

**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

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

INTERSTATE COMMERCE COMMISSION

DEC 16 1988 9-40 AM  
1 6078  
RECORDATION UNIT FILED 1425

Dear Ms. Lee:

Enclosed is a Locomotive Lease Agreement dated October 24, 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: 15, 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

*Copy to file - Mary Ann Oster*

DEC 16 9 34 AM '88  
MOTOR OPERATING UNIT

LOCOMOTIVE LEASE AGREEMENT DEC 16 1988 9:40 AM

RECORDATION NO. 1 6078 FILED 1423

THIS LEASE made and entered into as of this 24th day of October 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. Lease: Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the Locomotives described in Schedule A attached hereto and made a part thereof, "as is", together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto, (hereinafter called "Locomotive(s)"), upon the terms and conditions herein set forth. This Lease shall be binding only on Locomotives described in Schedule A. The Lessee may stencil its name on the Locomotives, but shall not remove or obscure Lessor's reporting marks.

2. Inspection and Acceptance: Lessee acknowledges that it will inspect the Locomotives at a mutually agreed upon location with the Lessor. At the time of said delivery of Locomotives to Lessee, Lessee shall inspect each Locomotive and except as otherwise determined by said inspection, each Locomotive shall be considered in good repair and operating condition at the time of delivery. At the time of return of the Locomotives to Lessor at a mutually agreed point on the lines of Lessee, a joint inspection of each Locomotive shall be performed and except as otherwise determined by said joint inspection, each Locomotive shall be considered to be in good repair and operating condition at the time Locomotives are returned to Lessor.

3. Rental: Lessee shall pay to Lessor as rental for each Locomotive the sum outlined in Schedule A for each day or fraction thereof from the time that each Locomotive is delivered to Lessee at a mutually agreed interchange point, (hereinafter called "Rent Commencement Date"), until same is returned to Lessor at the expiration of the lease term. Lessor shall render a monthly bill against Lessee for said rental and Lessee shall pay same within thirty (30) days of receipt thereof.

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or 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 otherwise provided herein; nor shall this Lease 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. Lessor hereby irrevocably appoints and constitutes Lessee its attorney-in-fact for and in its name and behalf, but for the account of Lessee, to make and enforce, from time to time, at Lessee's expense, whatever claims Lessor may have against manufacturer that arise or are discovered during the term of this Lease. Lessee acknowledges that; Lessor is in no way connected to the Locomotive manufacturer; Lessor has no knowledge or information as to the condition or suitability for Lessee's purpose of the Locomotives; and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein, including Lessee's express agreement not to assert against Lessor any claims, defenses, set-offs or counterclaims it may now or hereafter have against the Locomotive manufacturer.

4. Term: The term of this Lease shall begin on the Rent Commencement Date and continue for a period of sixty (60) days. In the event the Lessee elects to continue to lease the locomotives beyond the initial sixty day period, Lessee may elect to store the Locomotives for ten days (with rent abating) during December of 1988. At termination of the Lease, the locomotives will be delivered by Lessee to a mutually agreed interchange on the lines of CSX.

In the event Lessee desires to extend the term of this Lease, Lessee shall give Lessor fifteen (15) days notice prior to its termination. It is understood that any extension of the Lease will have substantially different terms.

5. Warranties and Representations: LESSOR MAKES NO REPRESENTATION OR WARRANTIES, EXCEPT AS PROVIDED IN SECTION 10 BELOW, 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 FOR 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 assess any claim whatsoever against Lessor based thereon, except that this shall not limit Lessee's rights against the manufacturer as stated in Section 3. Lessee further agrees, regardless of cause, not to assess any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

6. 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

7. Recordkeeping; Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance 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 to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee. Lessor agrees that its agents will sign a disclaimer or release of liability as a precondition to having access to Lessee's property.

8. Loss or Destruction: Lessee agrees it will be solely responsible for any loss, damage or destruction due to accident, derailment, collision or inappropriate use of any Locomotive leased from Lessor while subject to this Lease. In case any of the Locomotives during the term of the Lease period become lost, destroyed or damaged beyond repair from any cause whatsoever except as provided in Section 10, rental with respect to any such Locomotive shall cease immediately, but in such case Lessee agrees to pay Lessor the sum for each unit type outlined in Schedule A.

9. Insurance: The Lessee represents that it is self-insured.

10. Compliance with Law; Repair, Maintenance and Liens: 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 shall, at its own cost and expense, maintain and keep the Locomotives in good order, condition and repair (including lubrication and inspection of Locomotives in accordance with manufacturers recommendation), ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor. Lessee will not permit any liens or encumbrances to be placed on the Locomotives and will promptly take action, at its expense, to

remove and discharge any liens that may be placed on the Locomotives.

Lessor shall accept responsibility for the crankshaft, main engine block, turbocharger, air compressor and main generator (alternator) during the term of this Lease. Should any of the above components fail, rent shall abate upon notification by Lessee to Lessor that a failure has occurred on any of the foregoing components. If the CSX performs the repairs, which repairs shall be done in a timely and expedited manner, rent shall commence on such locomotive when the repairs are completed. If the CSX does not repair the locomotive, then rent shall commence with respect to such locomotives when the locomotive is interchanged to the CSX. Lessee agrees to accept 100% responsibility for the above components at any time if said failure has been caused by misuse or accident of Lessee.

Notwithstanding the foregoing, however, Lessor shall have the right to terminate the Lease of any Locomotive that fails due to any of the above reasons. In the event Lessor terminates the Lease of any Locomotive due to mechanical reasons, rental shall cease on the date of the mechanical breakdown or when Lessee delivers the Locomotive to Lessor at a mutually agreed location, whichever comes first.

Both parties will use their best efforts and good faith to either repair the Locomotive at the nearest location or to expedite its movement to the interchange point nearest the location or repair.

11. Indemnity: Subject to the obligations and undertakings of the Lessor specified in Sections 8, 10 and 14 of this Lease, Lessee does hereby release, indemnify and save harmless Lessor, its successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessor may incur, suffer or be in any way subjected to, resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of or damage to any property whatsoever of any persons, firm or corporation, including but not limited to the property of the parties hereto or in the care or custody of the parties hereto and from any and all claims, demands, or actions for such loss, injury or damage, caused by, growing out of or in any way connected with the lease, possession, use, maintenance or operation of said equipment by Lessee whether attributable to the fault, failure or negligence of Lessor or otherwise. The foregoing release and indemnification shall apply to matters or things occurring only between the time all Locomotives are delivered to Lessee and the time they are re-delivered to Lessor (save and except while any Locomotive or Locomotives are within the Lessor's possession).

12. 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. 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 of such assignment is given to Lessee in accordance with Section 14.

13. 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: Paul M. Seaton, President

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

14. Quiet 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.

15. 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.

16. 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.

17. Filing and Administration: Lessee will promptly cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 for the protection of Lessor's 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, or 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.

18. 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 3 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.

19. Default: If the Lessee, after five (5) business days' notice of default, shall fail to carry out and perform any of the obligations on its part to be performed under this Lease, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to repossess the Locomotives, to remove the Locomotives from Lessee's service, to terminate this Lease, and recover any and all damages sustained as a result of Lessee's default. If Lessor shall terminate this Lease pursuant to this Section, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given are provided by law or in equity.

Should any proceedings be instituted by Lessor for monies due to Lessor hereunder and/or for possession of any or all of the Locomotives or for any other relief, Lessee shall pay Lessor a reasonable sum as attorney's fees. In addition to any remedies

provided herein, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provision thereto.

20. Miscellaneous: All transportation charges for delivery of the Locomotives to the Lessee shall be borne by Lessor. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations or any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee admits the receipt of a true copy of this Locomotive Lease Agreement.

21. Laws Governing Lease: The Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

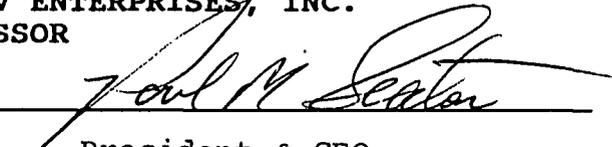
IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

HELM FINANCIAL CORPORATION  
LESSEE

By 

Title President

VMV ENTERPRISES, INC.  
LESSOR

By 

Title President & CEO

SCHEDULE A

Locomotive Description: General Motors (Electro-Motive Division)  
SD45 six axle road haul locomotives.

The Locomotive numbers are as follows:

<u>LOCOMOTIVE NUMBER</u>	<u>BUILDER</u>	<u>TYPE</u>	<u>HORSEPOWER</u>	<u>DAILY RENTAL RATE</u>	<u>CASUALTY VALUE</u>
VMV 3156	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6685	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6686	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6687	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6688	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6689	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6690	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6691	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6692	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6693	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6695	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6696	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6697	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6698	EMD	SD45	3,600	[REDACTED]	[REDACTED]
VMV 6699	EMD	SD45	3,600	[REDACTED]	[REDACTED]

(15)

STATE OF CALIFORNIA )  
 ) §  
COUNTY OF SAN FRANCISCO )

On this 29<sup>th</sup> 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 appears Paul M. Seaton, to me personally known, who being by me duly sworn says that he is a 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]