

\$60.00

# OSTER Researching Services

12897 Colonial Dr • Mt Airy, Md 21774 • 16717  
301-253-6040

RECORDATION NO \_\_\_\_\_ FILED 1423

JAN 11 1990 -1 55 PM

INTERSTATE COMMERCE COMMISSION

January 12, 1990

0-011A050

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

Dear Ms. Lee:

Please find enclosed a Lease of Railroad Equipment dated as of November 28, 1989, between the following parties:

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

Lessee: Florida Rock Industries, Inc.  
P. O. Box 4667  
Jacksonville, FL 32201

The equipment involved in this transaction is listed on Annex A.

Please record this document as a primary agreement. The filing fee of \$15 is enclosed. Thank you for your assistance.

Sincerely,

*Mary Ann Oster*

Mary Ann Oster  
Research Consultant

Enclosures

*Handwritten notes:*  
Hester  
Oster

**Interstate Commerce Commission**

Washington, D.C. 20423

1/11/90

OFFICE OF THE SECRETARY

Mary A. Oster  
Research Consultant  
Oster Researching Services  
12897 Colonial Dr.  
Mt Airy, Maryland 21771

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/11/90 at 1:55pm and assigned recordation number(s). 16717,16718,16719 & 16720

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

RECORDATION NO 16717 FILED 1425

JAN 11 1990 -1 55 PM  
INTERSTATE COMMERCE COMMISSION

**LEASE OF RAILROAD EQUIPMENT**

**BETWEEN**

**HELM FINANCIAL CORPORATION**

**AND**

**FLORIDA ROCK INDUSTRIES, INC.**

## LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of November 28, 1989, between HELM FINANCIAL CORPORATION, a California corporation, (hereinafter called the "Lessor") and FLORIDA ROCK INDUSTRIES, a Florida corporation (hereinafter called the "Lessee").

WHEREAS, the Lessor hereby represents that it has the right to lease the open top hopper railcars more fully described in Annex A hereto (hereinafter called the "Units");

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

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

1. Delivery and Acceptance of Units. Lessor will deliver the Units to Lessee (at no expense to Lessee) at Ft. Myers, Florida on the lines of the CSX Transportation Company (hereinafter called "Delivery Point") and Lessee agrees to accept such delivery.

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

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

2. Car Hire Earnings. Upon acceptance of the Units as set forth in Section 1 hereof, with reporting marks on each Unit as set forth in Section 5 and Annex A hereto, Lessee shall enjoy all car hire earnings thereafter until the expiration or sooner termination of this Lease. If reporting marks are other than Lessor's, Lessor shall not be responsible for collection of any car hire earnings and such responsibility shall lie solely with Lessee.

3. Rentals. Lessee shall pay to Lessor as rental for the Units an amount of \_\_\_\_\_ per Unit per month ("Lease Charges"). Rent shall become effective, with regard to each of the Units, upon the date of the delivery and acceptance of each as provided in Section 1 hereof, and shall continue in effect, with regard to each of the Units, until returned to Lessor at the end of the term of this Lease, as hereafter provided in Section 11. Payment of Lease Charges shall be made to Lessor at the address specified in Section 16 on the first day of each month in advance, with the Interim and first months' Fixed Term payment due on the first day of the month following the Effective Date, all as hereafter defined in Section 4. Rent for any Unit for any partial month shall be pro-rated on a daily basis and shall be paid on the first day of the month following the month on which the last Unit is delivered and accepted as provided in Section 1. Any costs incurred by Lessor in collecting Lease Charges wrongfully withheld by Lessee, including reasonable attorney's fees, will be paid by Lessee.

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

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

Lessor for any reason whatsoever. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever.

4. Term of Lease. The interim term of this Lease with respect to each Unit ("**Interim Term**") shall commence on the date of delivery and acceptance of each Unit as provided in Section 1 hereof and shall continue until the first day of the month following the delivery of the last Unit ("**the Effective Date**") provided that the Effective Date shall be no later than January 1, 1990 at which time the fixed term ("**Fixed Term**") of this Lease with respect to each Unit shall automatically commence and shall continue in full force and effect for a period of six (6) months thereafter (the Interim Term and the Fixed Term herein collectively the "**Term of this Lease**".)

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Sections 6, 9 and 11 hereof) shall survive the expiration or sooner termination of this Lease.

5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the owner and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of any Unit to be changed without written consent of Lessor and in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

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

6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than the federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than state or city income taxes or

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

7. Loss, Damage or Destruction.

(a) Risk of Loss, Damage or Destruction. As between Lessee and Lessor and any person claiming through Lessor, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Unit, however caused or occasioned (provided that Lessor shall be responsible for any and all damage and liabilities caused by Lessor), such risk to be borne by Lessee with respect to each Unit from the date of its delivery and acceptance as provided in Section 1 hereof and continuing until such Unit has been returned to Lessor in accordance with the provisions of Section 11 hereof. Lessee agrees that, except as otherwise provided herein, no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee under this Lease, including, without limitation, the obligation to pay rent.

(b) Casualty Occurrence. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable from any cause whatsoever, or any Unit shall be condemned, confiscated, or seized, or the title to or use of any Unit shall be requisitioned for a period of ninety (90) continuous days (such occurrences being hereinafter called "**Casualty Occurrences**") during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the Lessor an amount equal to any accrued rental for such Unit to the date of such payment. Lessee shall also pay Lessor a settlement value payment pursuant to Rule 107 of the Field Manual of the AAR Interchange Rules and Car Hire Agreement Code. Upon the making of such payment by the Lessee in respect of a Unit, the rental for such Unit shall cease to accrue as of the date

of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessee shall be entitled to ownership and possession of such Unit or the remains hereof. Lessor has the right, in its sole discretion, to replace any and all Units subject to a Casualty Occurrence and such replacement Units will be subject to this Lease as if originally a part thereof.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

8. Report and Inspection. On or before December 31 in each year, commencing with the calendar year 1990, the Lessee will furnish to the Lessor an accurate statement setting forth as of the preceding period (a) the amount, description and numbers of all Units then leased hereunder; (b) the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and; (c) such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request. The Lessor, or its agent at its sole cost and expense, shall have the right, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

9. Compliance with Laws and Rules; Maintenance; Insurance and Indemnification. Lessor warrants that Lessor has the right to lease the Units. Lessor hereby assigns to Lessee for the term of this Lease the benefit to which Lessor is entitled of all warranties and indemnities of the manufacturer, reconditioner, repairer or maintainer of the Units. Otherwise, except for the aforesaid, Lessor leases the Units AS-IS, AND LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNITS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNITS ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and in the event

such laws or rules require the alteration or repairs of any such Unit, the Lessor will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the Lessor may, in its reasonable judgment based upon the cost and economic value of such repairs or alterations in relation to the then estimated fair market value of the Units, declare this Lease terminated for those so affected as of the date such repairs or alterations are required as a condition to use of the Units by Lease.

During the term of this Lease, commencing on the date of delivery and acceptance of each Unit as provided in Section 1 the Lessor shall perform or cause to be performed maintenance and repair work necessary to maintain the Units in good operating condition ("Maintenance Services") in conformity with all applicable laws and regulations including the AAR Code of Interchange Rules and FRA Railroad Freight Unit Safety Standards, 49 CFR Part 215, as amended, except for the following:

(1) repairs required as a result of damage caused by the Lessee, its agents, representatives, customers or independent contractors or any third party; or

(2) repairs required because of damage caused to the Units by any corrosive or abrasive substance loaded therein or used in connection therewith; or

(3) repairs required because of excessive, unusual or avoidable damage caused to the Units by vibrators, sledges or other similar devices during loading or unloading operations; or

(4) repairs required because of excessive or unbalanced loading; or

(5) repairs required because of damage to safety appliances and/or hopper doors.

If Units in possession of Lessee are in need of repairs for which Lessee is responsible hereunder, Lessee shall contact Lessor and advise, at Lessee's sole option, whether Lessee desires to perform such repairs or have such repairs performed at its expense. If Lessee decides not to repair such Units, Lessor will either repair the Units or subcontract for the repairs. Lessee shall be responsible only for the invoice price, if repairs are subcontracted, or for actual costs (but not to exceed AAR charges) if performed by Lessor.

Lessee will make the Units available to Lessor at a repair shop specified by Lessor at any reasonable time for the purpose of repairs. Lessee shall as promptly as practical deliver Units requiring repairs which Lessor is required to make to the repair shop

specified by Lessor. Lessee shall make Units available for inspection or maintenance in accordance with its operating convenience and at its own expense.

Rent shall abate for any Unit requiring Lessor responsible repairs or inspection three (3) days following the date such Unit is placed into bad order status by the handling railroad. These three (3) days include all days, seven days a week, including holidays. Rent shall resume as of the date such Unit is released from the repair or inspection facility by the handling railroad.

If there is any dispute as to who is responsible for repairs to any Unit, the completion of such repairs by a party shall not constitute an admission of responsibility, but instead such party may still assert its claims that the other party was responsible.

Lessee will review any suggestions made by Lessor regarding operating conditions that might be causing undue and avoidable wear or damage to the Units and to implement those suggested changes that are reasonable under the circumstances.

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

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

Lessor reserves the right to retire any Unit that in its sole opinion it deems uneconomical to repair. Lessee's obligation to pay rent shall abate for any Unit retired by Lessor as of the date on which it is retired or when such Unit is delivered to the repair shop, whichever occurs first.

Lessee shall, at all times while this Agreement is in effect at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to each Unit in minimum amount equal to the settlement value (as defined in Section 7b); and (ii) public liability insurance in a minimum amount of            per occurrence with respect to third party personal injury and property damage, in each case for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional insureds and shall also list Lessor and any assignee of Lessor as loss-payees as their interests may appear on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or

cancellation thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("**Other Insurance**") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Lessee.

Each item obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Lessor pursuant to this Subparagraph. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request.

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

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

10. Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Units, any Unit or any part thereof, Lessor's title thereto, or any

interest therein, except (i) any lien resulting from an independent act of or claim against Lessor which does not result from, arise out of, or relate to the manufacture, acquisition, ownership or leasing of the Units or this Lease or any Lease Supplement or any Event of Default, (ii) liens for taxes either not yet delinquent or being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units or any part or item thereof, and (iii) materialmen's, mechanics', workmen's, repairmen's, employees' storage or other like liens arising in the ordinary course of business, which are not delinquent or are being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units, or any part thereof. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Units free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Lessor and (any assignee of Lessor), any such lien not excepted above if the same shall arise at any time. Lessee will notify Lessor and (any assignee of Lessor) in writing promptly upon becoming aware of any tax or other lien (other than any lien excepted above) that shall attach to the Units or any Unit, and of the full particulars thereof.

11. Return of the Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor as the Lessor may reasonably designate. The condition of the Units upon such return shall be as required pursuant to Section 9 hereof.

The assembling and delivery of the Units as provided in this Section 11 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble and deliver the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice and Lessor shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances arising by or through Lessor.

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

(a) default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for ten (10) days after written notice is sent to Lessee;

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

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

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

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

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

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

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain

liable as herein provided; and thereupon, the Lessor may in a reasonable manner and without damage to the property of the Lessee or injury to any person by Lessor or its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as representing actual loss incurred by the Lessor, damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit which represents the then present value of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed in each case on a basis of a — per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, expenses of sale or re-leasing (including incidental transportation costs incurred by Lessor).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim

which may be asserted by the Lessee or on its behalf except the Lessee shall be credited with any present value payments made pursuant to subsection 12(e)(ii)(a).

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

13. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 12 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. The condition of the Units upon such return shall be as required pursuant to Section 9 hereof. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense, and risk transport the Units to the Lessor as the Lessor may reasonably designate.

The assembling and delivery of the Units as provided in this Section 13 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 13, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

14. Assignment; Possession and Use. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Units during the term of this Lease.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under Sections 6, 9 and 12) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to

provide any reasonable documentation requested by Lessor including opinions of counsel.

So long as the Lessee shall not be in default under this Lease, the Lessee may with prior written consent of the Lessor sublease any one or more of the Units or assign this Lease to third parties; provided, that (i) such sublease or assignment shall provide that the subject Units shall be operated and maintained in accordance with the terms hereof; (ii) the Lessee shall provide the Lessor with ten (10) days advance notice of any such sublease or assignment and a copy of such sublease or assignment; (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of the Lessor; and (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety. The Lessor's consent to the Lessee's sublease or assignment shall not be unreasonably withheld provided that the Lessee complies with the aforementioned terms and conditions.

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

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the Lessee shall not assign or transfer (except as otherwise permitted by this Section 14) or encumber its leasehold interest under this Lease in the Units. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provision of the next succeeding paragraph hereof.

Nothing in this Section 14 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the

effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder (including, but not limited to, Section 16 hereof).

The Lessee agrees that during the term of this Lease, the Lessee will not assign any Unit to service involving the operation and maintenance thereof outside the United States of America and that operation of any Unit outside the United States of America during such term will be limited to incidental and temporary use in Canada.

15. Recording. Prior to the delivery and acceptance of the Units, and in connection with any sublease or assignment permitted by Section 14 hereof, the Lessee will cause this Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or re-deposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection to the satisfaction of the Lessor of its title to the Units or for the purpose of carrying out the intention of this Lease.

16. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails certified first-class postage prepaid, addressed as follows:

If to the Lessor: Helm Financial Corporation  
One Embarcadero Center  
Suite 3500  
San Francisco, CA 94111  
Attn: President

If to the Lessee: Florida Rock Industries, Inc.  
P.O. Box 4667  
Jacksonville, FL 32201  
Attn: Bert Dodds

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

17. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

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

20. 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.

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

22. Renewal Option. It is agreed that the Lessee has the right at the expiration of this Lease to lease all, but not less than all, of the surviving Units or substitute Units at the same rental rate as specified in Section 3 or for a rental rate of \_\_\_\_\_ per Unit per month should Lessee choose to accept the responsibility for maintenance. Such lease renewal in either case shall be for a period of six (6) months. Such Renewal Option is to be exercised, if at all, by Lessee's giving notice of exercise to Lessor no less than forty-five (45) days prior to expiration of this Lease.

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

HELM FINANCIAL CORPORATION

By

Title President

FLORIDA ROCK INDUSTRIES, INC.

By

Title Vice President

STATE OF CALIFORNIA )  
 ) §  
COUNTY OF SAN FRANCISCO )

On this 28<sup>th</sup> day of NOVEMBER, 1989, before me personally appeared RICHARD C. KIRCHNETZ, 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 and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lynda A Herskovitz  
Notary Public

My Commission Expires: July 16, 1993

[Notarial Seal]



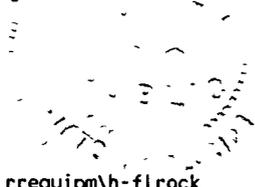
STATE OF FLORIDA )  
 ) §  
COUNTY OF DUVAL )

On this 13<sup>th</sup> day of November, 1989, before me personally appeared D. R. Blalbaum, to me personally known, who, being by me duly sworn says that he is Vice Pres. of **FLORIDA ROCK INDUSTRIES, 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.

Barbara V. Terrell  
Notary Public

My Commission Expires: Notary Public, State of Florida  
My Commission Expires Nov 16, 1991

[Notarial Seal]



**Annex A**

**to**

**Lease of Railroad Equipment**

**Dated as of November 28, 1989**

<u>Equipment Description</u>	<u>Equipment Numbers</u>
100 Ton, 3600 cubic foot capacity, open top hopper cars.	HLMX 40129 40204
	40130 40205
	40131 40206
	40132 40207
	40138 40208
	40149 40220
	40159 40221
	40160 40222
	40161 40223
	40162 40224
	40163 40225
	40165 40229
	40166 40230
	40172 40232
	40173 40233
	40174 40234
	40175 40235
	40176 40250
	40177 40259
	40178 40260
	40199 40261
40200 40264	
40201 40265	
40202 40266	
40203 40267	

ANNEX B

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of FLORIDA ROCK INDUSTRIES, INC. (the "Lessee"), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of the Lessee the following described Units of equipment, which Units are in good order, condition and repair and conform in all respects to the terms, provisions, requirements and standards of the certain Lease of Railroad Equipment dated as of November 28, 1989 between Helm Financial Corporation and Lessee.

<u>Equipment Description</u>	<u>No. of Cars</u>	<u>Car Numbers</u>	<u>Date Accepted</u>
100 Ton, 3600 cubic foot capacity, open top hopper cars.	50	HLMX 40129	40204
		40130	40205
		40131	40206
		40132	40207
		40138	40208
		40149	40220
		40159	40221
		40160	40222
		40161	40223
		40162	40224
		40163	40225
		40165	40229
		40166	40230
		40172	40232
		40173	40233
		40174	40234
		40175	40235
		40176	40250
		40177	40259
		40178	40260
40199	40261		
40200	40264		
40201	40265		
40202	40266		
40203	40267		



Authorized Representative

*See attached receiving information*