

McDERMOTT, WILL & EMERY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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1850 K STREET, N. W.
WASHINGTON, D. C. 20006
202/887-8000

RECORDATION NO. 1 5704

JUL 6 1988 June 23, 1988
10 10 AM

INTERSTATE COMMERCE COMMISSION

CORNELIUS J. CHAPMAN, JR.

Noretta McGee, Secretary
Interstate Commerce Commission
Room 2215
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

8-188A060

No. JUL 6 1988

Date
Fee \$ 13.00

ICC Washington, D.C.

Dear Secretary McGee:

I have enclosed an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Railcar Lease Agreement, a primary document, dated February 20, 1988. We request that this lease be cross-indexed.

The name and address of the parties to the document is as follows:

Lessor: NEMLC Leasing Associates No. 3, 28 State Street, Boston, Massachusetts 02109

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

Managing Agent: Helm Financial Corporation, One Embarcadero Center, San Francisco, California 94111

A description of the equipment covered by the document follows:

94 railroad boxcars with serial numbers and bearing the reporting marks described in the attached Exhibit A.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the undersigned.

Noreta McGee, Secretary
June 23, 1988
Page 2

A short summary of the document to appear in the index follows:

Railcar Lease Agreement between NEMLC Leasing Associates No. 3, 28 State Street, Boston, Massachusetts 02109, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, Nebraska 68179 and Helm Financial Corporation, One Embarcadero Center, San Francisco, California 94111 dated February 20, 1988 and evidencing the lease of 94 railroad boxcars.

Very truly yours,


Cornelius J. Chapman, Jr.

CJC:djl:4327c

Enclosures

EXHIBIT A (Cont'd)

<u>Marking</u>	<u>Number</u>
CHTT	100117
CHTT	100118
CHTT	100119
CHTT	100120
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CHTT	100163

Interstate Commerce Commission

Washington, D.C. 20423

7/6/88

OFFICE OF THE SECRETARY

Cornelius J. Chapman, Jr.
McDermott, Will & Emery
One Post Office Square
Boston, Mass. 02109

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 7/6/88 at 10:10AM, and assigned recordation number(s). 15704 Lead, 13474-A & 13227-F

Sincerely yours,



Secretary

Enclosure(s)

EXHIBIT A

Continuation Sheet

<u>Marking</u>	<u>Number</u>
CHTT	100070
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JUL 6 1988 10 54792-13

Agreement, dated as of February 20, 1988, by and between NEMLC Leasing Associates No. 3, a Massachusetts limited partnership principal place of business at 28 State Street, Boston, Massachusetts 02109, as Lessor; Union Pacific Railroad Company, a Utah corporation ("Lessee"), having its principal place of business at 1416 Dodge Street, Omaha, Nebraska 68179, as Lessee; and Helm Financial Corporation, a California corporation ("Helm"), having its principal place of business at One Embarcadero Center, San Francisco, California 94111, Helm being a party to this Agreement at the request of and for consideration provided by Lessor.

1. Scope of Agreement

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, not more than ninety-four (94) 50', 6" 70 ton, roller bearing, Plate C boxcars built by Pickens Railroad in 1979 (hereinafter called collectively the "Cars" and individually a "Car").

2. Term

This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars shall be for thirty-six (36) months commencing upon the first (1st) day of the month following the month in which the last Car is delivered and accepted as provided Section 3(B) hereof.

3. Supply Provisions

A. To move the Cars to Lessee's railroad line, Helm agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Helm, to issue movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("ARR") interchange agreements and rules. Lessee covenants that it shall subscribe to the Interchange Rules for the duration of this Agreement. Helm will deliver the Cars to Lessee (at no expense to Lessee) at any Union Pacific Railroad interchange point and each Car shall be considered delivered to Lessee one full day after interchange. If Helm incurs expenses in having other railroads move Cars in accordance with this Section at Lessee's specific request for a delivery at an interchange point, Lessee shall reimburse Helm for such additional delivery expense within ten (10) days of receipt of an invoice from Helm.

B. Lessee, at its expense, shall have the right to inspect and reject the Cars subject to this Agreement prior to Helm's transporting the Cars from their present location. Acceptance of the Cars by Lessee shall be evidenced by an Equipment Schedule as per attached Exhibit A, executed by a duly authorized representative of Lessee, the execution of which shall constitute conclusive evidence of delivery and acceptance of the Cars herein identified.

C. In the event any Car delivered to Lessee is not in AAR interchange condition, then upon written notice of same by Lessee to Lessor, Lessor at its

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option, shall either promptly cause said Car(s) to be repaired or replaced (at no expense to Lessee) or to exclude such Car(s) from this Lease.

D. During the term of this Agreement Lessor may, at its expense, and at its sole option, replace any or all of the Cars with similar boxcars upon prior written notice from Lessor or Helm to Lessee.

4. Railroad Markings and Record Keeping

A. Helm agrees that upon or before delivery of the Cars to Lessee said Cars will be lettered and numbered with the railroad markings and numbers of Lessee at the cost and expense of Lessee.

B. Lessee shall, at its expense, prepare and file, with respect to the Cars all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars. Lessee shall register each Car in UMLER in such a manner that Lessor or Helm is allowed access to any required information with regard to each Car.

C. Lessee shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of revenues from other railroad companies, records pertaining to maintenance and repair and billing in accordance with the Interchange Rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor or Helm from time to time during Lessee's regular business hours.

D. Lessee shall submit to Lessor and Helm a monthly report in complete AAR format for all sums due to Lessee from Lessor or Helm for such calendar month with respect to the maintenance of the Cars. Such report shall include all repair charges received by Lessee during the previous month. Lessor or Helm shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.

5. Maintenance, Taxes and Insurance

A. It is understood and agreed that all maintenance and repair of the Cars will be the responsibility of Helm, in compliance with such maintenance and repair standards and procedures as required by AAR Interchange Rules, and as otherwise may be required to keep the Cars in good order and operating condition, and in compliance with all requirements of law applicable to the maintenance and condition of the Cars. It is understood and agreed that neither Lessor nor Lessee shall be required to service the Cars or to perform or provide for actual maintenance or repair services hereunder; provided, however, that the foregoing repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of the Lessee, or arises in those instances in which the Interchange Rules would assign responsibility to Lessee (as handling carrier handling a foreign boxcar) for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessor shall not be liable for any delays

in repairs, maintenance and servicing, nor shall Lessor be liable to Lessee for any loss of use of the Cars, but Helm shall reimburse Lessee an amount equal to the daily rental hereunder for each day that a Car is out of service for repairs beyond the 5th day of first need for repair. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Helm for any repairs required for damage not noted at the time of interchange which should have been noted at the time of interchange as provided in the applicable AAR Interchange Rules. Lessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper on Lessee's railroad line. If repairs are owners responsibility as defined by the AAR Field Manual, Lessee shall promptly notify Helm and request disposition to a repair facility. In no event shall Lessee place such Car into a private contract repair facility, or allow a private contractor to perform repairs to such Car on the property of Lessee, unless such repairs are being performed at the direction and control of Helm. Repairs ("Repairs") shall be of the type that Helm determines Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Helm shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs.

B. It is understood that Helm shall be responsible for, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Title to such alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Lessee shall not make any alterations or additions to the Cars without Lessor's prior written consent. Lessee shall be liable to Lessor and Helm for any revenues lost due to any unauthorized repair, alteration, improvement or addition. In the event that the any such alteration or modification required to be made after the commencement of the term of a Car under this Lease would entail an unacceptable expense to Lessor, Lessor may elect to remove any such Car from this Lease.

C. Lessee will cause to be carried and maintained, at its sole expense, with respect to the Cars at all times during the term thereof and until the Cars have been returned to Lessor (a) physical damage insurance (including theft and collision insurance in the case of all Cars consisting of motor vehicles) insuring against all risks of physical loss or damage to the Cars, in an amount not less than the greater of the DV Cars (defined in Section 6(C) hereof) of the Cars or the replacement value of the Cars, and (b) insurance against liability for bodily injury, death and property damage resulting from the use and operation of the Equipment in an amount not less than \$10,000,000.00 per occurrence. Such insurance policy or policies will name Lessor, as the sole loss payee, as its interests may appear, on all policies referred to in clause (a) of the preceding sentence, and will name Lessor and Helm as additional insureds on all policies referred to in clause (b) of the preceding sentence. Such policies will provide that the same may not be invalidated against Lessor and Helm by reason of any violation of a condition or breach of warranty of the policies or the application therefor by Lessee, that the policies may be cancelled or materially altered or reduced in coverage (except as otherwise permitted under the terms of this Lease) by the insurer only after thirty (30) days' prior written notice to Lessor and Helm, and that the insurer will give written notice to Lessor and Helm in the event of nonpayment of premium by Lessee when due. The policies of insurance required under this Section shall be valid and enforceable policies issued by insurers of recognized responsibility acceptable to Lessor and Helm and authorized to do an insurance business in the state in which each Item of Equipment is located. In the event that any of such policies referred to in clause (b) of the first sentence of this Section shall now or hereafter provide coverage on a "claims-made" basis, Lessee shall continue to maintain such policies in effect for a period of not less

than three (3) years after the expiration of the term of the last Car leased to Lessee hereunder. Upon the execution of this Lease and thereafter not less than thirty (30) days prior to the expiration dates of any expiring policies theretofore furnished under this Section, certificates of the insurance coverage required by this Section and, if requested by Lessor or Helm, copies of the policies evidencing such insurance coverage, shall be delivered by Lessee to Lessor and Helm. Any certificate of insurance issued with respect to a blanket policy covering other equipment not subject to this Lease shall specifically describe the Cars as being included therein and covered thereby to the full extent of the coverages and amounts required hereunder. If Lessee shall fail to cause the insurance required under this Section to be carried and maintained, Lessor or Helm may provide such insurance and Lessee shall reimburse Lessor or Helm, as the case may be, upon demand for the cost thereof as a supplemental payment hereunder. It is mutually agreed that Lessee may self-insure against such risks as are required to be insured against hereunder pursuant to a formal plan of self-insurance, and Lessee shall certify that such self-insurance is being maintained in accordance therewith and the details of same. Should Lessee discontinue such self insurance plan, Lessee agrees to immediately notify Lessor and Helm of such fact and to promptly procure the coverages outlined above.

D. Lessee agrees to pay, and indemnify and hold Lessor and Helm, and their respective successors and assigns harmless on an after-tax basis from any and all Federal, state, local and foreign taxes, fees, withholdings, levies, imposts, duties, assessments and charges of any kind and nature whatsoever, together with any penalties, fines or interest thereon (herein called "taxes or other impositions") howsoever imposed, whether levied or imposed upon or asserted against Lessor, Lessee, the Cars, or any part thereof, by any Federal, state or local government or taxing authority in the United States, or by any taxing authority or governmental subdivision of a foreign country, upon or with respect to (a) the Cars or any part thereof, (b) the manufacture, construction, ordering, purchase, ownership, delivery, leasing, re-leasing, possession, use, maintenance, registration, re-registration, titling, re-titling, licensing, documentation, return, sale or other application or disposition of the Cars or any part thereof, (c) the rentals, receipts or earnings arising from the Cars or any part thereof, or (d) this Lease, the rent and/or supplemental payments payable by Lessee hereunder; provided, however, that the foregoing indemnity shall not apply to any taxes or other impositions based upon or measured solely by Lessor's or Helm's net income, and which are imposed or levied by any Federal, state or local taxing authority in the United States. Lessee will promptly notify Lessor and Helm of all reports or returns required to be made with respect to any tax or other imposition with respect to which Lessee is required to indemnify hereunder, and will promptly provide Lessor and Helm with all information necessary for the making and timely filing of such reports or returns by Lessor and Helm. If Lessor or Helm requests that any such reports or returns be prepared and filed by Lessee, Lessee will prepare and file the same if permitted by applicable law to file the same, and if not so permitted, Lessee shall prepare such reports or returns for signature by Lessor or Helm, as the case maybe, and shall forward the same, together with immediately available funds for payment of any tax or other imposition due, to Lessor or Helm, as the case may be, at least ten (10) days in advance of the date such payment is to be made. Upon written request, Lessee shall furnish Lessor or Helm, as the case may be, with copies of all paid receipts or other appropriate evidence of payment for all taxes or other impositions paid by Lessee pursuant to this Subsection C. All of the indemnities contained in this Subsection C shall continue in full force and effect notwithstanding the expiration or earlier

termination of this Lease in whole or in part, including the expiration or termination of the term with respect to any Car, and are expressly made for the benefit of, and shall be enforceable by Lessor and/or Helm.

6. Lease Rental

A. Lessee shall pay to Lessor as rental for the Cars an amount of three hundred fifty dollars (\$350.00) per Car per month ("Lease Charges"). Rent shall become effective, with regard to each of the Cars, upon the date of the delivery and acceptance of each as provided in Section 3(B) hereof, and shall continue in effect, with regard to each of the Cars, until returned to Lessor at the end of the term of this Agreement, as hereafter provided in Section 9. Payment of Lease Charges shall be made to Lessor at the address specified in Section 13 on the first day of each month in advance, with the first and second months' payment due on the first day of the month following the month the last Car is delivered and accepted as provided in Section 3. Rent for any Car 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 car is delivered and accepted as provided in Section 3(B). Any costs incurred by Lessor in collecting Lease Charges wrongfully withheld by Lessee, including reasonable attorney's fees, will be paid by Lessee.

Upon the delivery and acceptance of the Cars as set forth in Section 3(B), Lessee shall enjoy all car hire earnings (per diem and mileage) thereafter until the expiration or sooner termination of this Lease. In addition Lessee shall be responsible for any reclaim, storage or negotiation necessary for arrangement of bi-lateral agreements, as a result of, Ex Parte 346 (Sub-No. 19).

B. In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules of Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire for such Car ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its option and at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.

C. If any Car, while in the possession of the Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor. Upon payment of such amount, title to such Car shall vest with Lessee.

D. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 6.

7. Possession and Use

A. Subject to the provisions of Section 5(A) hereof, and so long as Lessee shall not be in default under this Agreement, Lessor and Helm shall not interfere with Lessee's possession, use and quiet enjoyment of the Cars in accordance with

the terms of this Agreement. Lessee shall use the Cars in the manner and to the extent Cars are customarily used in the railroad freight business, as set forth in Subsection 7(C) However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the acquisition of Cars; i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rental payments shall be made directly to such party and/or that the Cars be returned to such party, whereupon this Lease shall terminate upon payment of all amounts due from Lessee hereunder.

B. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission, and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time) except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

C. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of Lessee or its affiliates or subsidiaries. The reporting marks on the Cars shall not be changed without Lessor's prior written consent. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and UMLER.

D. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Equipment Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any rental or other sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;

(ii) The breach by Lessee of any other term, covenant or condition of this Agreement, which is not cured within ten (10) days;

(iii) The insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors;

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is consented to by Lessee or is not dismissed within thirty (30) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within thirty (30) days from the date of said filing or appointment;

(v) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state, if such action might unfavorably affect the payments earned by the Cars.

(vi) Lessee shall fail to observe or perform any of the covenants or agreements of Lessee set forth in Sections 9(A), 13(A) or 5(C) hereof;

(vii) Lessee (or any guarantor of Lessee's obligations hereunder) shall be in default (i) under any lease, loan agreement or other agreement, instrument or document heretofore, now or hereafter entered into between Lessee (or any such guarantor) and Lessor, or between Lessee (or any such guarantor) and any parent, subsidiary or affiliate of Lessor, and such default shall have been declared by the party entitled to declare the same, or (ii) under any promissory note heretofore, now or hereafter executed by Lessee (or any such guarantor) and delivered to any party referred to in clause (i) above evidencing a loan made by any such party to Lessee (or any such guarantor), or (iii) in the payment of any obligation of Lessee (or any such guarantor) to any person (other than Lessor, or any parent, subsidiary or affiliate of Lessor, and other than any guarantor of Lessee's obligations hereunder) in excess of \$2,000,000 excluding any such obligation which is being contested in good faith by Lessee (or any such guarantor) by appropriate proceedings, and the liability for which has not been reduced to judgment) relating to the payment of borrowed money or the payment of rent or hire under any lease agreement, and such obligation shall be declared to be due and payable prior to the maturity thereof; or an attachment or other lien shall be filed or levied against a substantial part of the property of Lessee (or any such guarantor), and such judgment shall continue unstayed and in effect, or such attachment or lien shall continue undischarged or unbonded, for a period of 30 days;

(viii) Lessee (or any such guarantor) shall, without Lessor's prior written consent, sell, transfer or dispose of, or pledge or otherwise encumber, all or substantially all of its assets or property, or consolidate or merge with any other entity, or engage in any form of corporate reorganization;

(ix) Any representation, warranty, statement or certification made by Lessee under this Agreement or in any Equipment Schedule or in any document or certificate furnished Lessor in connection herewith or pursuant hereto (or made by any guarantor of Lessee's obligations hereunder under any guaranty or other document or certificate furnished to Lessor by such guarantor), shall prove to be untrue or incorrect when made, or shall be breached.

B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement and may:

(i) Proceed by any lawful means to enforce performance by Lessee of this Lease or to recover damages for a breach thereof (and Lessee agrees, to bear Lessor's costs and expenses, including reasonable attorney's fees, in securing such enforcement), and/or (ii) By notice in writing to Lessee, terminate Lessee's right

of possession and use of the Cars, whereupon all rights and interest of Lessee in the Cars shall terminate; and thereupon Lessor or Helm may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, and Lessee shall be responsible to either provide for a load outbound or transport the cars at Lessee's expense to an interchange point determined by the Lessor or Helm. Lessor or Helm, as the case may be, shall nevertheless have the right to recover from Lessee any and all rental and other amounts which under the terms of this Agreement may then be due or which may have accrued to the date the Cars are returned or terminated, whichever is later, and/or (iii) whether or not Lessor or Helm shall have exercised, or shall thereafter at any time exercise, any of its rights set forth above, Lessor, by written notice to Lessee specifying a payment date, may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, all unpaid rent payable therefor for all rental periods up to and including the rental period in which the payment date specified in such notice occurs, plus whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount from the payment date specified in such notice to the date of actual payment): (A) an amount, with respect to each Car, equal to the excess, if any, of the rent payable for such Car for the remainder of the then current term, over the fair market rental value of such Car for the remainder of the then current Term, after discounting such excess to present worth as of the payment date specified in such notice at 6% per annum; or (B) an amount, with respect to each Car, equal to the excess, if any, of the DV of such Car computed as of the rent payment date next preceding the payment date specified in such notice, over the fair market sales value of the Cars as of the payment date specified in such notice.

9. Termination

A. Upon the expiration of this Agreement (whether at the end of the initial term or any extended term) with respect to any Car, Lessee shall promptly deliver such Car to Helm, at such location as Lessor may designate, as follows:

(i) If some or all of the Cars, are to be delivered to Lessor at a location or locations on Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to Lessee's railroad, tracks subsequent to the date of expiration. Lessee shall, at Lessor's option, provide, with respect, to any Car described on each Equipment Schedule which is either on Lessee's railroad tracks on the date of expiration or is subsequently returned to Lessee's railroad tracks, up to sixty (60) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Equipment Schedule is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later.

(ii) At the option of Helm, either Lessee or a contractor chosen by Helm and Lessee shall remark the Cars as set forth in Subsection 9(C) of this Agreement. Lessee and Lessor shall each bear fifty percent (50%) of the costs associated with such remark. Lessee shall not remove Lessee's railroad marks from any Car without complying with all legal requirements applicable thereto. After remarking, Lessee shall, at Helm's option, load the Cars with freight on Lessee's lines and deliver them to a connecting carrier for shipment, subject to a thirty (30) day grace period from the date of remark.

(iii) If some or all of the Cars are to be delivered to Helm at a location other than Lessee's tracks, the cost of assembling, delivering, storing,

and transporting each Car to such location once off the lines of Lessee shall be borne by Helm. (Lessee and Lessor shall each bear fifty percent (50%) of the expense of remarking such Cars.)

B. Remarking, with respect to each Car, shall include the following: (i) removal of existing railroad initials and numbers, mandatory markings and all company logos of Lessee; (ii) complete cleaning of the area where new marks are to be placed subsequent to the removal of markings and company logos as designated by Lessor; (iii) application of new mandatory markings; and (iv) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

10. Lessee hereby assumes liability for, and does hereby agree to indemnify, protect, save, defend, and hold harmless Lessor, Helm and their respective officers, directors, stockholders, successors, assigns, agents and servants (each such party being herein, for purposes of this Section, called an "indemnified party") on an after-tax basis from and against any and all obligations, fees, liabilities, losses, damages, penalties, claims, demands, actions, suits, judgments, costs and expenses, including legal expenses, of every kind and nature whatsoever, imposed on, incurred by, or asserted against any indemnified party, in any way relating to or arising out of (a) the manufacture, construction, ordering, purchase, acceptance or rejection, ownership, titling or retitling, registration or reregistration, delivery, leasing, releasing, possession, use, operation, storage, removal, return, sale or other disposition of the Cars or any part thereof, during the term of this Lease including, without limitation, any of such as may arise from (i) loss or damage to any property or death or injury to any persons, (ii) patent or latent defects in the Cars (whether or not discoverable by Lessee or any indemnified party), (iii) any claims based on strict liability in tort, and (iv) any claims based on patent, trademark, tradename or copyright infringement, (b) any failure on the part of Lessee to perform or comply with any of the terms of this Lease, or (c) any power of attorney issued to Lessee to license, relicense, title, retitle, register or reregister Cars subject to motor vehicle titling and registration laws, and any towing charges, parking tolls, fines, parking and speeding tickets, odometer certifications and other civil and criminal motor vehicle violations with respect to any such Car, and all penalties and interest applicable thereto. Lessee shall give each indemnified party prompt notice of any occurrence, event or condition known to Lessee as a consequence of which any indemnified party may be entitled to indemnification hereunder. Lessee shall forthwith upon demand of any such indemnified party reimburse such indemnified party for amounts expended by it in connection with any of the foregoing or pay such amounts directly. Lessee shall be subrogated to an indemnified party's rights in any matter with respect to which Lessee has actually reimbursed such indemnified party for amounts expended by it or has actually paid such amounts directly pursuant to this Section. In case any action, suit or proceeding is brought against any indemnified party in connection with any claim indemnified against hereunder, such indemnified party will, promptly after receipt of notice of the commencement of such action, suit or proceeding, notify Lessee thereof, enclosing a copy of all papers served upon such indemnified party, but failure to give such notice or to enclose such papers shall not relieve Lessee from any liability hereunder. Lessee may, and upon such indemnified party's request will, at Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by Lessee and reasonably satisfactory to such indemnified party and in the event of any failure by Lessee to do so, Lessee shall pay all costs and expenses (including, without limitation, attorney's fees and expenses) incurred by such indemnified party in connection with such action,

suit or proceeding. The provisions of this Section, and the obligations of Lessee hereunder shall apply from the date of the execution of this Lease notwithstanding that the term may not have commenced with respect to any Cars, and shall survive and continue in full force and effect notwithstanding the expiration or earlier termination of this Lease in whole or in part, including the expiration or termination of the term with respect to any (or all) of the Cars. Each indemnified party may directly enforce Lessee's indemnification obligations to such indemnified party hereunder.

11. Representation, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power and authority and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and to perform its obligations under this Agreement.

(ii) This Agreement has been duly, authorized, executed and delivered by the Lessee and constitutes Lessee's legal, valid and binding obligation, enforceable in accordance with its terms except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors generally and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iv) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(v) There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

12. Inspection

Lessor and Helm shall at any time during normal business hours have the right to enter the premises where the Cars may be located, for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Helm of any accident connected with the Cars. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process which shall attach to any Car. Lessee shall furnish to Lessor promptly upon its becoming

available, a copy of its annual report or copies of any other income and balance sheet statements required to be submitted to the ICC and/or state agencies and such additional financial information as Lessor or Helm may reasonably request concerning Lessee.

13. Miscellaneous

A. This Agreement and any Equipment Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Lessor and Helm assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor in connection, with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and any Equipment Schedules, hereto and to confirm the subordination provisions contained in Section 7.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. This Agreement shall be governed by and construed according to the laws of the Commonwealth of Massachusetts.

E. Lessor shall have the right to examine the physical facilities of the Lessee, loading data, and other pertinent information which may affect the use and earning capacity of the Cars. After such examination Lessor may notify Lessee in writing of any dissatisfaction and this lease agreement shall be null and void by virtue of such notice. The right to so notify Lessee shall terminate 10 business days after the date of signing this lease agreement by Lessee.

F. Lessor and Lessee agree that this Agreement, including any Equipment Schedules attached hereto and made a part hereof, shall be recorded with the Interstate Commerce Commission, at the expense of Lessee.

G. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail postage prepaid, certified or registered, addressed as set forth below.

If to Lessor: NEMLC Leasing Associates No. 3
 28 State Street, 24th Floor
 Boston, Massachusetts 02109
 Attn: Mr. David A. Meehan, Senior Vice President

If to Lessee: Union Pacific Railroad Company
 1416 Dodge Street
 Omaha, Nebraska 68179
 Attn: Service Design
 Mr. Marlyn Eittmann

If to Helm:

Helm Financial Corporation
One Embarcadero Center, Suite 3320
San Francisco, California 94111
Attn: President

Either party hereto may change the address to which notice is to be mailed by written notice thereof to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NEMLC LEASING ASSOCIATES NO. 3

UNION PACIFIC RAILROAD COMPANY

By: NEMLC Leasing Corporation
(General Partner)

By: David Meehan
Title: Senior Vice President
Date: 5/3/88

Title: J.R. Dan
Executive U.R. Operations
Date: 4-14-88

HELM FINANCIAL CORPORATION

By: William M. Peterson
Title: Vice President
Date: 4-20-88

EXHIBIT A TO RAILCAR LEASE AGREEMENT

EQUIPMENT SCHEDULE ___

Union Pacific Railroad Company hereby leases from NEMLC Leasing Associates No. 3 and NEMLC Leasing Associates No. 3 hereby leases to Union Pacific Railroad the following railcars pursuant to that certain Lease Agreement dated as of February 20, 1988:

<u>A.A.R. Mechanical</u> <u>Mechanical</u> <u>Designation</u>	<u>Description</u>	<u>Reporting Marks</u> <u>and Car Numbers</u>	<u>Number</u> <u>of</u> <u>Cars</u>
XM	50',6",70 ton, roller bearing, Plate C Box Cars, built by the Pickens Railroad in 1979.	See Exhibit A Continuation Sheet	

HELM FINANCIAL CORPORATION

Title. William W. Pittman

Date. Vice President

4-20-88

UNION PACIFIC RAILROAD

By. J. R. Dain

Title. Executive VP Operations

Date. 4-14-88

EXHIBIT A

Continuation Sheet

<u>Marking</u>	<u>Number</u>
CHTT	100070
CHTT	100071
CHTT	100072
CHTT	100073
CHTT	100074
CHTT	100075
CHTT	100076
CHTT	100077
CHTT	100078
CHTT	100079
CHTT	100080
CHTT	100081
CHTT	100082
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CHTT	100114
CHTT	100115
CHTT	100116

EXHIBIT A (Cont'd)

<u>Marking</u>	<u>Number</u>
CHTT	100117
CHTT	100118
CHTT	100119
CHTT	100120
CHTT	100121
CHTT	100122
CHTT	100123
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CHTT	100163

COMMONWEALTH OF MASSACHUSETTS)
) SS.
COUNTY OF SUFFOLK)

On this 4th day of May 1988, before me personally appeared David A. Meehan, to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of NEMLC Leasing Corporation, a Massachusetts Corporation and General Partner of NEMLC Leasing Associates No. 3, a Massachusetts limited partnership, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation by and on behalf of said Partnership.

James E. Sheppard
Notary Public

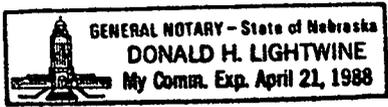
[Notarial Seal]

My Commission expires.. June 28, 1990

STATE OF)
) SS..
COUNTY OF)

On this 14 day of April 1988, before me personally appeared J.R. Davis, to me personally known, who, being by me duly sworn, says that he is Vice President of Union Pacific Railroad Company; that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Donald H. Lightwine
Notary Public



[Notarial Seal]

My Commission expires..

STATE OF *Calif.*)
COUNTY OF *San Francisco*) SS..

On this *20th* day of *April 1988*, before me personally appeared *Wm. M. Peterson*, to me personally known, who, being by me duly sworn, says that he is Vice President of Helm Financial Corporation; that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



Elena F. Gary

Notary Public

[Notarial Seal]

My Commission expires.. *July 12, 1988*