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

No. 8-351A040
Date DEC 16 1988
Fee $ 13.00
ICC Washington, D. C.

December 14, 1988

INTERSTATE COMMERCE COMMISSION
DEC 16 1988 9-40 AM
RECORDATION NO. 16077 Filed 1425

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

Dear Ms. Lee:

Enclosed is a Locomotive Lease Agreement dated November 1, 1988, between the following parties:

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

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

The equipment involved in this transaction is as follows:

Equipment: 8, SD45 Locomotives
See Schedule "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

Enclosure

Counterpart - Mary Ann Oster

DEC 16 9 34 AM '88
MOTOR OPERATIONS UNIT

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

12/16/88

Mary Ann Oster
Oster Reseaching Services
12897 Colonial Drive
Mt. Airy, MD 21771

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/16/88 at 9:40AM, and assigned recordation number(s). 16078 & 16077

Sincerely yours,

Noreta R. McGee

Secretary

Enclosure(s)

SE-30
(7/79)

INTERSTATE COMMERCE COMMISSION

DEC 16 1988 9-40 AM

RECORDATION NO. 16077 Filed 1425

LOCOMOTIVE LEASE AGREEMENT

THIS LEASE made and entered into as of this 1st day of November, 1988, by and between **HELM FINANCIAL CORPORATION**, a California corporation, hereinafter called "Lessee", and **VMV ENTERPRISES, INC.**, a Kentucky corporation, hereinafter called "Lessor".

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lessee: Lessee agrees to lease from Lessor the Locomotives described in Exhibit A, together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto (the "Locomotives").

2. Rent: The Lease shall commence with respect to each Locomotive on December 1, 1988, and shall continue until the final rental payment is made, subject to Section 10. Rent will commence on December 1, 1988, which date is herein called the "Rent Commencement Date" and shall continue for seven (7) months. The daily rental shall be as set forth below for each Locomotive payable monthly in arrears.

Equipment Description	Daily Rental
GP40	[redacted] Each
SD40	[redacted] Each
SD45	[redacted] Each

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent of any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as provided in Section 9 or as otherwise provided herein; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Locomotive or damage to or loss of possession or use or destruction of all or any of such Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. Lessee will settle all claims, defenses, set-offs and counterclaim against Lessor or its assigns. Lessee acknowledges that: Lessor is in no way connected to the Locomotive manufacturer; and Lessor's decision to enter into this Lease is made in reliance upon Lessee's commitment not to assert against Lessor any claims, defenses, set-offs or counter claims it may now or hereafter have against the Locomotive manufacturer.

During the term of this Lease, Lessee may place in storage any or all Locomotives for periods not to exceed twenty (20) cumulative days. Rental payments will abate for each Locomotive placed in storage providing the Lessee notifies the Lessor in writing as to the date each Locomotive is placed in storage and the date each Locomotive is returned to service.

3. Warranties and Representations: LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE LOCOMOTIVES, 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 LOCOMOTIVES, PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS OR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE LOCOMOTIVES, 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 LOCOMOTIVES. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

4. Place of Payment of Rent: Lessee shall direct payment of the monthly rent to the following address:

VMV Enterprises, Inc.
1300 Kentucky Avenue
Paducah, KY 42001
ATTN: Paul M. Seaton, President

5. Recordkeeping; Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, inspection, repairs, maintenance, storage and out of service periods of each Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times with reasonable notice to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee.

6. Loss or Destruction: In the event that any Locomotive during the term hereof shall become lost; stolen; destroyed; irreparably damaged; permanently rendered unfit for use; or, in the reasonable opinion of the Lessee, worn out or damaged beyond the economic limit of repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by the Lessee for a period of sixty (60) consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), Lessee shall notify Lessor of such

Casualty Occurrence. On the payment date next following the date of such Casualty Occurrence, Lessee shall pay to Lessor the Casualty Value of such Locomotive, determined under the casualty schedule attached hereto as Exhibit A, or replace such Locomotive with a similar type and condition locomotive mutually agreed upon. Upon the making of such payment or replacement by Lessee, all of Lessor's right, title and interest in such Locomotive shall automatically pass to Lessee on an as is, where is basis, and this Lease shall terminate with respect to such Locomotive.

7. Insurance: (a) Subject to the limitations set forth in Section 6, all risk of loss of, damage to or destruction of the Locomotives shall at all times be on Lessee except for loss, damage or destruction resulting from a negligent act or omission of Lessor, its officers, employees, agents, representatives, assignees, and/or successors.

(b) Lessee shall provide (i) insurance against loss, theft, and destruction or damage of the Locomotives, in this manner Lessee provides for coverage of similar equipment owned and leased by it and (ii) comprehensive public liability insurance against claims for personal injuries, death and property damage in no event less comprehensive in amount and against risk customarily insured against by Lessee in respect of similar equipment owned or leased by it. Lessee shall pay applicable premiums for insurance. Lessee shall have the right to insure the Locomotives for its own account, for the amount by which its fair market value exceeds the coverage required hereunder.

(c) All insurance policies required hereunder shall (i) be issued by insurance carriers of recognized responsibility, (ii) cover the interests of Lessee and Lessor and protect Lessee and Lessor in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Locomotives, (iii) provide that the insurance carrier give at lease thirty (30) days' prior notice in the event of cancellation or material alternation in coverage, (iv) provide, as to such physical damage insurance, that the losses, if any, shall be payable to the Lessor under a standard long form loss payable clause, (v) provide that in respect of the interest of the Lessor in such policies, the insurance shall not be invalidated by an action or inaction of Lessee and shall insure Lessor's interest as it appears regardless of any breach or violation by Lessee of any warranty, declaration of condition contained in such policies, and shall include coverage against liability which Lessor might incur by reason of the operation of the Locomotives, and (vi) not required co-insurance.

(d) The proceeds of any physical damage insurance received by Lessor shall be paid to Lessee; (i) in the case of a Casualty Occurrence with respect to any Locomotive upon payment by Lessee of the Casualty Value of such Locomotive, or (ii) upon the

loss, damage or destruction of any Locomotive which does not constitute a Casualty Occurrence, upon the receipt from Lessee of a certificate to the effect that such Locomotive has been repaired, restored or replaced, as the case may be (which certificate shall be accompanied by satisfactory evidence of such repair, restoration or replacement), provided that so long as any default by Lessee or event of default shall be continuing hereunder, Lessor shall be entitled to apply such proceeds against Lessee's obligations hereunder or under another obligation of Lessee to Lessor. Lessee shall furnish Lessor with certificates or other evidence of compliance with this Section 7 as may reasonably be requested.

8. Indemnity: Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify and save Lessor harmless from and against any and all liability, loss, damage, expense, causes of action, suits, claims or judgments arising from or caused directly or indirectly by: (a) Lessee's failure to promptly perform any of its obligations under the provisions of Section 2, 6, 7 and 16 of this Lease, or (b) injury to persons or property resulting from or based upon the actual or alleged use, operation, delivery or transportation of any or all of the Locomotives or its location or condition, or (c) inadequacy of the Locomotives, or any part hereof, for any purpose of and deficiency or defect therein or the use of maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business; and shall, at its own cost and expense, defend any and all suits which may be brought against Lessor, either alone or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Lessor in any such action or actions, provided, however, that Lessor shall give Lessee written notice of any such claim or demand. This indemnity shall survive the expiration or termination of this Lease. To the extent Lessor receives payment from Lessee, Lessee shall be subrogated to the extent of such payment to Lessor's rights with respect to the transaction or event requiring such indemnification.

9. Compliance with Law; Repair and Maintenance: Lessee shall comply with FRA and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the Lease period.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee will, at its sole expense, perform or cause to be performed all repair and maintenance work, servicing lubrication and inspection of the Locomotives in accordance with Lessee's existing maintenance practices except that, Lessor agrees

to accept responsibility for the failure of the (a) Turbocharger, (b) Main Generator, (c) Crankshaft (d) Gear Train and (e) Major Electrical Cabinet Fire from the date the Locomotives are placed in service. Lessee agrees to accept responsibility for items (a), (b), (c), (d) and (e) at any time if said failure has been caused by Lessee's misuse or abuse or caused by derailment or any accident.

Rent will abate for each Locomotive upon interchange off the Southern Pacific railroad for delivery to Lessor's shop for work to be performed on behalf of Lessor. Rent will abate five (5) days following interchange off the Southern Pacific railroad for delivery to Lessor's shop on each Locomotive where work is performed by Lessor on behalf of Lessee.

Lessee agrees not to perform any maintenance on behalf of Lessor without authorization from the Lessor. Charges to Lessor by Lessee or charges to Lessee by Lessor in performance of authorized maintenance work will not exceed $35.00 per hour in labor costs and not exceed Lessee's or Lessor's cost of replacement parts. Rent will abate for a period not to exceed three (3) days for each Locomotive undergoing repairs for Lessor's account.

Notwithstanding the foregoing, however, Lessor shall have the right to terminate the Lease of any Locomotive that fails due to items (a), (b), (c), (d) or (e) above. In the event Lessor terminates the Lease of Locomotive(s) due to these mechanical reasons, rental shall cease on the date that Lessee notifies Lessor of such an event.

10. Return Provision: Upon expiration or termination of this Lease, Locomotives will be delivered in the same condition as received less ordinary wear and tear at Lessee's expense to an interchange location on the Southern Pacific railroad that is mutually agreed upon with Lessor.

11. Assignment: Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries, without the prior written consent of Lessor, which shall not be unreasonably withheld. Lessor expressly consents to incidental operation and use on railroads other than Lessee's under standard run-through and power pooling arrangements.

Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as notice is given of such assignment in accordance with Section 12.

12. Notice: Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

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

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

VMV Enterprises, Inc.
1300 Kentucky Avenue
Paducah, KY 42001
ATTN: P. M. Seaton, President

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

13. Quite Enjoyment: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

14. Authority: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof.

15. Late Charges: Delinquent installments of rent shall bear interest at the rate of [redacted] per month if not prohibited by law, otherwise at the highest lawful contract rate. Rent installments are delinquent fifteen (15) days following due date.

16. ICC Recording: Lessee will promptly cause this Lease to be duly filed, registered or recorded in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act or other place within or without the United States as Lessor may reasonably request for the protection of its title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, re-record whenever required) any and all further instruments required by law or

reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

17. Taxes: Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Locomotives including without limitation amounts payable under Section 2, 6 and 11, hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

18. Performance Obligations of Lessee by Lessor: In the event that the Lessee shall fail duly and promptly to perform any of its obligations under the provisions of this Lease, the Lessor may, at its option, perform the same for the account of Lessee without thereby waiving such default, and any expense or amount paid (including reasonable attorney's fees), penalty or other liability incurred by the Lessor in such performances, together with interest at the rate of [redacted] per month thereon until paid by the Lessee to the Lessor, shall be payable by the Lessee upon demand as additional rent hereunder.

19. Further Assurance: Lessee shall execute and deliver to Lessor, upon Lessor's request such instruments and assurances as Lessor deems necessary or advisable for the confirmation or perfection of this Lease and Lessor's right hereunder.

20. Lessee's Covenants: Lessee will: (a) defend at Lessee's own cost and action, proceeding or claim affecting the Locomotives; (b) do everything necessary or expedient to preserve or perfect the Lessors' interest in the Locomotives; (c) not misuse, fail to keep in good repair (ordinary wear and tear excepted), secreted, or without the prior written consent of Lessor, and notwithstanding Lessor's claim to proceeds, sell, rent,lend, encumber or transfer any of the Locomotives, except as provided in Subsection (e) of this Section; (d) agree that Lessor may enter upon Lessee's premises or wherever the Locomotives may be located, at any reasonable time and upon reasonable notice to inspect the Locomotives; (e) notwithstanding any provision to the contrary Lessee may, without the consent of Lessor, lease or permit the use of the Locomotives or Locomotive (such lease or use to be subject to the rights and remedies of the Lessor hereunder) to or by a lessee or user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines or railroad owned or operated by the Lessee or such Lessee

of user or by a railroad company or companies having trackage rights or railroad of connecting and other carriers in the usually interchange of traffic or in through or non-through service, but only upon and subject to all the terms and conditions hereof; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any lease that is for a term longer than six (6) months; provided, further, however, that the Lessee shall not lease or permit the sublease or use of any Locomotive for service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada is de minimis and does not involve regular operation and maintenance outside the United States.

21. Default: An event of default shall occur if: (a) Lessee fails to pay when due any installment of rent and such failure continues for a period of ten (10) days; (b) Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and such failure continues uncured for fifteen (15) days after written notice thereof to Lessee by Lessor; (c) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, files a petition seeking for itself any reorganizational, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consent to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties, or if it or its shareholders shall take any action looking to its dissolution or liquidation; (d) within sixty (60) days after the commencement of any proceedings against Lessee seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed or it within one hundred twenty (120) days after the appointment without Lessee's consent or acquiescence of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated; or (e) Lessee attempts to remove, sell, transfer, encumber, part with possession or sublet the Locomotives or any item thereof, other than as permitted under this Lease.

Upon the occurrence of an event of default, Lessor, at its option, may (a) declare all sums due an to become due hereunder immediately due and payable; (b) proceed by appropriate court action or actions or other proceedings either at law or equity to enforce performance by the Lessee of any and all covenants of this Lease and to recover damages for the breach thereof; (c) demand that

Lessee deliver the Locomotives forthwith to Lessor at Lessee's expense at such place as Lessor may designate; and (d) Lessor and/or its agents may, without notice or liability or legal process, enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where the Locomotives may be or by Lessor is believed to be, and repossess all or any item thereof, disconnecting and separating all thereof from any other property and using all force permitted by applicable law so to do, Lessee hereby expressly waiving all further rights to possession of the Locomotives and all claims for injuries suffered through or loss caused by such repossession. Upon Lessee's default and at any time thereafter, Lessor shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to any deficiency remaining after disposition of the Locomotives for which Lessee hereby agrees to remain fully liable. Lessor will give Lessee reasonable notice of the time and place of any public sale of the Locomotives or of the time after which any private sale or other intended disposition of the Locomotives is to be made. Unless otherwise provide by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Lessee shown herein at least ten (10) days before the time of the sale or disposition. If any statute governing any proceeding hereunder specifies the amount of Lessor's deficiency or other damages for breach of this Lease by the Lessee, Lessor shall be entitled to prove as and for damages for the breach an amount equal to that allowed under such statute. The provisions of this paragraph shall be without prejudice to any rights given to the Lessor by such statute to prove for any amounts allowed thereby. Should any proceedings be instituted by or against Lessor for monies due to Lessor hereunder and/or for possession of any or all of the equipment or for any other relief, Lessee shall pay a reasonable sum as attorneys' fees. Lessee understands that Lessor's rights are cumulative and not alternative.

In addition to any remedies provided in this Lease, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provisions thereto.

22. Choice of Law: This Lease shall be governed in all respects by the law of the State of California.

23. Miscellaneous: If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee waives all rights under all exemption laws. Lessee admits the receipt of a true copy of this Locomotive Lease Agreement. This Lease is irrevocable for the full term hereof and for the aggregate rental herein reserved.

24. Early Termination: Should Lessee, due to conditions beyond its control, desire to terminate this Lease Agreement any time after ninety (90) days of its effective date, Lessee agrees to pay to Lessor the equivalent of two (2) months additional rental and Lease will be considered terminated. In any event, the total of Lease Payments shall not exceed seven (7) months.

25. Lease Renewal: Lessee will have the option to extend this Lease for an additional six (6) months following June 30, 1989 upon sixty (60) days advanced notice.

26. 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.

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,
LESSEE

By _____

Title President

VMV ENTERPRISES, INC.
LESSOR

By _____

Title President & CEO

EXHIBIT A

Locomotive Description

Eight (8) General Motors (Electro-Motive Division) SD45 diesel electric locomotives numbered as follows:

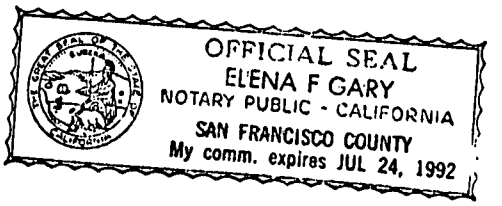
Locomotive Number		Casualty Value
VMV	3100	[redacted]
	3124	
	3139	
	3143	
	3155	
	3160	
	3162	
	6694	

STATE OF CALIFORNIA)
) §
COUNTY OF SAN FRANCISCO)

On this 29th day of November, 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 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

My Commission Expires: July 24, 1992



[Notarial Seal]

STATE OF KENTUCKY)
) §
COUNTY OF McCRACKEN)

On this 23 day of November, 1988, before me personally appeared Paul M. Seaton, to me personally known, who, being by me duly sworn, says that he is President of VMV Enterprises, Inc., 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.

Susan K. McClellan
Notary Public

My Commission Expires: April 27, 1991

[Notarial Seal]