

**HELM**  
**FINANCIAL CORPORATION**

One Embarcadero Center • San Francisco, CA 94111

415/398-4510

(3)  
\$15

16765

VIA AIR COURIER

RECORDATION NO \_\_\_\_\_ FILED 1425

FEB 14 1990 - 12 35 PM

**INTERSTATE COMMERCE COMMISSION** February 9, 1990

Ms. Mildred Lee  
Recordations Unit  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, DC 20423

0-045A061

Dear Ms. Lee:

Enclosed is a Locomotive Lease Agreement dated as of January 18, 1990 between the following parties:

Lessor: Helm Financial Corporation  
One Embarcadero Center  
Suite 3500  
San Francisco, CA 94111

Lessee: The Florida West Coast Railroad Company  
104 Northwest Lancaster Street  
Trenton, FL 32693

The equipment involved in this transaction is as follows:

Equipment: (1) GP9 Locomotive  
See Schedule A for Equipment Number

Please file this agreement as a primary document. The filing fee of \$15 is enclosed. Thank you.

Sincerely,

*Karen Staudenmaier*

Karen Staudenmaier  
Fleet Operations Administrator

KS:jgs  
Enclosures

OS 1/17/90 11:04

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REGISTRATION NO. \_\_\_\_\_ FILED 1425

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INTERSTATE COMMERCE COMMISSION

LOCOMOTIVE LEASE AGREEMENT

BETWEEN

HELM FINANCIAL CORPORATION

(LESSOR)

AND

FLORIDA WEST COAST RAILROAD COMPANY

(LESSEE)

## LOCOMOTIVE LEASE AGREEMENT

THIS LEASE made and entered into as of this 18<sup>th</sup> day of January, 1990, and between HELM FINANCIAL CORPORATION, a California corporation, hereinafter called "Lessor", and the FLORIDA WEST COAST RAILROAD COMPANY, a Florida corporation, hereinafter called "Lessee".

### LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease: Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor with intent to purchase, the Locomotive 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", upon the terms and conditions herein set forth. This Lease shall be binding only on the Locomotive described in Schedule A.

2. Inspection and Acceptance: Lessee acknowledges that it has inspected the Locomotive at the Old Augusta Railroad facility in New Augusta, Mississippi. At the time of such inspection, the Locomotive was considered to be in good repair and operating condition except for the engine gear train and dynamic brakes which required repair. Lessee agrees to accept delivery of the Locomotive at the V.M.V. Enterprises repair facility in Paducah, Kentucky ("Delivery Point") and Lessor agrees to deliver such unit in fully operable condition. Lessee shall be responsible for transportation costs beyond the Delivery Point. At the time of return of the Locomotive to Lessor at a mutually agreed upon point on the lines of Lessee, a joint inspection of the Locomotive shall be performed and except as otherwise determined by said joint inspection, the Locomotive shall be considered to be in good repair and operating condition at the time Locomotive is returned to Lessor.

3. Rental: Lessee shall pay to Lessor as rental for the Locomotive the amount of \_\_\_\_\_, payable monthly in advance commencing on the date of acceptance at the Delivery 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 what-

soever, 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 the Locomotive or damage to or loss of possession or use or destruction of such Locomotive 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 the Locomotive 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 Locomotive; 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 counter-claims it may now or hereafter have against the Locomotive manufacturer.

4. Term: The term of this Lease shall be thirty-six (36) months following acceptance of the Locomotive at the Delivery Point.

5. Warranties and Representations: LESSOR MAKES NO REPRESENTATION OR WARRANTIES, EXCEPT AS PROVIDED IN SECTIONS 10 AND 17 BELOW, OF ANY KIND RESPECTING THE LOCOMOTIVE, 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 LOCOMOTIVE, 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 LOCOMOTIVE, 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 THE LOCOMOTIVE. 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:

Helm Financial Corporation  
One Embarcadero Center, Suite 3500  
San Francisco, CA 94111  
ATTN: 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 the 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 the 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 of the Locomotive leased from Lessor while subject to this Lease. In case the Locomotive during the term of the Lease period becomes lost, destroyed or damaged beyond repair from any cause whatsoever, (hereinafter "**Casualty Occurrence**"), rental with respect to the Locomotive shall cease immediately. On the payment date next following the date of such Casualty Occurrence, Lessee shall pay to Lessor the Casualty Value of the Locomotive, determined under the Casualty Schedule attached hereto as Schedule B, or replace the 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 the Locomotive shall automatically pass to Lessee on an as is, where is basis, and the Lease shall terminate with respect to the Locomotive.

9. Insurance: The Lessee will at all times during the term of this Lease, at its own expense, cause to be carried and maintained insurance in respect of the Locomotive in amounts and against risks comparable to those insured against by Lessee on similar equipment owned or leased by it.

10. Mechanical: Lessee will, at its sole expense, perform all running repair maintenance work, lubrication and inspection on Locomotive in accordance with manufacturer's recommendation.

11. Plans and Specifications: Lessor agrees to provide Lessee with current wiring diagram, current wiring running list, and current air brake piping diagrams including all modifications.

12. Indemnity: Subject to the obligations and undertakings of the Lessor specified in Sections 8 and 16 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 the Locomotive is delivered to Lessee and the time they are re-delivered to Lessor (save and except while the Locomotive is within the Lessor's possession).

13. Assignment: Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of the 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.

14. 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:  
Florida West Coast Railroad Company  
104 Northwest Lancaster Street  
Trenton, FL 32693  
ATTN: Mr. Clyde S. Forbes

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:  
Helm Financial Corporation  
One Embarcadero Center, Suite 3500  
San Francisco, CA 94111  
ATTN: President

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

15. 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 Locomotive during the Lease period.

The Lessee shall use the Locomotive only in the manner for which designed and intended and so as to subject it only to ordinary wear and tear. Lessee shall, at its own cost and expense, maintain and keep the Locomotive in good order, condition and repair, ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotive shall be considered accessions to the Locomotive 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 Locomotive and will promptly take action, at its expense, to remove and discharge any liens that may be placed on the Locomotive.

16. 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 Locomotive according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

17. 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.

18. Late Charges: Delinquent installments of rent shall bear interest at the rate, \_\_\_\_\_ % per month if not prohibited by law, otherwise at the highest lawful contract rate.

19. Filing and Administration: Lessor will, on behalf of Lessee 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 Lessee 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 Locomotive 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.

20. 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 the Locomotive 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 Locomotive and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

21. 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, 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 Locomotive, to remove the Locomotive 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 the Locomotive 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.

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

23. Purchase Option. The Lessor shall extend to the Lessee a purchase option on the Locomotive at the expiration of this Lease in the amount of                      so long as the following conditions are met:

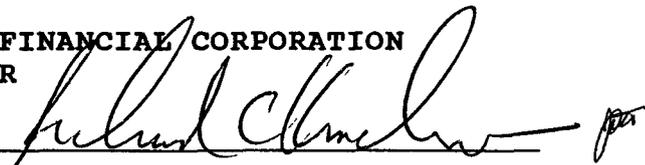
- (a) Lessee is not in default under this Lease.
- (b) The first rental payment and all the monthly rental payments to the Lessor shall have been made pursuant to Section 3 herein.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed and delivered that day and year first written.

**FLORIDA WEST COAST RAILROAD COMPANY  
LESSEE**

BY:   
TITLE: President  
DATE: January 18, 1990

**HELM FINANCIAL CORPORATION  
LESSOR**

BY:   
TITLE: PRESIDENT  
DATE: February 5, 1990

STATE OF CALIFORNIA )  
 ) §  
COUNTY OF SAN FRANCISCO )

On this 5<sup>th</sup> day of February, 1990, 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.

Karen Staudenmaier

Notary Public

My Commission Expires:

July 26, 1993



[Notarial Seal]

STATE OF FLORIDA )  
 ) §  
COUNTY OF GILCHRIST )

On this 18 day of JANUARY, 1988, before me personally appears Clyde S. FORBES, to me personally known, who being by me duly sworn says that he is president of FLORIDA WEST COAST RAILROAD COMPANY, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rebecca D. Remy  
Notary Public

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. NOV. 16, 1991  
BONDED THRU GENERAL INS. CO.

My Commission Expires:

[Notarial Seal]

JALOCO HELM-FLO

**SCHEDULE A**

Locomotive Description

Equipment Number

General Motors (Electro  
Motive Division) GP9,  
1750 H.P. Diesel Electric  
Locomotive.

669

SCHEDULE B

CASUALTY SCHEDULE

Casualty Value  
after Payment Number

Settlement Value

- 1
- 2
- 3
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