# OSTER
## Researching Services
12897 Colonial Dr. • Mt. Airy, Md. 21771
301-253-6040


1 6146

January 9, 1989

JAN 9 1989 · 10 10 AM
INTERSTATE COMMERCE COMMISSION

9-009A035
No.
Date JAN 9 1989
Fee $ 13.00
ICC Washington, D.C.

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Railroad Equipment Lease Agreement dated as of December 26, 1988, between the following parties:

Lessor: Helm Financial Corporation
One Embarcadero Center
San Francisco, CA 94111

Lessee: Detroit Edison Company
2000 Second Avenue
Detroit, MI 48226

The equipment involved in this transaction is as follows:

Equipment: 189, Rotary Dump Gondolas
(See Exhibit A)

Please file this agreement as a primary document. The filing fee of $13 is enclosed. Thank you.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

JAN 9 10 03 AM '89

Mary A Oster

# Interstate Commerce Commission

Washington, D.C. 20423

1/9/88

OFFICE OF THE SECRETARY

Mary Ann Oster

Oster Researching Services

12897 Colonial Dr.

Mt. Airy,Maryland 21771

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 1/9/88 at 10:10am , and assigned recordation number(s). 16146 & 16147

Sincerely yours,

Noreta L. McGee

Secretary

Enclosure(s)

SE-30
(7/79)

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JAN 9 1989 10 52 AM

INTERSTATE COMMERCE COMMISSION

# RAILROAD EQUIPMENT LEASE AGREEMENT
(RAILCARS)

dated as of December 26, 1988

between

Helm Financial Corporation
an California corporation

and

The Detroit Edison Company,
a Michigan corporation

# RAILROAD EQUIPMENT LEASE AGREEMENT

THIS RAILROAD EQUIPMENT LEASE AGREEMENT ("Lease), made and entered into this 26th day of December, 1988, by and between HELM FINANCIAL CORPORATION, an California corporation, (herein-after called "Lessor"), and THE DETROIT EDISON COMPANY, a Michigan corporation, (hereinafter called "Lessee").

## R E C I T A L S

(a) Lessor is sole owner of certain railroad equipment as indicated by Exhibit A to this Lease (hereinafter referred to collectively as "Equipment" or individually as "Unit");

(b) Lessee desires to lease from the Lessor all of the Equipment referenced on Exhibit A;

(c) Lessor desires to lease all of the Equipment referenced on Exhibit A to Lessee, subject to the terms and conditions of this Lease.

(d) Lessor and Lessee agree to treat this transaction as a Lease for all purposes including tax, accounting and regulatory.

For the purpose of convenience, this Lease is divided into sections; it being understood, however, that all sections herein are considered together as part of one and the same document.

1. LEASE TERM. Subject to the terms and conditions of this Lease, Lessor agrees to lease to Lessee, and Lessee agrees to accept and use the Equipment for a total lease term of seventy-two (72) months ("Lease Term"). The Lease Term shall begin on January 1, 1989, and expire on December 31, 1994.

2. LEASE PAYMENTS. Lessee covenants and agrees to pay to Lessor monthly lease rental payments ("Rental Payments") during the Lease Term for the use of each Unit listed in Exhibit A to this Lease. Lessee shall pay seventy-two (72) monthly Rental Payments equal to [redacted] per Unit per month. The first payment shall be due on January 31, 1989.

a. Late Payments. In the event that any Rental Payment or other payment due from Lessee to Lessor pursuant to this Lease shall be received later than ten (10) days after its due date, Lessee shall pay to Lessor, upon demand by Lessor, interest from the date due until fully paid, on the late payment amount at a rate equal to the Prime Rate as announced by Citibank as its Prime Rate, calculated on a 360 day year basis.

All payments required to be made by Lessee to Lessor hereunder shall be made in immediately available funds to Lessor at or at such other place as Lessor may from time to time designate in notice to Lessee.

3. NET LEASE; OFFSET. This Lease is a net lease, and Lessee shall not be entitled to any abatement of Rental Payments or other payments due under this Lease or any reduction of Rental Payments under any circumstances or for any reason (except as expressly provided herein) Lessee agrees to pay the Rental Payments and other amounts due hereunder as and when due regardless of any offset or claim which may be asserted by Lessee or on its behalf. Except as expressly provided herein, this Lease shall not terminate, or the respective obligations of Lessor or Lessee be otherwise affected, or Lessor have any liability whatsoever to Lessee, by reason of any defect in or damage to or loss or destruction of any or all Units of Equipment from whatever cause, the prohibition of Lessee's use of the Equipment or any Unit thereof, the interference with such use by any government, person or corporation other than Lessor.

4. DELIVERY AND ACCEPTANCE. The Lessee has the Equipment in its possession and hereby accepts the Equipment where upon each Unit shall be subject thereafter to all terms and conditions of the Lease unless Lessee provides evidence to Lessor that any Unit(s) has been last, stolen, or destroyed prior to January 1, 1989 (such evidence to be provided to Lessor prior to January 30, 1989).

5. WARRANTIES AND REPRESENTATION. LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND UNLESS EXPRESSLY PROVIDED HEREIN, RESPECTING THE EQUIPMENT WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE EQUIPMENT PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE EQUIPMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNIT OF EQUIPMENT.

6. LESSEE'S REPRESENTATIONS. Lessee hereby represents to Lessor as follows:

a. Organization, Power, Etc.. Lessee (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan, (ii) is qualified to do business in every jurisdiction in which such qualifications is necessary and (iii) has the power and authority to own its properties and to carry on its business as now being conducted.

b. Validity of Lease. The execution, delivery and performance by Lessee of this Lease has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or By-Laws of Lessee, or any indenture, agreement or other instrument to which it is a party, or by which it or any of its property is bound, or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets; and no registration with, or approval of, any governmental agency or commission is necessary for the execution, delivery or performance by Lessee of the terms of this Lease, or for the validity and enforceability thereof; and this Lease constitutes the legal valid and binding obligation of Lessee in accordance with its terms.

c. Other Agreements. Lessee is not a party to any agreement or instrument materially and adversely affecting its present or proposed business, properties or assets, operation or condition, financial or otherwise; except as may be set forth in the Lessee's annual, quarterly and current reports to the Securities and Exchange Commission on Forms 10-K, 10-Q, and 8-K respectively, hereinafter referred to collectively as ("Financial Statements"), and Lessee is not in default in the performance, observance or fulfillment of any obligations, covenants or conditions set forth in any agreement or instrument to which it is a party which would materially and adversely affect the ability of the Lessee to perform its obligations under the Lease.

d. Taxes. Lessee has filed all federal, state, county and municipal tax returns which are required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessment received by it, and Lessee does not know of any basis for additional assessment in respect of such taxes which would materially and adversely affect the ability of the Lessee to perform its obligations under the Lease.

e. Litigation. There is not now pending against or affecting Lessee, nor to its knowledge is there threatened, any action, suit or proceedings at law, in equity or by or before any administrative agency which, if adversely determined, would materially impair or affect Lessee's financial condition or operations except as may be set forth in the Lessee's Financial Statements.

7. COVENANTS.

a. Use of Equipment. Lessee shall use and operate or permit others to use and operate the Equipment (i) in a careful

and proper manner, (ii) solely in the conduct of its business, thereof (iii) inside the continental United States and (iv) in compliance with (A) all laws, rules and regulations of every governmental authority having jurisdiction over the Equipment and (B) the provisions of all policies of insurance carried by Lessee pursuant to this Lease. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment. As long as Lessee is not in default hereunder, Lessee shall have and enjoy an unconditional right quietly to enjoy and use all Equipment, free from any disturbance or interruption of possession arising as a result of any action or inaction of Lessor or its assigns.

b. Inspection. Lessee shall permit any person designated by Lessor, at Lessor's expense and at its option, to visit and inspect the Equipment, or any part thereof, and any records pertaining to the use and maintenance thereof, at such reasonable times and places and as often as Lessor may reasonably request during Lessee's regular business hours. Lessor is under no duty or obligation to inspect the Equipment.

c. Additions, Modifications and Improvements. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) in the course of ordinary maintenance of the Units or (iii) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body having jurisdiction, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Lessor) shall immediately be vested in the Lessor.

d. Maintenance. Lessee shall at its own cost and expense, cause the Equipment to be maintained, serviced and repaired so as to keep it in as good operating condition, working order, and repair as it was when it first became subject to this Lease, ordinary wear and tear excepted. Lessee agrees to conform with all applicable laws and regulations including the Field Manual of the AAR Interchange Rules and FRA Railroad Freight Car Safety Standards.

e. Freight and Other Charges. Lessee shall pay all switching, freight, or other charges incurred by the movement or holding of the Equipment, either loaded or empty, during the term of this Lease.

f. Taxes. In addition to the Rental Payments and other amounts payable by Lessee under this Lease, Lessee shall pay promptly all taxes, assessments, license fees and governmental charges, municipal, state, federal and foreign (herein referred to as "Imposts")

(1) levied or assessed against Lessee (i) in respect of this Lease of the Equipment, (ii) upon the interest of the Lessee in the Equipment, (iii) upon the use or operation thereof, or (iv) upon the earnings of Lessee arising therefrom; or

(2) levied or assessed against Lessor as a result of this Lease or the Lessor's ownership of Equipment subject to this Lease excluding, however, any net income, franchise or value added taxes (including Michigan Single Business Tax) payable by Lessor to the United States or any state or political subdivision thereof or to any foreign country. Lessor and Lessee agree that Lessee does not warrant or represent that Lessor is entitled to any benefit, credit, offset, deduction, or right from this Lease or from the Equipment in connection or respect to any income, franchise or value added tax whatsoever and Lessee does not indemnify Lessor for any loss of any kind thereof.

If a claim is made against Lessor for any Imposts payable by Lessee hereunder, Lessor shall promptly notify Lessee, and if Lessor pays such claim, Lessee will promptly reimburse Lessor for such payment, provided, however, that Lessee shall not be required to pay any such Imposts if and so long as Lessee shall in good faith, with due diligence and by appropriate legal or administrative proceedings contest the validity, applicability or amount thereof. Lessor shall fully cooperate with the Lessee in determining the validity, applicability or amount of any Impost, any expense in connection therewith or any contest arising therefrom.

If any Impost payable by Lessee hereunder is, by law, to be assessed or billed to Lessor, Lessee shall, at its expense, do any and all things required to be done by Lessor in connection with the levy, assessment, billing, payment, negotiation, protest, appeal, contest, or litigation thereof; and Lessor hereby authorizes and appoints Lessee to act for and on behalf

of Lessor in Lessor's name, place and stead in connection therewith, but Lessee shall indemnify and hold harmless Lessor from and against any and all claims and all costs, expenses, damages, losses and liabilities incurred or suffered by Lessor in connection therewith, as a result of, or incident to, any action by Lessee pursuant to the filing of required reports and returns with respect to the Equipment, and to the extent permitted by the relevant jurisdictions, Lessee shall cause all billing of Imposts levied against Lessor to be made to Lessor in care of Lessee, shall file all required reports and returns with respect to the Equipment on behalf of Lessor, and shall, from time to time, on request of Lessor, submit written evidence of the payment of such Imposts.

g. Loss of Equipment. Lessee shall bear the risk of the Equipment being lost, destroyed or otherwise rendered permanently unfit or unavailable for use (herein called an **"Event of Loss"**) after its delivery to Lessee. For the purposes of this Lease, a Unit shall be deemed to have been otherwise rendered permanently unfit or unavailable for use, without limiting the general meaning of such phrase, if any such Unit shall have been (i) confiscated, condemned or taken by any governmental body, de facto or de jure, by exercise of the power of eminent domain or otherwise, (ii) damaged to such an extent rendering repair impracticable or uneconomic or (iii) stolen or misappropriated and not recovered by Lessee such time as and Event of Loss shall occur with respect to a Unit, Lessee shall promptly notify Lessor thereof and shall pay to Lessor on the next rental payment date after the first to occur of:

(1) the date on which the sixty (60) day period following the occurrence of such an Event of Loss shall have expired; and

(2) the date on which there shall be made any payment of any proceeds of insurance or of any condemnation, confiscation or other taking in respect thereof, or the date on which any underwriter of insurance on the Equipment shall advise Lessor or Lessee that it disclaims liability in respect to such Event of Loss, if it disclaims liability,

in addition to the Rental Payment then due, an amount equal to the settlement value of the Unit found in the casualty schedule attached as Schedule B (hereinafter **"Casualty Value(s)"**). In such an event, Lessee shall continue to pay the rental payment applicable to such Unit until the rental payment date on which Lessor receives payment in full of the casualty payment of such Unit, whereupon Lessee's obligations to pay Rental Payments with respect to such Unit shall terminate.

h. Insurance Coverage. Lessee will carry, at Lessee's cost and at no cost to Lessor, with insurers of recognized responsibility:

(1) all risk loss and physical damage insurance on the Equipment, in an amount not less than the Casualty Value in Schedule B; and

(2) comprehensive public liability and property damage insurance in respect of the operation and use of the Equipment, in an amount not less than U.S. [redacted] for each occurrence,

provided, however, that Lessee may, at is option, in good faith self-insure the risks set forth in section 7.b.1 with respect to the Equipment in a manner consistent with industry practice and Lessee's practice for self-insuring such risks with respect to other similar equipment owned or operated by Lessee, provided, further, that Lessee shall only have the right to self-insure as long as Lessee adequately provides, and properly accounts, for risks that are self-insured. Notwithstanding the foregoing, in no event shall Lessee be permitted to self-insure with respect to the Equipment at any time after an Event of Default of this Lease has occurred.

i. Insurance Policy Provisions. Lessee shall cause each insurance policy issued pursuant to the requirements of this Lease to provide, and the insurer issuing such policy to certify to Lessor, as follows:

(1) as to insurance on the Equipment, that (i) Lessor, as owner and lessor of the Equipment, shall be insured as its interest may appear, (ii) Lessor shall be named loss payee as Lessor's interest may appear (iii) the interests of Lessor will be insured regardless of any breach or violation by Lessee of any warranties, declarations or conditions contained in such policy and (iv) if such policy shall expire, be cancelled or materially changed for any reason whatsoever such insurer will promptly notify Lessor, and such expiration, cancellation or change will not be effective as to Lessor for thirty (30) days after notice to Lessor; and

(2) as to public liability and property damage insurance, that (i) Lessor, as owner and lessor of the Equipment, is an additional insured thereunder, (ii) all provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy covering each insured and (iii) if such policy shall expire, be cancelled or materially changed for any reason whatsoever such insurer will promptly notify Lessor and such

expiration, cancellation or change will not be effective as to Lessor until thirty (30) days have elapsed after notice to Lessor.

j. Delivery of Policies and Receipts for Premiums. Lessee shall deliver to Lessor a certificate of insurance upon execution of the policy and each renewal thereafter or preceding renewal policy, Lessee shall deliver to Lessor receipts or other evidence that the premiums thereon have been paid if reasonably requested by Lessor.

k. Identification. Lessee shall, at its own cost and expense, cause each Unit to be legibly marked in a reasonably prominent location with a decalcomania or other marking as shall, in the opinion of Lessor, be appropriate or desirable to evidence the fact of Lessor's ownership of such Unit. Lessee shall not remove or deface, or permit to be removed or defaced, any such plate, disc or other marking or the identifying manufacturer's serial number with respect to such Unit, and, in the event of any such removal or defacement, Lessee shall promptly cause such decalcomania or other marking or serial number to be replaced. Lessee shall not allow the name of any person, association or corporation to be placed on any Unit in any manner that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Lessee or Lessee's customers on equipment used by it of the same or a similar type as the Equipment for convenience of identification of its rights to use the Equipment as permitted under this Lease.

l. Equipment to be Personal Property. It is expressly understood that the Equipment shall be and remain personal property notwithstanding the manner in which the same may be attached or affixed to realty, and Lessee and Lessor shall do all acts and enter into all agreements necessary to insure that the Equipment remains personal property.

m. Financial Statements. Lessee shall, during the Term of Lease, furnish to Lessor:

(1) within sixty (60) days after the close of each quarter, except the last quarter of its fiscal year, a consolidated income statement for such quarter and balance sheet, as of the end of such quarter, of Lessee.

(2) within one hundred twenty (120) days after the end of each of its fiscal years, a complete conformed copy of an executed report of an examination of its financial affairs made by recognized and reputable independent certified public accountants in accordance with generally accepted accounting principles, such report to include a balance sheet, a statement of changes in financial position and an

income statement for such year and an opinion to the effect that such balance sheet, statement of changes in financial position and income statement fairly represent the financial condition of Lessee and the results of its operations.

Any financial statement furnished pursuant to this subsection may be a consolidated statement (i.e., consolidated the financial information with respect to Lessee with that of its consolidated subsidiaries, if any).

n. Indemnity. Lessee agrees to indemnify and hold harmless Lessor from and against, on an after-tax basis, any and all liabilities, obligations, expenses, claims (including claims for negligence or strict liability in tort), losses, costs, disbursements, (including legal fees and expenses), actions, suits, judgments, penalties and damages (herein referred to individually as **"Indemnity"** and collectively as **"Indemnities"**) imposed on, incurred by or asserted against Lessor or any successors or assigns of Lessor but excluding any Indemnity occasioned by the gross negligence or willful misconduct of Lessor or any successors or assigns of Lessor, in any way relating to or arising out of:

(1) the manufacture, purchase, delivery, non-delivery, acceptance or rejection, ownership, management, control, possession, use, operation, storage, condition, return or other disposition (prior to return to Lessor), of the Equipment or any part thereof,

(2) the use in or about the construction or operation of the Equipment of any design, article, or material which infringes or is claimed to infringe on any patent, trademark, copyright or other right, or

(3) the failure of Lessee to observe and conform to the statues, ordinances or other regulations or requirements of any governmental authority having jurisdiction applicable or relating to the Equipment.

The covenant of indemnity contained in this subsection shall continue in full force and effect notwithstanding the full payment of all amounts due hereunder or the termination of this Lease in any manner whatsoever.

Upon the payment in full by the Lessee of any Indemnity provided for under this Lease, the Lessee shall be subrogated to any right of the Lessor in respect of the matter as to which such Indemnity was paid.

This section 7.n shall not apply with respect to any Impost. Lessee's obligation, if any, to pay or indemnify Lessor for

Imposts and the amount of payment or indemnity shall be determined solely by the provisions of section 7.f of this Lease.

o. Assignment; Liens. Lessee shall be permitted to sublease the Equipment to a third party with the prior written consent of Lessor, which shall not be unreasonably withheld. If the monthly rental payments are greater than [redacted] per Unit per month, the Lessee shall pay to the Lessor the difference on a monthly basis.

Lessee shall not assign, transfer, pledge or hypothecate this Lease, (except for subleasing as described in this section) any Unit of Equipment or any interest in this Lease or in and to the Equipment or permit its rights under this Lease or the Equipment to be subject to any security interest, lien, charge or encumbrance, other than those created by Lessor pursuant to this section below.

All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, however, subject to the rights of Lessee under this Lease. Lessor shall promptly notify Lessee of any assignment of, or security interest in the Lease. Lessee shall acknowledge receipt thereof in writing and shall thereafter pay any amounts due hereunder designated in such notice as directed therein. In the event Lessor assigns this Lease or the Rental Payments due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by Lessor hereunder or pursuant to any other agreement between Lessor and Lessee, should there be one, shall excuse performance by Lessee of any provision hereof, it being understood that in the event of such default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. No such assignee shall be obligated to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Lease.

Subject always to the foregoing, this Lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

8. RETURN OF EQUIPMENT. The Lessee agrees, immediately upon the expiration or termination of this Lease without demand by Lessor, to return each of the Units to Lessor uncontaminated and in the same condition as received, less reasonable wear and tear including reasonable amounts of corrosion resulting from normal use, able to meet all Field Manual of the AAR Interchange Rules, FRA Railroad Freight Car Safety Standards, capable of interchange use, and free of liens arising by, through or under Lessee, at a point within a four hundred (400) mile radius of Detroit, Michigan and to pay rent on each Unit until such return. Rent for each Unit shall cease when all the Equipment is returned in the above

condition to the point referenced above, or are placed in storage at the request of Lessor as stipulated below. Lessee shall provide up to ninety (90) days free storage for all or less than all of the Equipment at the request of the Lessor at the expiration or termination of this Lease.

9. EVENT OF DEFAULT. The occurrence of any of the following shall constitute an Event of Default hereunder:

a. Default in Payment. Lessee shall fail to pay all or any part of a Rental Payment or other payment hereunder when and as the same shall become due and payable, and shall continue to fail to do so for a period of fifteen (15) days after notice thereof by Lessor to Lessee.

b. Breach of Representation. Any representation made in this Lease, or in any Financial Statement provided by Lessee or Lessor, shall prove to have been false or misleading in any material respect as of the date on which the same was made.

c. Breach of Covenant. Lessee shall fail to duly observe or perform any covenant, condition or agreement made by it hereunder, and such failure shall not, within the earlier of thirty (30) days after notice thereof shall not been given to Lessee by Lessor, or thirty (30) days after the date that Lessor is notified of such failure or should have been so notified pursuant to an affirmative covenant of Lessee in the Lease, have been remedied to Lessor's satisfaction, such satisfaction to be evidenced by a written declaration of Lessor filed with Lessee.

d. Bankruptcy, Receivership, Insolvency, Etc.. Bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against Lessee or a material part of its property under Federal bankruptcy laws as presently existing or as amended or under a future bankruptcy law of the United States or other law of the United States or of any State or other competent jurisdiction, and, if against Lessee, it shall consent thereto or shall fail to cause the same to be discharged within thirty (30) days.

e. Other Defaults. A default with respect to any order, judgement, or award of any court, governmental authority, arbitration board or tribunal, or a default with respect to any other debt obligation of Lessee, which default would materially and adversely affect the ability of the Lessee to perform its obligations under the Lease.

10. REMEDIES. If an Event of Default hereunder shall occur and be continuing, Lessor may exercise any one or more of the following remedies:

a. Termination of Agreement. Terminate this Lease and Lessee's rights hereunder.

b. Specific Performance or Damages. Proceed, by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, or both.

c. Repossession. Subject always to any mandatory requirements of applicable law then in effect:

(1) Personally, or by agents or attorneys, retake possession of the Equipment, or any Unit, from Lessee.

(2) Retake possession of the Equipment, or any Unit thereof, without liability to return to Lessee any Rental Payment or other payments theretofore made and free from all claims by Lessee, by directing Lessee to assemble the Equipment and deliver the same to Lessor at the place designated by Lessor in Detroit, Michigan or Chicago, Illinois or at such other place that Lessor shall designated, in which event Lessee shall, at its own expense, forthwith cause the same to be moved to the place so designated and there delivered to Lessor; it being understood that Lessee's obligations so to deliver the Equipment are of the essence of this Lease and that, accordingly, upon application to a court of equity having jurisdiction, Lessor shall be entitled to a decree requiring specific performance by Lessee of such obligations.

Lessor may, without charge, pending further action by Lessor as hereinafter provided, keep any of the Equipment repossessed by Lessor on the premises of Lessee or track provided by Lessee; provided, however, that if the storage of the Equipment thereon materially interferes with the efficient operation of such premises, the Equipment shall be removed to and stored (at the expense of Lessee) at any other location mutually agreed upon by Lessor and Lessee.

(3) In the event Lessor repossesses the Equipment, Lessor shall, (i) lease the Equipment, or any portion thereof, in such manner, for such time and upon such terms as Lessor may reasonably determine, (ii) sell the Equipment, or any portion thereof, at one or more public or private sales, in such manner at such time or times and upon such terms as Lessor may reasonably determine, or (iii) otherwise dispose of, hold, use, operate or keep idle any Unit of Equipment as Lessor in its sole discretion may determine.

d. In the event that Lessor shall enter into a lease or leases ("New Lease") to an unrelated third party of any Units that have been repossessed by Lessor from Lessee pursuant to this Lease, Lessee shall (i) pay to Lessor the net present value of the Rental Payments remaining on the Lease in excess of the Net Present Value of the Rental Payments of the New Lease, if any. The Net Present Values described herein shall be calculated using a [redacted] annual discount rate, and Lessee shall also pay to Lessor an amount equal to the sum total of (ii) any and all expenses and fees (including attorney's fees) incurred by Lessor in retaking possession of, and removing, storing and leasing such Units, (iii) the costs and expenses incurred by Lessor, if any, in repairing such Units to the state of repair required by section 7.d of this Lease, (iv) all Rental Payments then due and unpaid under this Lease and (v) any and all other sums then owing to Lessor by Lessee pursuant to this Lease.

e. In the event that Lessor shall sell or otherwise dispose of (other than pursuant to a lease) any Unit, the proceeds shall be applied to the payment of (i) any and all expenses and fees (including attorney's fees) incurred by Lessor in retaking possession of, and removing, storing and selling or otherwise disposing of such Unit, (ii) the costs and expenses incurred by Lessor, if any, in repairing such Unit to the state of repair required by section 7.d of this Lease (iii) the Rental Payments accrued under this Lease but unpaid up to the time of such sale or other disposition, (iv) any an all other sums (other than Rental Payments) then owing to Lessor by Lessee under this Lease and (v) the appropriate Casualty Loss Value (from Exhibit B) of the Equipment determined as of the Rental Payment Date next preceding such sale or other disposition. The remaining balance of such proceeds, if any, shall be retained by Lessor. Lessee shall remain liable to Lessor to the extent that the aggregate amount of the sums offered to in clauses (i) through (v) above shall exceed the aggregate proceeds received by Lessor in connection with the sale or disposition of the Equipment.

f. Other Remedies. Exercise any other remedy specifically granted hereunder or now or hereafter existing in equity or at law, by virtue of statute or otherwise.

11. PURCHASE OPTION. The Lessor shall extend to the Lessee a purchase option at the expiration of this Lease in the amount of [redacted] per Unit of Equipment on all but not less than all of the one hundred eighty-nine (189) Units of Equipment described in Exhibit A so long as the following conditions are met:

a. Lessee is not in default under this Lease.

b. The monthly Rental Payments paid to the Lessor relating to all but not less than all of the one hundred eighty-nine (189) Units of Equipment described in Exhibit A shall have been [redacted] per Unit per month for a term of seventy-two (72) months.

12. MISCELLANEOUS.

a. Performance of Lessee's Obligations. If Lessee shall fail to make payment or perform any act required by this Lease, Lessor may, but shall not be obligated to, make such payment or perform such act for the account of and at the expense of Lessee, without waiving or releasing any obligation or default. Lessor shall promptly notify Lessee of such payments made or acts performed. Lessee shall indemnify and hold harmless Lessor from and against all losses and reasonable expenses (including, but not limited to, attorney's fees) suffered or incurred by Lessor by reason of any acts performed by it pursuant to this subsection; and Lessee shall pay to Lessor, upon demand, all sums expended by Lessor pursuant to this subsection of with respect to which (i) it shall be entitled to be indemnified, (ii) it previously notified Lessee, and (iii) it provides reasonable evidence of payment, plus interest thereon, at an annual rate equal to the average of the Prime Rate from the date on which such sums are expended by Lessor to the date on which Lessor receives such payment from Lessee.

b. Further Assurances. Lessee agrees that at any time, and from time to time, after the execution and delivery of this Lease, it shall, upon request of Lessor, execute and deliver such further documents and do such further acts and things as Lessor may reasonably request in order to fully effect the purposes of this Lease as may be required by applicable law, including but not limited to, any and all information necessary to enable Lessor to properly complete and file tax returns for any and all states or political subdivisions. Without limiting the generality of the foregoing, Lessor at Lessor's expense shall cause this Lease and any sublease or assignment to be kept, to be filed and recorded with the Interstate Commerce Commission (ICC) in accordance with 49 U.S.C. 11303 in order to perfect and preserve Lessor's rights hereunder.

c. Rights, Remedies, Powers. Each and every right, remedy and power granted to Lessor and Lessee hereunder shall not be exclusive but shall be cumulative and in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise and may be exercised by either from time to time concurrently or independently and as often and in such order as they may deemed expedient. Any failure or delay on the part of either in exercising any such right, remedy or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect either parties' right

thereafter to exercise the same, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

d. Communications. Any notice, request, demand, consent, approval or other communication provided or permitted hereunder shall be in writing and be given by personal delivery or sent by overnight guaranteed delivery (in which case such communication shall be deemed effective on the second day after mailing), addressed as follows:

if to Lessor: Helm Financial Corporation
One Embarcadero Center
San Francisco, CA 94111
ATTN: President

if to Lessee: The Detroit Edison Company
2000 Second Avenue
Detroit, MI 48226
ATTN: Secretary

provided, however, that either party may change its address for purposes of receipt of any such communication by giving fifteen (15) days written notice of such change to the other party in the manner above prescribed.

e. Governing Law; Venue. This Lease shall be deemed to have been made under and shall be governed by, the laws of the State of Michigan in all respects, including matters of construction, validity and performance. Venue for any action hereunder or related hereto shall be in an appropriate court in the State of Michigan or in an appropriate court of such other justification as Lessor may choose having jurisdiction over the parties.

f. Severability. If any provision of this Lease is prohibited by, or is unlawful or unenforceable under, any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof; provided, however, that any such prohibition in any jurisdiction; shall not invalidate such provision in any other jurisdiction; and provided further, that where the provision of any such applicable law may be waived, they hereby are waived by Lessor and Lessee to the full extent permitted by law to the end that this Lease shall be deemed to be a valid and binding agreement in accordance with its terms. Any rate of interest set forth in this Lease that is in excess of the maximum interest rate that is applicable to Lessee shall be automatically reduced to the maximum interest rate applicable to Lessee.

g. Entire Agreement. This Lease contains the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes and cancels any prior understanding and agreements between Lessor and Lessee with respect thereto.

h. Counterparts. This Lease may be executed in counterparts, and each such counterpart shall, for all purposes, constitute one agreement binding upon the parties hereto, notwithstanding that such parties are not signatory in the same counterpart.

i. Survival. The representations, warranties, indemnities and agreements of the Lessee provided for in this Lease, and the Lessee's obligations under any and all such representations, warranties, indemnities and agreements, shall survive the return of the Equipment to Lessor and the expiration or other termination of this Lease.

**IN WITNESS WHEREOF**, Lessor and Lessee have executed this Lease.

**HELM FINANCIAL CORPORATION**
**LESSOR**

By: _____

Title: Pres

Date: 12/30/98

**THE DETROIT EDISON COMPANY**
**LESSEE**

By: _____

Title: _____

Date: _____

**EXHIBIT A**

to the
Railroad Equipment Lease Agreement
dated as of December 26, 1988
between
Helm Financial Corporation
and
The Detroit Edison Company

**DESCRIPTION OF EQUIPMENT**

| Quantity | Type | Unit Numbers |
|---|---|---|
| 189 | 125 Ton, 5,160 Cubic Foot, Aluminum Body, Steel Underframe, High Side, Rotary Dump Gondola Railcars | DEEX (See List Below) |

Even Numbers (95 Railcars - Fixed End Couplers)

| | |
|---|---|
| 1004 - 1012 | 2040 - 2042 |
| 1016 - 1030 | 2046 - 2066 |
| 1034 - 1038 | 2072 - 2078 |
| 1044 | 3002 - 3020 |
| 1048 - 1050 | 3024 - 3028 |
| 1054 - 1074 | 3032 - 3046 |
| 1078 - 1080 | 3052 |
| 2002 - 2006 | 3056 - 3058 |
| 2010 - 2024 | 3062 - 3068 |
| 2028 - 2036 | 3072 - 3074 |

Odd Numbers (94 Railcars - Rotary End Couplers)

| | | |
|---|---|---|
| 1001 - 1013 | 1077 - 1079 | 2065 - 2071 |
| 1017 | 2001 - 2005 | 2077 - 2083 |
| 1021 - 1035 | 2009 - 2015 | 3001 - 3009 |
| 1039 - 1041 | 2019 | 3019 - 3051 |
| 1045 - 1051 | 2023 - 2029 | 3055 - 3057 |
| 1053 - 1061 | 2035 - 2051 | 3061 - 3067 |
| 1067 | 2055 - 2061 | 3073 - 3075 |
| 1073 | | |

EXHIBIT B

to the
Railroad Equipment Lease Agreement
dated as of December 26, 1988
between
Helm Financial Corporation
and
The Detroit Edison Company

## CAUSALTY VALUE SCHEDULE

| LEASE TERM PERIOD (MONTHS) | VALUE PER UNIT ($) |
|---|---|
| 0 | [redacted] |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
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| 35 | |

EXHIBIT B (cont.)

to the
Railroad Equipment Lease Agreement
dated as of December 26, 1988
between
Helm Financial Corporation
and
The Detroit Edison Company

CAUSALTY VALUE SCHEDULE

| LEASE TERM PERIOD (MONTHS) | VALUE PER UNIT ($) |
|---|---|
| 36 | [redacted] |
| 37 | |
| 38 | |
| 39 | |
| 40 | |
| 41 | |
| 42 | |
| 43 | |
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STATE OF CALIFORNIA )
) §
COUNTY OF SAN FRANCISCO)

On this 30th day of December, 1988, before me personally appeared Richard C. Kirchner, to me personally known, who, being by me duly sworn, says that he is President 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. Harry
Notary Public

My Commission Expires: July 24, 1982

[Notarial Seal]

STATE OF MICHIGAN )
) §
COUNTY OF WAYNE )

On this 29th day of December, 1988, before me personally appears Ernest L. Grove, Jr., to me personally known, who being by me duly sworn says that he is a CFO & Vice Chairman of the Board of **THE DETROIT EDISON COMPANY**, 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.

Janet A. Scullen
Notary Public
Acting in Wayne County

JANET A. SCULLEN
Notary Public, Macomb County, MI
My Commission Expires July 31, 1989

My Commission Expires:

[Notarial Seal]