assigns to file financing statements signed only by Lessor or such assigns in all places where necessary to perfect Lessor's interest in all jurisdictions where such authorization is permitted by law. Notwithstanding the filing of a financing statement, this Lease is and is intended to be a lease and Lessee does not acquire hereby any greater right, title or interest in or to the Equipment. The relationship between the parties hereto is that of lessor and lessee, and Lessee shall not during the term hereof for any purpose whatsoever be or become the agent of Lessor except as otherwise expressly provided herein, nor shall Lessor be responsible for the acts or omissions of Lessee or its agents. Lessee shall file this Lease on Lessor's behalf with the Interstate Commerce Commission and may file this Lease with such other bodies and in such offices as it shall deem appropriate.

14. **FURTHER ASSURANCES: FINANCIAL INFORMATION:** Lessee will promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder. Lessee also agrees to furnish Lessor: (a) As soon as available, but in any event within one hundred twenty (120) days after each fiscal year of Lessee, a copy of its annual report, including financial information, required by the Interstate Commerce Commission of Class II railroads (Report R-2) as at the end of such year, in each case setting forth in comparative form the corresponding figures for the preceding fiscal year, all in reasonable detail and certified by a financial officer of Lessee; (b) Balance sheets as of the end of each quarterly period of Lessee's fiscal years and profit and loss and surplus statements certified as accurate by an officer of Lessee within forty-five (45) days after the close of each such quarterly period, and (c) From time to time such information as Lessor may reasonably request.

15. **RIGHT OF FIRST REFUSAL:** If no event of default (or other event which after the lapse of time or notice of both would become an event of default) hereunder shall be continuing and this Lease shall not have been earlier terminated, Lessee shall have the right, upon expiration of the term of this Lease, to purchase all but not less than all of the Equipment leased hereunder at the end of the term of this Lease at the price and upon the other terms and conditions established between Lessor and any prospective third party purchaser at the end of such term. Lessor shall promptly notify Lessee of any such prospective purchase and of the terms and conditions thereof, and Lessee shall have up to fifteen (15) days in which to notify Lessor of Lessee's desire to exercise its right to purchase hereunder, and an additional period of time (together with the fifteen days referred to above not to exceed thirty days) within which to purchase the Equipment in accordance with the terms and conditions of such prospective purchase. On the date of a purchase pursuant to this Lease, Lessee shall pay Lessor the purchase price of all such Equipment, and Lessor shall transfer title to all such Equipment to Lessee WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, ON THE PART OF LESSOR, together with such documents evidencing transfer of title as Lessee shall reasonably request.

16. **FINANCIAL COVENANTS:** Lessee agrees that, without the consent of Lessor (which consent shall not be unreasonably withheld), Lessee will not: (a) pay dividends with respect to any fiscal period in amounts in excess of 50% of the net after tax earnings of Lessee for such fiscal period, or pay any dividends if Lessee's net worth would be less than \$17,487,000 were such dividends paid on the date of declaration thereof; (b) permit Lessee's debt to net worth ratio to exceed 3:1 (for the purpose of determining Lessee's debt, there shall be included as debt the present value of rentals payable under off balance sheet leases and there shall be excluded from debt all per diem lease transactions); (c) sell, transfer or otherwise dispose of any of its assets which are necessary to the carrying on of its business except in the ordinary course of business; and (d) except as provided in clause (a) above, pay or transfer any funds to Intel Corporation without the prior written consent of Lessor except in repayment of authenticated intercompany transactions in the ordinary course of business (exclusive of management fees). In connection with the foregoing, any determination of net after tax earnings, net worth or debt shall be made in accordance with the accounting practices established by Interstate Commerce Commission.

17. **CASUALTY OCCURRENCE; REQUIRED MODIFICATION:** (a) If any Unit shall be or become worn-out, lost, stolen, destroyed or, in the opinion of Lessee, irreparably damaged, obsolete or economically unservicable for use from any cause whatsoever, or otherwise rendered permanently unfit for service or taken by any governmental authority (such occurrences being called "Casualty Occurrences"), Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform Lessor in regard thereto. On the first rent installment payment date after such Casualty Occurrence, Lessee shall pay to Lessor a sum equal to the Casualty Value (as defined in Schedule C hereto) of such Unit as of the date of such payment, in accordance with Schedule C. Upon payment of such Casualty Value and all rent accrued and unpaid on such Unit to the date of such payment, (i) rent on such Unit shall cease to accrue, (ii) the term of this Lease as to such Unit shall terminate and (iii) Lessor shall be entitled to recover possession of such Unit. Lessor hereby appoints Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, at the best price obtainable on an "as is, where is" basis, and Lessee shall do so unless notified to the contrary by Lessor within ten (10) days after Lessor's receipt of the

notice of such Casualty Occurrence. If Lessee shall have paid the Casualty Value for any Unit to Lessor prior to Lessee's disposal thereof, Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to Lessor. The Casualty Value of any Unit as of any rent installment payment date before and during the Base Lease Term of this Lease shall be an amount equal to that percentage of Lessor's Cost of such Unit as is set forth in Schedule C hereto opposite such date. Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due during the Base Lease Term and before such Unit shall have been returned to Lessor as provided herein, Lessee shall promptly (as provided above) and fully notify Lessor with respect thereto and pay to Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20 percent of the Lessor's Cost of such Unit. If the term of this Lease shall have been extended, then the applicable Casualty Value shall be the fair market value of such Unit as of the rent installment payment date on or preceding such Casualty Occurrence, determined as provided in the following sentence. The term "fair market value" of a Unit, at the beginning of any renewal term, shall be equal to the Fair Market Value (as hereinafter defined) of such Unit at such time, and shall decline on a straight-line basis to the estimated Fair Market Value of such Unit at the end of such renewal term. The term "Fair Market Value" means the fair market value of any Unit determined as hereinafter set forth: first, by agreement between Lessor and Lessee; second, if they shall fail to agree within thirty (30) days, Lessor and Lessee shall agree upon an appraiser who shall determine such Fair Market Value; and third, if Lessor and Lessee shall not agree upon such an appraiser within an additional thirty (30) days, the Fair Market Value shall be determined by the American Appraisal Company or any corporation succeeding thereto in its business; except that in the case of the Fair Market Value being determined with respect to any Unit, as of the first day of the first renewal term, such Fair Market Value shall not be less than 20 percent (20%) of the Lessor's Cost of such Unit. Appraisal costs shall be borne equally by Lessor and Lessee. Upon the making of any such payment by Lessee in respect of any Unit, Lessor shall be entitled to recover possession of such Unit. Lessor hereby appoints Lessee its agent to dispose of any Unit suffering a Casualty Occurrence after the final rent installment payment therefor during the term hereof and prior to the delivery of such Unit to Lessor at the best price obtainable on an "as is, where is" basis, and Lessee may be a purchaser of such Unit and shall notify Lessor prior to any such purchase by Lessee. If Lessee has previously paid the Casualty Value to Lessor and if no event of default (or other event which after notice or lapse of time or both would become an event of default) hereunder shall be continuing, Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to Lessor. Lessee shall bear the risk of any Casualty Occurrence and, except as provided in this paragraph, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Unit.

(b) If at any time during the term of this Lease it shall be determined by the Interstate Commerce Commission, the Federal Railroad Administrator or the Association of American Railroads that any Unit does not conform to the respective standards, specification and requirements of any such entities, Lessee, at its option, upon thirty (30) days' notice to Lessor, shall either declare this Lease to be terminated as to such nonconforming Unit or agree in writing within said thirty (30)-day period

to correct such nonconformity at its sole cost and expense. If Lessee so agrees, it shall effect such correction within one hundred twenty (120) days from the date of such notice or such longer period as may be permitted by the Interstate Commerce Commission, the Federal Railroad Administrator or the Association of American Railroads. Upon a declaration of termination under this Section, Lessee shall pay to Lessor, on the next rent installment payment date, the Casualty Value (as defined in Schedule C hereto) of such Unit as of the date of such payment, in accordance with Schedule C. Upon payment of such Casualty Value and all rent accrued and unpaid on such Unit to the date of such payment, (i) rent on each such Unit shall cease to accrue, (ii) the term of this Lease as to such Unit shall terminate and (iii) Lessor shall be entitled to recover possession of such Unit. Lessor hereby appoints Lessee its agent to dispose of such Unit, at the best price obtainable, on an "as is, where is" basis, and Lessee shall do so unless notified to the contrary by Lessor within twenty (20) days after Lessor's receipt of such notice of termination. If Lessee shall have paid the Casualty Value for any Unit to Lessor prior to Lessee's disposal thereof, Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to Lessor.

18. **FEDERAL INCOME TAX INDEMNITY:** Lessor, as the owner of the Equipment, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code"), to an owner of property, including, without limitation, (i) the maximum depreciation deduction with respect to the Equipment authorized under Section 167 of the Code (the "Depreciation Deduction"), and (ii) the maximum investment tax credit with respect to the Equipment authorized under Section 38 and the related sections of the Code (the "Investment Credit"). Lessee represents and warrants that (x) no portion of any Unit other than the hulk thereof shall have been used by any person so as to preclude the "original use of such property" (within the meaning of sections 48(b) and 167(c)(2) of the Code) from commencing with Lessor; and (y) at all times during the term of this Lease, such Unit will constitute "Section 38 property" within the meaning of Section 48(a)(1) of the Code, and will not be used predominately outside the United States within the meaning of Section 48(a)(2). If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (a "loss"), in whole or in part, of such Investment Credit or Depreciation Deduction due to any reason whatsoever other than an event or act described in clauses (a) through (f) below, Lessee, after written request of Lessor, shall pay to Lessor an additional rent to compensate Lessor of the consequent lost cumulative deferral of income tax liability, which may exist thereafter from time to time, as determined by Lessor. Such additional rent shall be an amount which, after deduction of federal and state, city and local income taxes, interest and penalties (after giving credit for any savings in respect of any such taxes, penalties and interest by reason of deductions, credits or allowances in respect of the payment of any other such taxes arising out of this transaction) required to be paid by Lessor with respect to the receipt of such additional rent, will, in respect of such Equipment, in the reasonable opinion of Lessor, cause Lessor's net yield to equal the net yield that Lessor would have received if Lessor had not suffered a loss with respect to the Investment Credit or the Depreciation Deduction. Such additional rent shall be paid commencing with the first periodic rent installment payment due after Lessor notifies Lessee of the required additional rent. If any additional rent is required to be paid pursuant to this provision, the Casualty Values set forth in Schedule C to this Lease shall be revised as necessary to preserve the net after-tax return on Lessor's investment in the Equipment as provided hereinabove. Notwithstanding the provisions

hereof, Lessee shall not be required to make any payment on account of any loss with respect to any Unit solely due to:

- (a) a Casualty Occurrence with respect to any Unit, whereby Lessee is required by the terms hereof to pay, and shall pay in full, the appropriate Casualty Value, provided, however, that the indemnities set forth in this provision shall continue in effect, notwithstanding such payment of Casualty Value, with respect to the period prior to the date of payment of said Casualty Value;
- (b) the voluntary or (except in a case constituting a Casualty Occurrence) involuntary transfer, or other disposition, by Lessor of its interest in such Unit, or the reduction by Lessor of its interest in the profits from such Unit, if such transfer, disposal or reduction by Lessor shall be the cause of the loss of the Investment Credit or Depreciation Deduction, if such transfer, disposal or reduction by Lessor shall occur (without the written consent of Lessee) at any time while such Unit is leased hereunder, and while no event of default under this Lease is continuing unremedied or unwaived;
- (c) the failure to properly claim the Investment Credit or the Depreciation Deduction in the tax returns filed by Lessor or the affiliated group of which it is a member or the failure to follow the proper procedure in claiming the same, and such failure to claim or to follow such procedure, as the case may be, shall preclude Lessor from claiming the Investment Credit or Depreciation Deduction;
- (d) the failure of Lessor to have any federal income tax liability against which to apply the Investment Credit or the inability of Lessor or the affiliated group of which it is a member to utilize the Investment Credit as a result of the limitation imposed by Section 46(a)(3) of the Code;
- (e) the enactment of an amendment to the Code or any adoption of an amendment to the Federal income tax regulations issued under the Code, in each case after the acceptance of any Unit hereunder; and
- (f) any other act or failure to act of Lessor which directly causes the loss of all or part of the Investment Credit or the Depreciation Deduction; provided, however, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other documents shall not be deemed to have caused the loss of such Investment Credit or the Depreciation Deduction under this subparagraph (f).

If the Internal Revenue Service proposes an adjustment on a United States corporation income tax return of Lessor or the affiliated group of which it is a member which adjustment, if successful, could result in a loss in whole or in part of Investment Credit or Depreciation Deduction for which Lessee would be required to indemnify

Lessor pursuant to this provision, Lessor hereby agrees to exercise in good faith its best efforts, determined by Lessor in its sole discretion, to be reasonable and proper, and not requiring administrative or judicial proceedings beyond the level of an Internal Revenue Service examining agent, to avoid requiring Lessee to pay such indemnity. Lessor shall advise Lessee, in writing, of any such proposed adjustment as promptly as possible and shall take no action with respect thereto until thirty (30) days after the date of such notice, except that Lessor shall take any and all action necessary to preserve its rights to contest such adjustment during said 30-day period. Lessor shall permit Lessee to participate in any discussions with the Internal Revenue Service concerning the proposed adjustment and, at the request of Lessee, Lessor shall seek Technical Advice from the Internal Revenue Service National Office with respect to such proposed adjustment. Lessor shall notify Lessee of any proposed settlement or other disposition of the proposed adjustment and, to the extent possible, take no action with respect thereto until thirty (30) days from the date of such notice. Lessor's obligations (other than Lessor's obligations to notify Lessee of the proposed adjustment) under this Section are conditioned upon Lessee having first (x) agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustment and (y) agreed to pay Lessor on demand all costs and expenses which Lessor may incur as a result of contesting such adjustment, including without limitation (1) reasonable attorneys', accountants', engineers' and like professional fees and disbursements, and (2) in the event that Lessor shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, an amount equal to 10 percent per annum interest 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 amount to be payable in equal installments within each calendar year on the dates on which rent for such period is payable. Upon receipt by Lessor of a refund of any tax paid by it in respect of which Lessee has paid an amount equal to interest at the rate of 10 percent while such tax payment was contested by Lessor, any interest on such refund paid to Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by Lessor. Lessee's agreement to pay any sums which may become payable pursuant to this paragraph 18 shall survive the expiration or other termination of this Lease.

19. **QUIET ENJOYMENT:** Lessor hereby covenants and agrees that, so long as no event of default is continuing hereunder, it will not interfere with Lessee's right of quiet enjoyment to the Equipment and Lessee shall be free to use the Equipment without any interference whatsoever from Lessor in accordance with the terms and provisions of this Lease.

20. **NOTICES:** Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mail, first-class certified mail, postage prepaid, or, in the event of telegraphic notice, when delivered to the telegraph office, charges prepaid, addressed as follows:

If to the Lessor:

Union-Tidewater Financial Company, Inc.
207 East Redwood Street
Post Office Box 2373
Baltimore, Maryland 21203

If to the Lessee:

Green Bay and Western Railroad Company
Post Office Box 2507
Green Bay, Wisconsin 54306

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

21. **OTHER PROVISIONS:** If this Lease or any provision hereof shall be deemed invalid, illegal, or unenforceable in any respect or in any jurisdiction, the validity, legality, and enforceability of this Lease in other respects and other jurisdictions shall not in any way be impaired or affected thereby. The section headings in this Lease are for the convenience of reference only and shall not be considered to be a part of this Lease. this Lease may be executed in as many counterparts as may be deemed necessary and convenient, by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, and all such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first written.

UNION TIDEWATER FINANCIAL COMPANY, INC.

BY



President

TREASURER

(Corporate Seal)

Attest:


Assistant Secretary

GREEN BAY AND WESTERN RAILROAD COMPANY

BY



President

(Corporate Seal)

Attest:


Assistant Secretary

EXHIBIT A

<u>Description</u>	<u>Location</u>
One (1) Alco diesel electric locomotive Century Model 420 (2000 h.p. - 4 axles) Lehigh & Hudson River Unit No. 27	General Electric Company, Apparatus Service Division Hornell Transportation Facility, Hornell, New York
Four (4) Alco diesel-electric locomotives Century Model 424 (2400 h.p. - 4 axles) Consolidated Rail Corporation (Conrail) Units No. CR 2474, CR 2486, CR 2489, CR 2493	General Electric Company Apparatus Service Division Hornell Transportation Facility Hornell, New York

CERTIFICATE

The undersigned, as agent of UNION-TIDEWATER FINANCIAL COMPANY, INC., the purchaser of the five (5) diesel-electric locomotive hulks described in Exhibit A hereto (the Hulks) pursuant to that certain Hulk Purchase Agreement, dated as of September 18, 1979, between General Electric Company and Green Bay and Western Railroad Company (GB&W), GB&W's interest in which as purchaser thereunder has been assigned to Union-Tidewater Financial Company, Inc., hereby certifies that it has inspected the Hulks at their location in Hornell, New York, approves such Hulks and the condition thereof and accepts delivery of the hulks under that certain Equipment Lease Agreement, dated as of September 28, 1979, all on behalf of Union-Tidewater Financial Company, Inc. and hereby acknowledges on its own behalf that it has inspected the Hulks at such location and hereby approves such Hulks for the purpose of rebuilding. This certificate shall be a part of the lease and incorporated therein as Schedule A-1 thereto. Dated as of this fifth day of October, 1979.

GREEN BAY AND WESTERN RAILROAD COMPANY

By Joseph R. Galassi
Title: President

Schedule B

Delivery; Term; Rent

1. Delivery

(a) Date of Delivery: not earlier than October 1, 1979, upon not less than five (5) days written notice to Lessee.

(b) Place of Delivery: on the tracks of the General Electric Company, Apparatus Service Division, Hornell Transportation Facility, Hornell, New York.

2. Term of this Agreement

The interim lease term of this Lease shall commence on the date of the acceptance of the locomotive hulks to be leased hereunder and shall expire as to each such hulk on the day prior to the acceptance of delivery of such hulk as evidenced by a Certificate of Acceptance of such hulk as remanufactured to a Unit. The Base Lease Term for any Unit shall commence on the date of the acceptance of such Unit for delivery by Lessee as evidenced by a Certificate of Acceptance for such Unit. The Base Lease Term for those Units for which a Certificate of Acceptance shall have been delivered on or before December 31, 1979, shall expire on December 31, 1991. The Base Lease Term for all other Units shall expire on the twelfth anniversary of the last day of the calendar month in which occurs the date of acceptance of delivery of the last of such Units to be accepted.

3. Rent

(a) The rental payment with respect to any Unit for the portion of the Base Lease Term commencing on the date of the acceptance of delivery of such Unit and ending on the last day of the calendar month which shall be twelve (12) years before the end of the Base Lease Term shall be paid on the last day of each calendar month occurring during such portion of the Base Lease Term in an amount equal to 1.0041% of the Lessor's Cost of such Unit multiplied by a fraction, the numerator of which is the number of days occurring in such calendar month during the term hereof and the denominator of which is the number of days occurring in such calendar month.

(b) The rental payments with respect to any Unit for the portion of the Base Lease Term commencing on the first day of a full calendar month occurring after the end of the portion of the Base Lease Term referred to in paragraph 3(a) above (the "First Day") and ending on the day prior to the sixth anniversary of the First Day shall be equal in amount to 1.0041% of the Lessor's Cost of such Unit and shall be payable on the last day of each calendar month occurring during such portion of the Base Lease Term.

(c) The rental payments with respect to any Unit for the portion of the Base Lease Term commencing on the sixth anniversary of the First Day with respect to such Unit and ending on the day prior to the twelfth anniversary of such First Day shall be equal in amount to 1.2271% of the Lessor's Cost of such Unit and shall be payable on the last day of each calendar month occurring during such portion of the Base Lease Term.

(d) Lessor's Cost of any Unit shall equal the sum of the following:

- (i) the cost of acquiring the locomotive hulk; and
- (ii) the allocable cost of overhauling and remanufacturing the same pursuant to the Letter Agreement.

*For GB&W
R.H.
10/9/79*

(e) During the period prior to the commencement of the Base Lease Term with respect to any prospective Unit not accepted for delivery before January 1, 1980, Lessee shall pay interim rent with respect to such prospective Unit in an amount equal to thirteen percent (13%) per annum simple interest (based on a 365 day year and actual day count) on each portion of Lessor's Cost for such Unit advanced by Lessor with respect to such Unit from the date of advance thereof until the date such Unit is accepted for delivery as evidenced by a Certificate of Acceptance, and such interim rent shall be payable on January 1, 1980 (for the period ending December 31, 1979), and on the last day of each month to occur thereafter and on the date such Unit is accepted for delivery as to interim rent accrued on each such date up to February 29, 1980. Commencing on March 1, 1980, as to any prospective Unit not accepted for delivery, Lessee shall pay interim rent with respect to such prospective Unit for each day from March 1, 1980, until the date such prospective Unit is accepted for delivery as evidenced by a Certificate of Acceptance in an amount equal to the excess of (i) the greater of twelve percent (12%) per annum simple interest (based on a 365 day year and actual day count) and two percent (2%) over the "prime rate" of Citibank of New York from day to day on each portion of Lessor's Cost for such Unit advanced by Lessor with respect to such prospective Unit from March 1, 1980, as to funds advanced on or before such date and from the date of advance thereof as to funds advanced after such date over (ii) \$75.00. Such interim rent shall be payable on the last day of each month commencing on March 31, 1980, and on the last day of each calendar month thereafter, and on the date such Unit is accepted for delivery as to interim rent accrued on each such date.

For G.B. & W.
JBY.
10/4/79

Schedule C
CASUALTY VALUES

Casualty Value means, with respect to any Unit, the Lessor's Cost of such Unit multiplied by the percentage set forth in Table I of this Schedule in each case opposite the month in which such Unit suffered a Casualty Occurrence, less the proceeds actually paid to Lessor under any insurance policy by reason of such Casualty Occurrence. The month numbered 1 is the first month of the Base Lease Term in which the First Day occurs.

Table I

<u>Month</u>	<u>Percentage</u>
for the portion of the Base Lease Term prior to the First Day	102.5835
1	102.7298
2	102.8707
3	103.0060
4	103.1358
5	103.2557
6	103.3698
7	103.4739
8	103.5772
9	103.6648
10	103.7472
11	103.8236
12	103.8941
13	103.9543
14	104.0084
15	104.0565
16	104.0985
17	104.1330
18	104.1614
19	104.1822
20	104.1968
21	104.2050
22	104.2056
23	104.1998
24	104.1876
25	104.1676
26	104.1410
27	104.1079
28	104.0681
29	104.0225
30	103.9701
31	103.9117
32	103.8466
33	103.7746
34	103.6966
35	103.6116
36	103.5197
37	103.4215

*For GB&W
J.B.
10/9/79*