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RECORDATION NO 16407/B FILED 1425
JUN 30 1989 -12 35 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO 16407 FILED 1425
JUN 30 1989 -12 35 PM
INTERSTATE COMMERCE COMMISSION

June 30, 1989

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RECORDATION NO 16407 FILED 1425
JUN 30 1989 -12 35 PM
INTERSTATE COMMERCE COMMISSION

HAND DELIVERED - DOCUMENTS FOR RECORDATION

JUN 30 12 20 PM '89
MOTOR OPERATING UNIT

Honorable Noreta R. McGee
Secretary
Interstate Commerce Commission
Room 1324
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed please find an original and one counterpart original of a Lease of Railroad Equipment Between VMV Enterprises, Inc. and Helm Financial Corporation, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a primary document, a Lease between the above-mentioned parties entered into as of February 1, 1989. The names and addresses of the parties to the document are as follows:

Lessor: VMV Enterprises, Inc.
1300 Kentucky Avenue
Paducah, Kentucky 42001

Lessee: Helm Financial Corporation
Suite 3500
One Embarcardero Center
San Francisco, California 94111

A short summary of the document and a description of the equipment covered by it to appear in the index is as follows:

Karen Lefke

A Lease by and between VMV Enterprises, Inc. and Helm Financial Corporation covering 10 General Motors EMD, 3,000 H.P., GP40 Locomotives, Road Nos. UP 850-859

Also enclosed you will find an original and one counterpart original of (i) a Lease of Railroad Equipment Between Helm Financial Corporation and Union Pacific Railroad Company and (ii) an Amendment to Lease of Railroad Equipment Between Helm Financial Corporation and Union Pacific Railroad Company, each to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

These documents are secondary documents, a sublease to a Lease between VMV Enterprises, Inc. and Helm Financial Corporation entered into as of February 1, 1989, and an amendment to the lease by and between the same parties. Both documents regard that certain Lease by and between VMV Enterprises, Inc. and Helm Financial Corporation, a primary document filed concurrently herewith and described above.

The names and addresses of the parties to the Lease and the Amendment are as follows:

Lessor: Helm Financial Corporation
Suite 3500
One Embarcadero Center
San Francisco, California 94111

Lessee: Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

A short summary of the Lease and a description of the equipment covered by it to appear in the index follows:

A Lease by and between Helm Financial Corporation and Union Pacific Railroad Company covering 10 General Motors EMD, 3,000 H.P., GP40 Locomotives, Road Nos. UP 850-859.

A short summary of the Amendment and a description of the equipment covered by it to appear in the index follows:

An Amendment to a lease by and between Helm Financial Corporation and Union Pacific Railroad Company covering 10 General Motors EMD, 3,000 H.P., GP40 Locomotives, Road Nos. UP 850-859.

A fee of $39.00 is enclosed. Please return the originals to Karen Lykke.

Very truly yours,

Karen Lykke

Karen Lykke
Representative of
VMV Enterprises, Inc.

Enclosures

8047P/7590

16407/A
RECORDATION NO _____ FILED 1425
JUN 30 1989 -12 35 PM
INTERSTATE COMMERCE COMMISSION

ORIGINAL COUNTERPART

C.D. No. 54792-32

NET MASTER LEASE

LEASE OF RAILROAD EQUIPMENT

BETWEEN

HELM FINANCIAL CORPORATION

AND

UNION PACIFIC RAILROAD COMPANY

HFC-UP-10

LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of February 2, 1989, between **HELM FINANCIAL CORPORATION**, a California corporation, (hereinafter called the **"Lessor"**) and the **UNION PACIFIC RAILROAD COMPANY** (hereinafter called the **"Lessee"**), a Utah corporation. The term **"Affiliate"** as used hereinafter means any parent or subsidiary of the Lessee or any subsidiary of Lessee's parent.

WHEREAS, the Lessor hereby represents that it is the Owner of and has free and clear title to the locomotives more fully described in Annex A hereto (hereinafter called the **"Units"**);

WHEREAS, the Lessee desires to lease from the Lessor all the Units at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

1. Lease. Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use upon the terms and conditions set forth, the Units described in Annex A attached hereto.

2. Delivery and Acceptance of Units. Lessor will deliver the Units to Lessee (at no expense to Lessee) at a mutually agreed upon interchange point (hereinafter called **"Delivery Point"**) and Lessee agrees to accept such delivery.

The Lessor agrees to furnish the Units in compliance with the FRA and AAR rules of interchange in effect at the time of delivery. The Lessee, at its expense, shall have the right to inspect and reject the Units subject to this Lease prior to the Lessors transporting the Units from their present location to the Delivery Point. Acceptance of the Units by the Lessee shall be evidenced by a **"Certificate of Acceptance"** in the form set forth in Annex B attached hereto, the execution of which shall constitute conclusive evidence of delivery and acceptance of the Units herein identified. The Lessee agrees to be responsible for any transportation cost associated with moving the Units from the Delivery Point.

In the event any Unit delivered to Lessee is not in FRA and AAR interchange condition, then upon written notice of the same by the Lessee to Lessor, the Lessor, at its option shall either promptly cause said Unit(s) to be repaired or replaced (at no expense to Lessee) or exclude such Unit(s) from this Lease.

3. Intentionally Omitted

4. Rentals. Lessee shall pay to Lessor as rental for the Units an amount of [redacted] per Unit per day ("Lease Charges"). Rent shall become effective, with regard to each of the Units, upon the date of the delivery and acceptance of each as provided in Paragraph 2 hereof, and shall continue in effect, with regard to each of the Units, until returned to Lessor at the end of the term of this Lease, as hereafter provided in Paragraph 12. Payment of Lease Charges shall be made to Lessor at the address specified in Paragraph 18 on the first day of each month in advance, with the Interim and first months' Fixed Term payment due on the first day of the month following the Effective Date, all as hereafter defined in Paragraph 5. Rent for any Unit for any partial month shall be pro-rated on a daily basis and shall be paid on the first day of the month following the month on which the last Unit is delivered and accepted as provided in Paragraph 2. Any costs incurred by Lessor in collecting Lease Charges wrongfully withheld by Lessee, including reasonable attorney's fees, will be paid by Lessee.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, the Lessee shall pay the Lessor, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessee at a rate equal to 13% per annum.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor shall this Lease terminate, or the respective obligations of the Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, and present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Units except in accordance with the express terms hereof. Each

rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever, except as otherwise provided herein.

5. Term of Lease. The interim term of this Lease with respect to each Unit (**"Interim Term"**) shall commence on the date of delivery and acceptance of each Unit as provided in Paragraph 2 hereof and shall continue until the first day of the month following the delivery of the last Unit (**"the Effective Date"**) provided that the Effective Date shall be no later than October 1, 1989 at which time the fixed term (**"Fixed Term"**) of this Lease with respect to each Unit shall automatically commence and shall continue in full force and effect for a period of sixty (60) months thereafter (the Interim Term and the Fixed Term herein collectively the **"Term of this Lease"**.)

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Paragraphs 7, 10 and 12 hereof) shall survive the expiration or sooner termination of this Lease.

6. Identification Marks. The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words **"Ownership subject to a security agreement filed with the Interstate Commerce Commission"** or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership.

7. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than the federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than state or city income taxes or franchise taxes measured by gross or net income based on such receipts or based on capital employed by Lessor, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or licenses (and any charges, fines or penalties in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof), all of which taxes, assessments, licenses, charges, fines and penalties the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all taxes, assessments or licenses (and any charges, fines or penalties in connection therewith) which may be imposed upon any Unit or for the use or operation thereof or upon the Lessee's earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all taxes and assessments which might in any way affect the title of the Lessor or result in a lien upon any such Unit.

8. Loss, Damage or Destruction.

(a) Risk of Loss, Damage or Destruction. As between Lessee and Lessor and any Assignee of Lessor, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Unit, however caused or occasioned (provided that Lessor shall be responsible for any and all damage and liabilities caused by Lessor), such risk to be borne by Lessee with respect to each Unit from the date of its delivery and acceptance as provided in Paragraph 2 hereof and continuing until such Unit has been returned to Lessor in accordance with the provisions of Paragraph 12 hereof. Lessee agrees that, except as otherwise provided herein, no occurrence specified in the preceding sentence (except when caused by Lessor) shall impair, in whole or in part, any obligation of Lessee under this Lease, including, without limitation, the obligation to pay rent.

(b) Casualty Occurrence. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable from any cause whatsoever, or any Unit shall be condemned, confiscated, or seized, or the title to or use of any Unit shall be requisitioned

for a period of ninety (90) continuous days (such occurrences being hereinafter called **"Casualty Occurrences"**) during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment. A settlement value payment pursuant to the casualty schedule attached as Annex C will also be made as of that date, provided however, such payment shall be reduced by sums received by Lessor as payment for condemnation, confiscation, seizure or requisition. Upon the making of such payment by the Lessee in respect of a Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessee shall be entitled to ownership and possession of such Unit or the remains thereof. Lessor has the right, in its sole discretion, to replace any and all Units subject to a Casualty Occurrence and such replacement Units will be subject to this Lease as if originally a part thereof.

Except as hereinabove in this Paragraph 8 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

9. Report and Inspection. On or before February 15th in each year, commencing with the calendar year 1990, the Lessee will furnish to the Lessor an accurate statement setting forth as of the preceding calendar year (a) the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and (b) such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request. The Lessor or its agent, at its sole cost and expense, shall have the right to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

10. Compliance with Laws and Rules; Insurance and Indemnification. Lessor warrants that Lessor is the lawful owner of the Units and has good and marketable title to the Units. Lessor hereby assigns to Lessee for the term of this Lease the benefit of all warranties and indemnities of the manufacturer, reconditioner, repairer or maintainer of the Units. Otherwise, except for the aforesaid, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNITS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT

HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNITS ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and in the event such laws or rules require the alteration or repairs of any such Unit, the Lessor will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the Lessor may, in its reasonable judgement based upon the cost and economic value of such modifications or alterations in relation to the then estimated fair market value of the Units, declare this Lease terminated for those so affected as of the date such repairs or alterations are required as a condition to use of the Units by Lessee.

Subject to Paragraph 8, the Lessee agrees it will return the Units to the Lessor at the expiration of the term or sooner termination of this Lease in good order and repair, ordinary wear and tear excepted, suitable for movement in the interchange system in conformity with all applicable laws and regulations including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards.

Neither party to this Lease will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Units without the other party's written consent.

Any and all additions to any Unit and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to such Unit and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in such Unit.

Lessee hereby acknowledges that it has elected to be self-insured to [redacted] for public liability and for property damage in an amount to cover the settlement value (as defined in Paragraph 8B). These amounts may

fluctuate during the term of the Lease but Lessee agrees that it will maintain during the term of the Lease a net worth sufficient to meet its self insurance obligations. Lessee agrees to give immediate notice to Lessor of any material adverse change in its financial condition that would preclude meeting its financial obligation under this Lease during the term of this Lease.

The Lessee agrees to indemnify save harmless and defend the Lessor against any charges or claims made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (unless resulting from the Lessor's sole negligence) by reason of entering into or the performance of this Lease or the ownership of, or which may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, any Unit until such Unit is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on the account of any accident (unless resulting from the Lessor's sole negligence) in connection with the operation, use, condition, possession or storage of such Unit resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all mandatory reports of which the Lessee has or reasonably should have actual knowledge, except income tax reports, to be filed by the Lessor, with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing of the Units to the Lessee. The Lessor shall notify the Lessee of any such reports of which the Lessor has actual knowledge.

11. Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Units, any Unit or any part thereof, Lessor's title thereto, or any interest therein, except (i) any lien resulting from an independent act of or claim against Lessor which does not result from, arise out of, or relate to the manufacture, acquisition, ownership or leasing of the Units or this Lease or any Lease supplement or any Event of Default, (ii) liens for taxes either not yet delinquent or being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units or any part or item thereof, and (iii) materialmen's, mechanics', workmen's, repairmen's, employees' storage or

other like liens arising in the ordinary course of business, which are not delinquent or are being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units, or any part thereof. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Units free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Lessor (and any assignee of Lessor), any such lien not excepted above if the same shall arise at any time. Lessee will notify Lessor (and any assignee of Lessor) in writing promptly upon becoming aware of any tax or other lien (other than any lien excepted above) that shall attach to the Units or any Unit, and of the full particulars thereof.

12. Return of the Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee or its Affiliates as the Lessor may reasonably designate. The condition of the Units upon such return shall be as required, pursuant to Paragraph 10 hereof. The Lessee shall permit the Lessor to store such Unit on its own tracks free of charge for a period not exceeding ninety (90) days after such expiration and shall transport the same to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as reasonably directed by the Lessor. The movement and storage of such Unit shall be at the expense and risk of the Lessee if the Lessor has given movement and storage instructions within the above ninety (90) day period; provided, however, that if the Lessor instructs the Lessee to store such Unit for a period beyond ninety (90) days after the expiration of this Lease with respect to such Unit, such additional storage shall be at the expense and risk of the Lessor with the exception of any loss, damage or destruction caused by gross negligence or willful misconduct of Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative to inspect the same at such reasonable time or times as the Lessee shall agree to.

The assembling, delivery, storage and transporting of the Units as provided in this Paragraph 12 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty

Occurrence, it may deliver written notice to such effect to the Lessee and Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of any, responsibility of ownership thereof, from and after receipt of such notice and Lessor shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances whatsoever.

13. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called **"Events of Default"**) shall occur;

(a) default shall be made in the payment of any part of the rental provided in Paragraph 4 hereof and such default shall continue for ten (10) days after written notice is sent to Lessee;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

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

(d) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that the status of such shall be the same as expense of trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(e) any material representation made by the Lessee herein or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

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

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon, the Lessor may in a reasonable manner and without damage to the property of the Lessee or injury to any person by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as representing actual loss incurred by the Lessor, damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit which represents the then present value of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed in each case on a basis of a 12% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, expenses of resale or re-leasing (including incidental transportation costs incurred by Lessor).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided,

to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14. Return of Units Upon Default. If this Lease shall terminate pursuant to Paragraph 13 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. The condition of the Units upon such return shall be as required pursuant to Paragraph 10 hereof. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense, and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee or its Affiliates as the Lessor reasonably may designate or, in the absence of such designation, as the Lessee may select,

(b) permit the Lessor to store such Units on such tracks for a period not exceeding six (6) months at the risk of the Lessee, and

(c) transport the same, at any time within such six (6) month period, to any place on the lines of railroad operated by the Lessee or any of its Affiliates or to any connecting carrier for shipment, all as reasonably directed by the Lessor. The assembling, delivery, storage and transporting of the Units as provided in this Paragraph 14 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Paragraph 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

15. Assignment; Possession and Use. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Units during the term of this Lease, provided, that no Event of Default has occurred and is continuing.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under Paragraphs 7, 10 and 13) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to provide any reasonable documentation requested by Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee may without any prior consent of the Lessor sublease any one or more of the Units or assign this Lease to any one or more of the Lessee's Affiliates, or with the prior written consent of the Lessor sublease the Units to third parties; provided, that (i) such sublease or assignment shall provide that the subject Units shall be operated and maintained in accordance with the terms hereof; (ii) the Lessee shall provide the Lessor with ten (10) days advance notice of any such sublease or assignment and a copy of such sublease or assignment; (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of the Lessor; and (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety.

The Lessee represents and warrants that: (i) Lessee (or any assignee or sublessee) will not at any time during the term of this Lease use or fail to use any Unit, in such a way as to disqualify it as **"Section 38 property"** within the meaning of Section 48 of the United States Internal Revenue Code; (ii) Lessee (or any assignee or sublessee) will at all times during the term of this Lease use each Unit in such a way that for federal income tax purposes, all amounts includable in the gross income of Lessor with respect to each Unit and all deductions allowable to Lessor with respect to each Unit will be treated as derived from, or allowable to, sources within the United States; and (iii) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within thirty (30) days after receipt of a written demand therefor.

So long as the Lessee shall not be in default under this Lease, the Lessee or its Affiliates shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the Lessee shall not assign or transfer (except as otherwise permitted by this Paragraph 15) or encumber its leasehold interest under this Lease in the Units and, in addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit or the interest of the Lessor, or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provision of the next succeeding paragraph hereof.

Nothing in this Paragraph 15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder (including, but not limited to, Paragraph 17 hereof).

In connection with any sublease or assignment by Lessee under this Paragraph 15, whether or not Lessee is required to obtain the consent of the Lessor to any such transaction, Lessee agrees, at its expense, to cause any such assignment or sublease to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 in order to protect the interest of the Lessor in and to the Units under this Lease.

The Lessee agrees that during the term of this Lease, the Lessee will not assign any Unit to service involving the operation and maintenance thereof outside the United States of America and that operation of any Unit outside the United States of America

during such term will be limited to incidental and temporary use in Canada.

16. Opinions of Counsel. Concurrently with or as soon as practicable after the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in scope and substance reasonably satisfactory to the Lessor and its counsel, to the effect that :

(a) the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;

(b) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

(c) the execution and performance of this Lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon the Lessee;

(d) this Lease has been duly filed and recorded with the Interstate Commerce Commission under 49 U.S.C. 11303 and no other filing or recording is necessary to protect in the United States of America the right, title and interest of the Lessor in and to the Units.

17. Recording. Prior to the delivery and acceptance of the Units, and in connection with any sublease or assignment permitted by Paragraph 15 hereof, the Lessee will cause this Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection to the satisfaction of the Lessor of its title to the Units or for the purpose of carrying out the intention of this Lease.

18. 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 certified mails, first-class postage prepaid, addressed as follows:

If to the Lessor: Helm Financial Corporation
One Embarcadero Center
Suite 3500
San Francisco, CA 94111
ATTN: David R. Eckles

If to the Lessee: Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179
ATTN: Larry S. Anderson

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

19. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

20. Effect and Modification of Lease. This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

21. Successors and Assigns. This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

22. Execution. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

23. Law Governing. This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of California; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

HELM FINANCIAL CORPORATION

By _____

Title Executive Vice President

UNION PACIFIC RAILROAD COMPANY

By _____

Title Chairman

HFC-UP-10

STATE OF CALIFORNIA)
) §
COUNTY OF SAN FRANCISCO)

On this 1st day of March, 1989, before me personally appeared David R. Eckles, to me personally known, who, being by me duly sworn, says that he is E.V.P. of **HELM FINANCIAL CORPORATION,** that said instrument was signed and sealed on behalf of said corporation by authority of it Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elena F. Gary
Notary Public

My Commission Expires: July 24, 1992

OFFICIAL SEAL
ELENA F GARY
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My comm. expires JUL 24, 1992

[Notarial Seal]

STATE OF NEBRASKA **)**
) §
COUNTY OF DOUGLAS **)**

On this 17th day of February, 1989, before me personally appears Mike Walsh, to me personally known, who being by me duly sworn says that he is a Chairman of Union Pacific Railroad, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carol A. Leo
Notary Public

My Commission Expires: October 5, 1992

[Notarial Seal]

GENERAL NOTARY-State of Nebraska
CAROL A. LEO
My Comm. Exp. Oct. 6, 1992

ANNEX A

to

Lease of Railroad Equipment

Dated as of February 2, 1989

Equipment Description	Number of Units	Equipment Numbers
General Motors EMD, 3,000 H.P. GP40 Locomotives	10	UP ~~858~~ 850 - ~~867~~ 859

HFC-UP-10

ANNEX B

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of the **UNION PACIFIC RAILROAD COMPANY** (the **"Lessee"**), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of the Lessee the following described Units of equipment, which Units are in good order, condition and repair (except for latent defects) and conform in all respects to the terms, provisions, requirements and standards of the certain Lease of Railroad Equipment dated as of February 2, 1989 between Helm Financial Corporation and Lessee.

Equipment Description	No. of Units	Unit Number	Date Accepted

_____

Authorized Representative

HFC-UP-10

ANNEX C

CASUALTY VALUE SCHEDULE

LEASE TERM PERIOD (Months)	VALUE PER UNIT ($)
0	[redacted]
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ANNEX C (Cont.)

CASUALTY VALUE SCHEDULE

LEASE TERM PERIOD (Months)	VALUE PER UNIT ($)
41	[redacted]
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