

**HELM**  
**FINANCIAL CORPORATION**

One Embarcadero Center - San Francisco, CA 94111

415/398-4510

REGISTRATION NO **17012** FILED 1425

VIA AIR COURIER

SEP 19 1990 -2 30 PM

INTERSTATE COMMERCE COMMISSION

0-262A032

September 20, 1990

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

SEP 20 2 25 PM '90

Dear Ms. Lee:

Enclosed is a Use Agreement dated as of August 24, 1990  
between the following parties:

Owner: Helm Financial Corporation  
One Embarcadero Center, 35th Floor  
San Francisco, CA 94111

Railroad: Wheeling and Lake Erie Railroad Company  
East 1st Street  
Brewer, Ohio 44613

The equipment involved in this transaction is as follows:

Equipment: Sixty-Six (66) Open Top Hoppers  
See Annex A for Car Numbers

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

Sincerely,

*Karen Rahnasto*

Karen Rahnasto  
Fleet Operations Administrator

KS:po  
Enclosures

17012  
SEP 19 1990 - 2 30 PM  
INTERSTATE COMMERCE COMMISSION

USE AGREEMENT

THIS USE AGREEMENT ("Agreement") is made and entered as of this 24th day, of August, 1990 between HELM FINANCIAL CORPORATION ("Helm") and Wheeling & Lake Erie Railway Company (hereinafter referred to as "Railroad").

R E C I T A L S:

A) Helm has leased sixty-six (66) open top hoppers to the Tradewater Railway Company, a Commonwealth of Kentucky corporation ("TWRV") pursuant to a Lease of Railroad Equipment ("Lease").

B) Railroad desires to receive the open top hoppers in assignment from TWRV.

C) Under certain circumstances described hereinbelow, the open top hoppers may be added to or removed from the Agreement without affecting the length of the term.

NOW, THEREFORE, the parties agree as follows:

1. Helm shall supply Railroad with the open top hoppers more fully described in Annex A hereto hereinafter called the ("Cars") subject to the terms and conditions of this Agreement.

2. The initial term of this Agreement shall begin with respect to each Car when it is delivered to a mutually agreeable CSX transportation interchange point and will terminate with respect to all Cars on the last day of the \_\_\_\_\_ e month in which the last Car is delivered. Thereafter, this Agreement shall continue for five (5) additional one year terms which shall run consecutively unless Railroad notifies Helm within the last sixty (60) days of each annual period that this Agreement with respect to a particular Car is terminated. Upon the delivery of the final Car, Helm shall provide Railroad with a certificate of delivery, including the expiration date of the initial 24 month term and each successive annual term. Unless Railroad, within thirty (30) days of such notice, demonstrates to the satisfaction of Helm that such date is incorrect, the Railroad shall be deemed to have concurred to such date. If Railroad terminates this Agreement at any time other than the above noted sixty (60) day termination periods, Railroad shall pay to Helm a termination penalty of one year's rental for each Car based on the following factors:

During year 2	-		%
During year 3	-		%
During year 4	-		%
During year 5	-		%
During year 6	-		%
During year 7	-		%

3. The Cars shall be placed into an assignment pool on the Railroad under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10. Railroad shall not incur any transportation cost in connection with the delivery of said Cars to Railroad. Pursuant to the Lease, TWRV shall use its best efforts to prevent any Car from being interchanged onto its lines during the Term of the Agreement, including advising connecting Carriers that the Cars have been placed into an assignment pool on Railroad and that the connecting Carriers should not return such Cars to TWRV during the term of the Agreement.

4. Helm will deliver Cars marked HLMX to Railroad and Railroad shall, at Helm's cost, have these Cars restenciled with the TWRV reporting marks. Railroad shall incur no per diem expense associated with these Cars for a period of ten (10) days or until such time as they have been remarked and placed in service by Railroad whichever is less. Railroad will bill Helm \_\_\_\_\_ Car for the restenciling of these Cars.

5. Railroad will not be entitled to per diem and mileage relief for any Car, while such Car is on Railroad's lines. Railroad shall not take any action to diminish the full Car hire rates to be paid by other railroads for the use of the Cars. Within forty (40) days after the end of each calendar month, Railroad will pay to TWRV the amount due for the use of the Cars on Railroad's lines during such calendar month and provide to TWRV a report indicating the number of days each Car was on Railroad's lines.

6. If, with respect to any calendar month, or months, the revenues received by TWRV for the Cars are less \_\_\_\_\_ Car per month ("Base"), Railroad will pay to Helm the difference between the Base and the actual revenues for such calendar month(s) ("Difference") within thirty (30) days of receiving such notice from Helm.

7. During the term of this Agreement, in accordance with the AAR Interchange Rules and FRA Railroad Freight Car Safety Standards, Railroad is responsible for maintenance and repair expenses, including transportation costs associated with such maintenance and repair.

8. Upon expiration of, or termination of, this Agreement, Railroad shall, at its own cost and expense, restencil Cars as designated by Helm and surrender such Cars to Helm at any interchange point on Railroad's lines designated by Helm with each

Car in interchange condition, in accordance with the AAR and FRA rules.

9. If a Car is damaged or destroyed beyond reasonable repair, Railroad will make an appropriate payment to Helm, as provided in AAR Interchange Rule 107. Railroad shall indemnify and hold Helm harmless against any claim made against Helm and against any expense, loss or liability (including but not limited to counsel fees and expenses) which the Helm may incur (unless resulting from Helm's own negligence) by reason of this Agreement, Helm's ownership of, or arising from the use, operation, condition, delivery, rejection, storage, return of any Car or any accident, personal injury, death or property damage involving any Car, until such Car is returned to Helm in accordance with the terms of this Agreement. The indemnities in this section shall survive payment or performance of all other obligations under this Agreement or the termination of this Agreement.

10. Railroad is responsible for the payment of all taxes, whether property, use or otherwise, that apply to the Cars or are applicable as a result of this Agreement (other than federal, state or local income tax payable by Helm in consequence of the receipt of payments provided herein.)

11. Railroad hereby acknowledges that it has elected to be self-insured for up to Twelve Million Dc \_\_\_\_\_ or public liability and for property damage in an amount to cover the settlement value (as defined in Paragraph 9). Notwithstanding the fact that the settlement value may fluctuate during the term of the Agreement, Railroad agrees that it will maintain during such term a net worth sufficient to meet its self insurance obligations hereunder. Railroad agrees to give immediate notice to Helm of any material adverse change in its financial condition that would impair Railroad's ability to meet its financial obligation under this section during the term of this Agreement.

12. Railroad will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Cars, any Car or any part thereof, Helm's title thereto, or any interest therein.

13. Helm must provide Railroad with notice and opportunity to correct any alleged default other than a default, in payment of the Difference, before an event of default may be declared by Helm. Twenty (20) days notice shall be given prior to any such declaration. If the alleged default is not corrected to Helm's reasonable satisfaction within the aforementioned time period, Helm may declare an event of default. In that event, Railroad shall return the Cars as provided in Paragraph 8. Helm shall be entitled in addition to pursue any remedy it may have at law or in equity to recover the full amount of its damages from Railroad resulting from

Railroad's default including all costs, expenses and reasonable attorneys' fees.

The following events shall be deemed to be "events of default":

(a) The failure of Railroad to pay Difference when due and the continuance of said failure for ten (10) days after the due date.

(b) The unauthorized assignment or transfer by Railroad of this Agreement or of possession of the Cars, or any part thereof.

(c) The failure of the Railroad to observe or perform any of the covenants, conditions or agreements contained herein.

(d) Any bankruptcy proceedings shall be commenced by or against Railroad.

(e) Any material representation made by the Railroad to Helm shall prove to be false or materially incorrect on the date it was made, including commodity to be loaded or method of loading.

14. So long as an event of default has not occurred against it, Railroad shall be entitled to the quiet enjoyment, use and possession of the Cars.

15. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by Telex addressed as follows:

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

If to Railroad: Wheeling & Lake Erie Railway Company  
East 1st Street  
Brewster, Ohio 44613  
Attention: President

or at any other address designated by the applicable party.

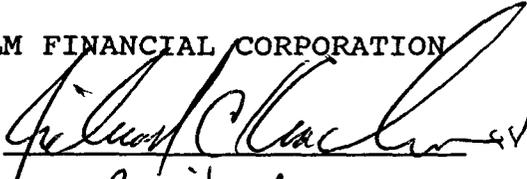
16. The rights of the parties under this Agreement are subject and subordinate to the rights of Helm and Tradewater

Railway Company under the Lease dated as of June 26, 1990, and under the terms of any financing agreement or lease entered into in connection with the Cars. Accordingly, following notice to Railroad from any such owner/lender that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement) and is continuing under such lease or financing agreement, Railroad agrees to pay such party the rentals and other sums due hereunder.

17. This Agreement shall be governed by the law of the State of California.

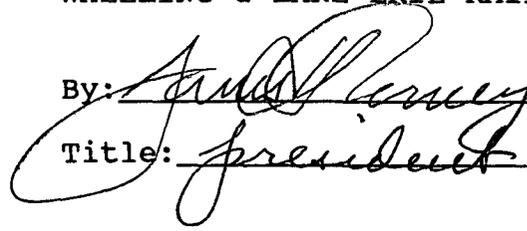
18. This Agreement represents the entire understanding of the parties, may only be modified by their mutual written consent and has been executed by their duly authorized officials.

HELM FINANCIAL CORPORATION

By: 

Title: President

WHEELING & LAKE ERIE RAILWAY

By: 

Title: President

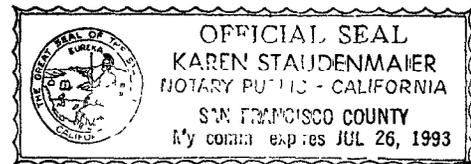
STATE OF CALIFORNIA )  
 ) S  
COUNTY OF SAN FRANCISCO )

On this 10<sup>th</sup> day of September, 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 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 Pennsylvania )  
 ) S  
COUNTY OF Allegheny )

On this 24<sup>th</sup> day of August, 1990, before me personally appeared J. Christopher Reobed, to me personally known, who, being by me duly sworn says that he is President of Wheeling & Lake Erie Railway, 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.

Donna L. Washner  
Notary Public

My Commission Expires:

[Notarial Seal]

