

HELM FINANCIAL CORPORATION

One Embarcadero Center • San Francisco, CA 94111

415/388-4510

April 24, 1992

17783

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INTERSTATE COMMERCE COMMISSION

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

Dear Ms. Lee:

On behalf of Helm Financial Corporation, I submit for filing and recording, under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, two (2) executed counterparts of a document entitled Rail Car Lease Agreement executed as of April 10, 1992 ("Lease"). Please file this Lease as a primary document.

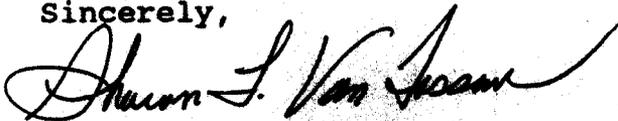
The executing parties to the enclosed Lease are:

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

Lessee: Dakota, Minnesota & Eastern Railroad
Corporation
337 22nd Avenue
Brookings, SD 57006

The filing fee of sixteen dollars (\$16.00) is included in the enclosed check for sixty-four dollars (\$64.00).

Sincerely,



Sharon L. Van Poyan
Contract Administrator

svf
Enclosures

17783

REGISTRATION NO. FILED 1425

APR 27 1992 5 35 PM

INTERSTATE COMMERCE COMMISSION

RAIL CAR LEASE AGREEMENT

This Rail Car Lease Agreement (the "Lease") dated and effective as of March 31, 1992 is between Helm Financial Corporation (the "Lessor") and Dakota, Minnesota and Eastern Railroad Corporation (the "Lessee").

1. Scope of Lease. Lessor agrees to provide and Lessee agrees to take and use, the units (the "Units") more fully described on Annex A attached hereto.

2. Term. The term of this Lease is for three (3) eight (8) month periods. The first period is from April 1, 1992 (the "Commencement Date") through and including November 30, 1992 (hereinafter "Term 1"). The second period is from April 1, 1993 through and including November 30, 1993 (hereinafter "Term 2"). The third period is from April 1, 1994 through and including November 30, 1994 (hereinafter "Term 3"). Term 1, Term 2, and Term 3 herein collectively constitute the "Term of this Lease". During the Term of this Lease Lessee shall pay Rent for each Unit, as described in Section 4 hereof from the Commencement Date until the date of return of each Unit. Lessor acknowledges that the Units will be returned after the end of the Lease term, and Lessee acknowledges that this Lease will continue to apply against the Units until returned.

3. Possession and Use. Lessee shall assume control, quiet enjoyment and possession of each Unit on the Commencement Date. LESSOR MAKES NO WARRANTY EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER INCLUDING THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR A PARTICULAR PURPOSE.

4. Rent. Rent for each Unit shall be per Unit per month, payable on the first day of each month, in advance. Rent for Term 1 shall commence for each Unit on April 1, 1992. Rent for Term 2 shall commence for each Unit on April 1, 1993 or the date the Unit is re-delivered to Lessee, whichever occurs later. Rent for Term 3 shall commence for each Unit on April 1, 1994 or the date the Unit is re-delivered to Lessee, whichever occurs later. Rent shall be prorated for Term 2 and Term 3 if a Unit is not in Lessee's possession by the first day of a calendar month or returned to storage by Lessee on the last day of each Term. If Rent commences after the first day of a calendar month, the pro rata payment for that month will be added to, and paid with the following month's rent. The Units shall otherwise be "zero rated" while on Lessee's trackage, i.e., no car hire charges (time or mileage) shall be assessed or paid by Lessee and Lessee shall receive a refund of all car hire charges received by Lessor while the Units are off Lessee's lines during the Lease term.

In the event Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, Lessee shall pay 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 Lessee at a rate equal to 18% per annum or the maximum rate permitted by law whichever is less. Any costs incurred by Lessor in collecting Rent or any other sum of money due under this Lease wrongfully withheld by Lessee, including, but not limited to, reasonable attorney's fees, will be paid by Lessee.

5. Maintenance. The Units are leased to Lessee on a "net" basis, i.e., Lessee is responsible for all maintenance and repair to the Units during the term of this Lease in accordance with the AAR Interchange Rules and FRA Railroad Freight Car Safety Standards.

6. Return Condition. The Units will be returned to Lessor in the same condition as received, subject to reasonable wear and tear, at the end of the Term of this Lease, as well as the end of Term 1 and Term 2 if Lessor exercises its right to sublease per Section 16 hereof. A joint inspection will be performed upon return of the Units to the Lessor and Lessee shall make any repairs to return the Units to the appropriate condition. If Lessor subleases any or all of the Units per Section 16 hereof such Units shall be returned to Lessee at the commencement of Term 2 and/or Term 3 in the same condition as received, subject to reasonable wear and tear.

7. Storage and Return. Lessee shall store the Units, at no expense to Lessor, during the time periods between Term 1 and Term 2, and between Term 2 and Term 3. Lessee shall provide Lessor with secure storage of the Units for a one hundred twenty (120) day free period upon termination of this Lease. Thereafter, a storage charge of One Dollar (\$1.00) per Unit per day will apply until disposition instructions are received except that there shall be no storage charge if this Lease has been terminated due to a default by Lessee. Storage after the free period shall be at the risk of Lessor, and Lessee shall not be required to provide security for the Units during such storage. Lessee shall, at its expense, transport the Units to a mutually agreed to interchange point on Lessee's lines.

8. Destruction; Indemnity. If a Unit is damaged or destroyed beyond reasonable repair, Lessee will make an appropriate payment to Lessor, as provided in the Casualty Schedule attached hereto as Annex B. Rent shall terminate as of the date of the appropriate payment. Lessee shall indemnify and hold Lessor harmless against any claim made against Lessor and against any expense, loss or liability (including but not limited to counsel fees and expenses) which the Lessor may incur (unless resulting from Lessor's sole negligence) by reason of this Lease,

Lessor's ownership of, or arising from the use, operation, condition, delivery, rejection, storage; return of any Unit or any accident, personal injury, death or property damage involving any Unit, until such Unit is returned to the Lessor in accordance with the terms of this Lease. The indemnities in this paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

9. Taxes. Lessee is responsible for the payment of all taxes, whether property, use or otherwise, that apply to the Units or are applicable as a result of this Lease (other than federal, state or local income tax payable by the Lessor in consequence of the receipt of payments provided herein).

10. Insurance. 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 Paragraph 8); and (ii) public liability insurance in a minimum amount of \$10,000,000 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.

11. 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.

12. Default. Lessor must provide Lessee with notice and opportunity to correct any alleged default, other than a default in payment of rent, before an event of default may be declared by Lessor. Twenty (20) days notice shall be given prior to any such declaration. If the alleged default is not corrected to Lessor's reasonable satisfaction within the aforementioned time period, Lessor may declare an event of default. In that event, Lessee shall return the Units, at Lessee's expense, to a mutually agreed to storage or interchange point on Lessee's lines and Lessor shall attempt to lease the Units to other parties and otherwise attempt to mitigate its damages. Lessor 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 Lessee resulting from Lessee'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 Lessee to pay rent when due and the continuance of said failure for ten (10) days after the due date.

(b) The unauthorized assignment or transfer by Lessee of this Lease or of possession of the Units, or any part thereof.

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

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

(e) Any material representation made by the Lessee to Lessor shall prove to be false or materially incorrect on the date it was made.

13. Quiet Enjoyment. So long as an event of default has not occurred against it, Lessee shall be entitled to the quiet enjoyment, use and possession of the Units.

14. Notices. All notices shall be in writing and given by certified or registered mail or overnight express carrier at the addresses shown below:

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

Lessee: Mr. Greg Robertson
Dakota Minnesota & Eastern Railroad
Corporation
337 22nd Avenue
Brookings, SD 57006

15. Assignment. Lessee may not assign this Lease or sublease the Units without the prior written consent of Lessor. Lessor may assign this Lease without the consent of Lessee but Lessee shall not be required to make any payments to any person other than Lessor unless Lessor has so advised Lessee in writing.

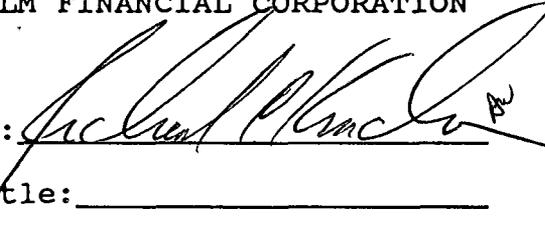
16. Sublease. Lessor shall have the right to sublease any or all of the Units, without the consent of Lessee, for the time periods between Term 1 and Term 2, and between Term 2 and Term 3. All expenses for such sublease shall be for the account of Lessor.

17. Purchase Option. Thirty (30) days prior to the expiration of the Term of this Lease, upon written notice to Lessor, Lessee shall have the option to purchase all, but not less than all, of the Units for a price of \$13,000.00 per Unit.

18. Law Governing. This Lease shall be governed by the law of the State of California.

19. Entire Understanding. This Lease 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: _____

DAKOTA MINNESOTA AND EASTERN
RAILROAD CORPORATION

By: 

Title: VP/Secretary/Treasurer/CFO

STATE OF CALIFORNIA)
) S
COUNTY OF SAN FRANCISCO)

On this 10th day of April, 1992, before me personally appeared Richard C. Kuehner 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.

Emma Susan Schmitt
Notary Public

My Commission Expires: June 16, 1995



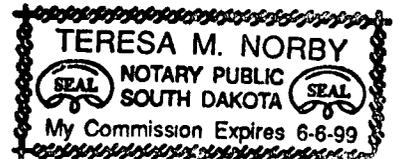
[Notarial Seal]

STATE OF SOUTH DAKOTA)
) S
COUNTY OF BROOKINGS)

On this 3rd day of April, 1992, before me personally appeared G.W. Robertson, to me personally known, who, being by me duly sworn, says that he is VP/Sec./Treas./CFO of Dakota, Minnesota & Eastern 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.

Teresa M. Norby
Notary Public Teresa M. Norby

My Commission Expires: June 6, 1999



[Notarial Seal]

ANNEX A

to

Rail Car Lease Agreement

Dated as of March ____, 1992

<u>Equipment Description</u>	<u>Equipment Numbers</u>
Eleven (11) 2,003 cubic foot capacity ballast cars	HLMX 100001 100003 100004 100005 100006 100007 100008 100009 100010 100011 100012

ANNEX B

TO RAIL CAR LEASE AGREEMENT
BETWEEN
HELM FINANCIAL CORPORATION
AND

DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION
DATED AS OF MARCH _____, 1992

CASUALTY SCHEDULE

AT RENTAL PAYMENT DUE	CASUALTY VALUE PAYMENT
01-Apr-92	\$16,000
01-May-92	15,906
01-Jun-92	15,813
01-Jul-92	15,719
01-Aug-92	15,625
01-Sep-92	15,531
01-Oct-92	15,438
01-Nov-92	15,344
01-Dec-92	15,250
01-Jan-93	15,156
01-Feb-93	15,063
01-Mar-93	14,969
01-Apr-93	14,875
01-May-93	14,781
01-Jun-93	14,688
01-Jul-93	14,594
01-Aug-93	14,500
01-Sep-93	14,406
01-Oct-93	14,313
01-Nov-93	14,219
01-Dec-93	14,125
01-Jan-94	14,031
01-Feb-94	13,938
01-Mar-94	13,844
01-Apr-94	13,750
01-May-94	13,656
01-Jun-94	13,563
01-Jul-94	13,469
01-Aug-94	13,375
01-Sep-94	13,281
01-Oct-94	13,188
01-Nov-94	13,094
thereafter	13,000