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**HELM**  
**FINANCIAL CORPORATION**

One Embarcadero Center • San Francisco, CA 94111

415/398-4510

VIA AIR COURIER

July 24, 1991

RECORDATION NO. 17455 FILED 1991

JUL 25 1991 - 2 30 PM

INTERSTATE COMMERCE COMMISSION

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

Dear Ms. Lee:

Enclosed is a Use Agreement dated as of May 29, 1991 between the following parties:

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

Lessee: Wisconsin & Calumet Railroad Company, Inc.  
203 South Pearl Street  
Janesville, WI 52545

The equipment involved in this transaction is as follows:

Equipment: (35) Gondolas  
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

Enclosures

JUL 25 2 13 PM '91

17455

REGISTRATION NO \_\_\_\_\_ FILED 143

JUL 25 1991 -2 20 PM

USE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS USE AGREEMENT ("Agreement") is made and entered as of this 29th day, of May, 1991 between HELM FINANCIAL CORPORATION ("Helm") and WISCONSIN & CALUMET RAILROAD COMPANY, INC. (hereinafter referred to as "Railroad").

R E C I T A L S:

A) Helm and Railroad desire to maximize the utilization of the gondolas described herein by making such equipment available for loading by shippers located on the lines of Railroad.

B) Under certain circumstances described hereinbelow, the gondolas 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 gondolas more fully described in Annex A hereto, hereinafter called (the "Cars") subject to the terms and conditions of this Agreement.

2. The term of this Agreement shall begin with respect to each Car when it is delivered in interchange to Chicago Rail Link at Blue Island, Illinois ("Delivery Point") and will terminate with respect to all Cars twelve (12) months after the last Car delivered to the Delivery Point. Railroad shall be responsible for all transportation costs associated with the Cars after delivery of such Cars to the Delivery Point.

Railroad shall restencil the Cars at its expense to the reporting mark's and numbers as provided in Annex A.

Helm shall have the right to terminate this Agreement at any time upon thirty (30) days written notice to Railroad. If termination is due to Helm's ability to re-lease or sell the Cars to a third party hereinafter ("New Agreement"), Railroad will have the option within five (5) business days from notice by Helm of the New Agreement to match the conditions of the New Agreement.

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~~3. The Cars shall be placed into an assignment pool on Railroad's lines for the account of Railroad under the provisions of Car Service Directive 435 of the Code of Car Service Rules, AAR Circular No. QT-10.~~

4. Railroad shall be entitled to per diem and mileage relief for each 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 seventy-five (75) days after the end of each calendar month, Railroad will pay to Helm the amount due for the use of the Cars on Railroad's lines during such calendar month and provide to Helm a report indicating the number of days each Car was on Railroad's lines.

5. Upon expiration of, or termination of, this Agreement, Railroad shall provide free storage for the Cars. Upon reasonable prior notification from Helm, Railroad shall restencil Cars at Railroad's expense 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.

6. Helm is responsible for normal maintenance and repair expenses, except as otherwise provided below. Helm will not incur any transportation costs on Railroad's line associated with moving Cars to and from a repair facility. Railroad is responsible for all costs associated with any maintenance resulting from Railroad's negligence or misuse in loading or unloading any Car while such Car is in Railroad's possession or control and all costs associated with damage for which Railroad is responsible under the Association of American Railroads Interchange Rules. Railroad shall promptly notify Helm of any damage to, defect in, need of repair to, or destruction of any Car. In no event shall Railroad place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of the Railroad without Helm's prior written approval. Any such repair must be performed under the direction and control of Helm.

7. 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 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.

8. Helm 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 (except that Railroad shall pay any such tax which it would otherwise be obligated to pay.)

9. Insurance. Railroad 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 Car in minimum amount equal to the settlement value (as defined in Paragraph 7); and (ii) public liability insurance in a minimum amount of \$ [REDACTED] 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 Helm. All insurance shall be taken out in the name of Railroad and shall name Helm and any assignee of Helm as additional insureds and shall also list Helm and any assignee of Helm as loss-payees as their interests may appear on the insurance policies. Said policies shall provide that Helm and any assignee of Helm shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. With respect to the additional insureds, Railroad's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Railroad 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 Railroad.

10. 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.

11. Helm must provide Railroad with notice and opportunity to correct any alleged default other than a default, in payment of any amounts due hereunder, 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 5. 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 any amounts due hereunder 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 (provided, however, that Railroad may interchange the Cars).

(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.

12. 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.

13. 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  
ATTN: President

If to Railroad: Wisconsin & Calumet Railroad  
Railroad, Inc.  
203 South Pearl Street  
Janesville, WI 52545  
ATTN: Director of Market Development

or at any other address designated by the applicable party.

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

15. 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.

**WISCONSIN & CALUMET RAILROAD  
COMPANY, INC.**

By: 

Title: EXECUTIVE V.P.

Date: 6-6-91

**HELM FINANCIAL CORPORATION**

By: 

Title: President

Date: 7/9/91

STATE OF CALIFORNIA )  
 ) S  
COUNTY OF SAN FRANCISCO )

On this 19<sup>th</sup> day of July, 1991, 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]

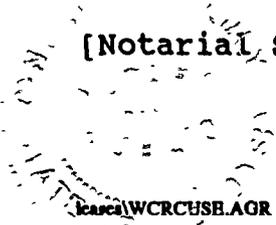
STATE OF WI )  
 ) S  
COUNTY OF Rock )

On this 6 day of June, 1991, before me personally appeared Edwin C. Elliot, to me personally known, who, being by me duly sworn, says that he is V.P. of Wisconsin Calumet RR, 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.

Cynthia A. Shreely  
Notary Public

My Commission Expires: permanent

[Notarial Seal]



**ANNEX A**

to

Use Agreement

Dated May 29, 1991

Equipment Description

Thirty-five (35) 100-ton 65 foot gondolas

Equipment Numbers

WICT 2001-2035