

HELM

FINANCIAL CORPORATION 505 Sansome Street, Suite 1800 San Francisco CA 94111
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STB E-File

January 30, 2013

Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

RE: LOCOMOTIVE LEASE AGREEMENT dated as of January 15, 2013 between **HELM FINANCIAL CORPORATION**, a California corporation ("Lessor") and **PAN AM RAILWAYS**, a Delaware corporation ("Lessee") pertaining to the lease of 10, SD40-2 locomotives.

Dear Section Chief:

On behalf of Lessor, I submit for filing and recordation under Section 11301 of Title 49 of the U.S. Code and the regulations promulgated there under the following document:

Fully executed true copy of the above referenced Locomotive Lease Agreement.

In connection with the recording of this Locomotive Lease Agreement, please note the following information:

Name and Address for Lessor: Helm Financial Corporation
505 Sansome Street, Suite 1800
San Francisco, CA 94111
Attn: President and COO

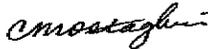
Name and Address for Lessee: Pan Am Railways
1700 Iron Horse Park
North Billerica, MA 01862
Attn: EVP Operations

Equipment: Ten (10) SD40-2 Locomotives: HLCX 7014, HLCX 7180, HLCX 7192, HLCX 7842, HLCX 7843, HLCX 7860, HLCX 8070, HLCX 8072, HLCX 8145, HLCX 8147.

Please record this Locomotives Lease Agreement as a primary recordation and apply the STB's filing fee to Lessor's account.

Summary: **LOCOMOTIVE LEASE AGREEMENT** dated January 15, 2013 between **HELM FINANCIAL CORPORATION** and **PAN AM RAILWAYS** for 10, SD40-2 locomotives: HLCX 7014, 7180, 7192, 7842, 7843, 7860, 8070, 8072, 8145, 8147.

Yours truly,



Cecilia Mostaghim

Enclosure

CERTIFICATION OF TRUE COPY

On January 30, 2013 I Cecilia Mostaghim, Supervisor of Contract Administration for Helm Financial Corporation, examined the original copy of the **LOCOMOTIVE LEASE AGREEMENT** dated as of January 15, 2013 by and between **HELM FINANCIAL CORPORATION**, a California corporation ("**Lessor**"), and **PAN AM RAILWAYS**, a Delaware corporation ("**Lessee**"). I hereby certify that I have compared the attached duplicate copy with the original and that it is a complete, true and correct copy of the original in all respects, including the dates, signatures and acknowledgements thereof.

Cmostaghim

Name: Cecilia C. Mostaghim
Title: Supervisor of Contract Administration

State of California
County of San Francisco

On January 30, 2013 before me, Matthew M. Ogburn personally appeared Cecilia C. Mostaghim, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Matthew M. Ogburn* (Seal)



LOCOMOTIVE LEASE AGREEMENT

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease") is dated as of January 15, 2013 between **HELM FINANCIAL CORPORATION**, a California corporation ("**Lessor**"), and **PAN AM RAILWAYS**, a Delaware corporation ("**Lessee**").

1. **Lease.** Subject to the terms and conditions of this Lease, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the locomotives described in Schedule A attached hereto ("**Unit(s)**").

2. **Inspection, Acceptance & Delivery of Units; Fuel & Unit Start-Up; Containment Tanks.**

(a) **Inspection, Acceptance & Delivery of Units.** Lessor shall make the nine (9) Units listed in Schedule A available for inspection (6 Units are available for a running inspection and 3 Units will be available for a non-running inspection) by Lessee at the CSX Transportation, Inc. facility in Waycross, GA, and the one (1) Unit listed in Schedule A for a non-running inspection by Lessee at the Norfolk Southern Railway facility in Columbus, OH (collectively, the "**Inspection Locations**"). At the time of the inspections, the Units shall be in compliance with the regulations of the Federal Railroad Administration ("**FRA**") and the Association of American Railroads ("**AAR**") rules of interchange then in effect (collectively, "**Rules**") and have at least thirty (30) days remaining on the Blue Card (collectively, "**Delivery Condition**"). Lessee agrees to accept each Unit that is in Delivery Condition at the Inspection Locations. If any Unit inspected by Lessee is not in fact in Delivery Condition at the Inspection Locations, Lessee may reject such Unit by notifying Lessor in writing within five (5) business days' of such inspection ("**Rejection Notice**"). Lessor shall have the option to either promptly repair or replace any such rejected Unit at Lessor's expense or to exclude such Unit from this Lease. If Lessee does not deliver a timely Rejection Notice to Lessor, such Unit will be deemed accepted by Lessee and to be in Delivery Condition. Lessor shall be responsible for all transportation costs and expenses from the Inspection Locations to any interchange point(s) on Lessee's lines (any such interchange point(s) as applicable a "**Delivery Point(s)**"). Lessee shall be responsible for all transportation costs and expenses on Lessee's lines. The "**Delivery Date**" for each Unit shall be the date such Unit is interchanged to the Lessee at the Delivery Point(s).

(b) **Fuel; Unit Start-Up.** At the time a Unit arrives at the Delivery Point(s) and is transported to Lessee's locomotive facility in Deerfield, MA (the "**Locomotive Facility**"), Lessee shall measure the fuel level of such Unit ("**Fuel Level**"). Lessee shall send written report(s) to Lessor listing the Units and stating the Fuel Level of each Unit. Lessee hereby agrees to supply to Lessor such Fuel Level report(s) within ten (10) days of the arrival of the last Unit at the Locomotive Facility. Upon the expiration or other termination of the Term of this Lease, Lessee shall return each Unit to Lessor with the same Fuel Level. The Units will be dead and drained upon arrival at the Delivery Point and Lessee, at its expense, will be responsible for all normal and customary start-up items and procedures, including, but not limited to, those start-up items and procedures set forth in Schedule B attached hereto. In the event Lessee encounters any issue(s) in connection with the start-up of a Unit which Lessee reasonably believes to not be normally and customarily associated with starting-up a locomotive, Lessee shall promptly notify Lessor in writing of such specific issue(s), and with prior written authorization from Lessor, Lessee may correct such issue(s) at Lessor's expense; provided, however, that Lessor shall have the option to replace any such Unit with a like-kind Unit in Delivery Condition subject to Lessee's inspection.

(c) **Containment Tanks.** At no additional cost to Lessee, Lessor shall provide Lessee with running take-out ("**RTO**") containment tanks for those Units which do not have containment tanks. Lessee shall be responsible for the cost of shipping the containment tanks from their current locations to the Locomotive Facility and for all labor costs associated with the installation of the RTO containment tanks. During the installation of any RTO containment tank Rent shall abate for such Unit up to a maximum of three (3) days.

3. **Term; Purchase Option; Renewal Option.**

(a) **Term.** The term of this Lease for each accepted Unit shall commence on the Delivery Date and shall continue in full force and effect for a period of twelve (12) months commencing on the first day of the month following the release of the tenth (10th) Unit from the Locomotive Facility ("**Term**").

(b) **Purchase Option.** Upon expiration of the Term and provided that Lessee is not then in default hereunder, Lessee shall have the option to purchase all ten (10), but not less than five (5), of the Units for the fair

market value of such Units upon the expiration date of this Lease. Such option shall be exercised by delivering written notice to Lessor not less than sixty (60) days prior to the expiration of the Term. If the parties cannot reach a mutually acceptable agreement as to the fair market value of the Units upon the expiration of the Term, such purchase option shall be null and void. Any such sale shall be on an as-is, where-is basis without recourse or warranty, express or implied, except that Lessor shall warrant good title to the Units free and clear of any liens or security interests arising through Lessor.

(c) **Renewal Option.** Upon expiration of the initial Term and provided that Lessee is not then in default hereunder, Lessee shall have the option to extend the Term of this Lease for an additional one (1) year period for all ten (10), but not less than five (5), of the Units for the fair market rental value of such Units upon the expiration date of the initial Term. Such option shall be exercised by delivering written notice to Lessor not less than sixty (60) days prior to the expiration of the Term. If the parties cannot reach a mutually acceptable agreement as to the fair market rental value of the Units upon the expiration of the Term, such renewal option shall be null and void. Any such renewal or extension shall be on the same terms and conditions as set forth in this Lease; provided, however, that the rental rate shall be determined by mutual agreement of the parties as set forth above and the warranties set forth in Section 11(b) and Schedule C hereto shall not apply during any such renewal or extension.

4. **Rent; Security Deposit.**

(a) **Rent.** Rent shall commence for each Unit upon the earlier of either (i) the date such Unit is released from the Locomotive Facility, or (ii) ten (10) calendar days after such Unit's Delivery Date. Lessee shall pay to Lessor on the tenth (10th) day of each month in advance rent in the amount of [REDACTED] per Unit per day ("**Rent**"). Rent shall continue in effect for each Unit, until such Unit is returned to Lessor in accordance with the terms of this Lease. All payment of Rent shall be made directly to Lessor at its address for notices hereunder. Except as expressly set forth in this Lease, Lessee's obligation to pay all Rent and other sums when due and to otherwise perform its obligations under this Lease is absolute and unconditional, and shall not be subject to any abatement, reduction, set-off, counterclaim, interruption, deferment or recoupment. Each Rent or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Lessor. The Rent and other sums payable by Lessee hereunder shall be paid without notice or demand; provided, however, that Lessor shall send a monthly invoice to Lessee for any rent or other monies due to Lessor under this Lease.

(b) **Security Deposit.** Upon acceptance of the Units by Lessee and prior to departure of the Units from the Inspection Locations, Lessee shall pay to Lessor [REDACTED] to be held by Lessor as a security deposit. Such sum shall be held by Lessor until the expiration of the Term and the return of all of the Units to Lessor in accordance with the Terms of this Lease; provided that Lessor shall have the right during the Term and/or upon the return of the Units to Lessor to deduct from the security deposit any money owed by Lessee to Lessor under this Lease, including, without limitation, past due Rent, interest, storage, transportation and end of lease repairs. All Rent due to Lessor under this Lease shall be due in accordance with the terms of this Lease without regard to the security deposit. Upon the return of all Units to Lessor in the condition required by this Lease, Lessor shall refund the security deposit subject to any deductions as set forth above.

5. **Identification Marks.** Lessee will keep each Unit marked with the identifying mark and number as set forth in Schedule A hereto, and Lessee will not change such mark or number without the prior written consent of Lessor. Lessee will not allow the name of any person or entity or any other mark or logo to be placed upon any Unit without the prior written consent of Lessor.

6. **Taxes.** Lessee shall pay when due (or reimburse to Lessor), and on a net after-tax basis shall indemnify and defend Lessor from and against any and all fees, taxes and governmental charges of any nature including, without limitation, liens, encumbrances, interest, penalties, fines and assessments (collectively, "**Taxes**") which may now or hereafter be imposed or levied by any foreign, federal, state, provincial or local authority upon this Lease or the Units (including, without limitation, relating to or arising from the transportation, delivery, installation, leasing, possession, use, operation, storage and return of such Units during the Term). The term Taxes shall include, but not be limited to, any property, sales, use or ad valorem tax applicable to the operation of the Units during the Term. Lessee shall have no responsibility for any Taxes on or measured by Lessor's net income. Lessee will pay promptly all Taxes which may be imposed upon Lessee's income and earnings arising from or connected with this Lease or the Units.

7. **Casualty Occurrence.** During the Term, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, condemnation, requisition or commandeering, partial or complete, of or to each accepted Unit, however caused or occasioned (collectively, a “**Casualty Occurrence**”). Lessee shall promptly notify Lessor of any Casualty Occurrence and fully inform Lessor in regard thereto. Such notice shall include a settlement value in the amount of [REDACTED] (“**Settlement Value**”), together with an amount equal to any accrued Rent for such Unit through the date of such Settlement Value payment. Upon Lessee's payment of such Settlement Value and accrued Rent for any Unit, (a) the Rent for such Unit shall cease and this Lease for such Unit shall terminate, and (b) Lessee shall be entitled to ownership and possession of such Unit or the remains thereof on an **as-is, where-is** basis without recourse or warranty. Lessor has the right, but not the obligation, to replace any Unit which suffers a Casualty Occurrence with a like-kind Unit in Delivery Condition subject to Lessee's inspection. Lessee shall not be released from the obligation to pay Rent under this Lease with respect to a casualty Unit until the Settlement Value is paid to Lessor.

8. **Record Keeping and Inspection.**

(a) **Record Keeping.** Lessee shall compile and maintain records pertaining to the maintenance, repair and inspections of the Units in accordance with the Rules, as may be amended, modified or supplemented hereafter. Upon Lessor's request, Lessee shall promptly provide to Lessor all repair, maintenance and inspection records for the Units.

(b) **Inspection.** At the sole expense of Lessor, Lessor or its agent, shall have the right to inspect the Units and Lessee's records with respect thereto at such reasonable times and places as Lessor may request.

9. **Warranties; Waiver.** So long as no Event of Default has occurred and is continuing, Lessor warrants that neither Lessor nor its successors and assigns will interfere with Lessee's quiet enjoyment and use of the Units during the Term. Except as expressly set forth in this Lease, **LESSOR LEASES AND LESSEE ACCEPTS 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 OR OTHER DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS. LESSEE HEREBY WAIVES ANY CLAIM (INCLUDING ANY CLAIM BASED ON STRICT OR ABSOLUTE LIABILITY IN TORT) IT MIGHT HAVE AGAINST LESSOR FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGE) OR EXPENSE CAUSED BY THE UNITS. LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE UNITS AND THAT LESSEE ACCEPTS THE UNITS BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON STATEMENTS MADE BY LESSOR OR ITS AGENTS.**

10. **Compliance with Laws and Rules.** Lessee agrees to comply with all laws, rules, regulations, decrees, or orders which apply to the operation or use of any Unit, including, but not limited to the rules and regulations of the AAR, FRA and the Surface Transportation Board (“**STB**”) or any other legislative, executive, regulatory, administrative or judicial body exercising any power or jurisdiction over any such Units (collectively, “**Laws**”). If any Laws require the modification, alteration or repair of any Unit (other than ordinary and routine maintenance, servicing and repair as set forth in Section 11(a) below) (“**Mandated Repair(s)**”), Lessee shall be responsible for the cost up to [REDACTED] per Unit subject to Mandated Repairs, and Lessor shall be responsible for any remaining balance due for such Mandated Repairs. Lessee agrees, at its sole expense, to maintain the same in proper condition and to operate the Units in compliance with such Laws; provided, however, that Lessee may in good faith contest the validity or application of any such Laws in any reasonable manner which does not, in the reasonable opinion of Lessor, adversely affect Lessor's rights under this Lease or Lessor's ownership of the Units.

11. Maintenance; Lessor's Component Warranty; Alteration & Accessions; EPA Tier O Compliance; Emissions Related Maintenance.

(a) **Maintenance.** At Lessee's sole expense, Lessee shall at all times in accordance with the Rules, cause each Unit to be maintained, serviced and repaired so as to keep it in as good operating condition, working order, and repair as it was when it first became subject to this Lease, ordinary wear and tear excepted. Lessee will perform all repair and maintenance work, servicing, lubrication and inspection of each Unit in accordance with the more stringent of either (i) Lessee's existing maintenance practices, or (ii) the original equipment manufacturer's recommendations.

(b) **Lessor's Component Warranty.** Effective upon the Delivery Date through the expiration of the Term ("**Warranty Period**"), Lessor will pay the costs for either the repair or replacement of any locomotive component(s) as set forth in Schedule C attached hereto ("**Warranty Item**") which suffers a catastrophic failure during the Term. For purposes hereof, the term "catastrophic failure" shall mean the failed Warranty Item requires removal from the Unit to complete such repair or replacement. Notwithstanding anything herein to the contrary, Lessee will pay the costs to repair or replace the Warranty Item (a) if the Warranty Item can be repaired in place without removal of the Warranty Item, (b) if the failure of the Warranty Item results from Lessee's misuse or abuse, any derailment or accident, or from Lessee's failure to comply with the original manufacturer's operating instructions, or (c) if the failure of the Warranty Item results from repairs or alterations which are not authorized by Lessor, where such authorization is required. In the event of a catastrophic failure of a Warranty Item for which this warranty applies, Lessor may in its sole discretion terminate the applicable Unit. Lessor shall have the right, but not the obligation, to replace the terminated Unit with a substitute Unit of like kind and in Delivery Condition, and such replacement Unit will be subject to this Lease as if originally a part thereof, subject to Lessee's inspection. **LESSOR'S LIABILITY FOR THE CATASTROPHIC FAILURE OF ANY WARRANTY ITEM IS EXPRESSLY LIMITED TO THE COST OF REPAIR OR REPLACEMENT OF SUCH WARRANTY ITEM. IN NO EVENT SHALL LESSOR BE LIABLE UNDER ANY CIRCUMSTANCES TO LESSEE OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES IN ANY AMOUNT, INCLUDING, BUT NOT LIMITED TO, TRANSPORTATION CHARGES (EXCEPT AS PROVIDED IN SCHEDULE C), LOSS OF USE OR DOWNTIME OF THE UNIT OR LOST PROFITS.**

(c) **Alteration; Accessions.** Lessee shall not materially alter, or allow any third party to materially alter, the physical structure of any Unit without the prior written consent of Lessor. All additions, alterations, improvements or replacements to any Unit made by Lessee shall constitute accessions to such Unit and belong to Lessor unless otherwise agreed by the parties in writing. Notwithstanding the foregoing, Lessee may install telemetry equipment on a Unit so long as no pre-existing equipment is removed from such Unit; provided, however, that Lessee shall remove any telemetry equipment installed on a Unit prior to the return of such Unit; provided further, however, that all parts and labor costs and expenses associated with the installation or removal of telemetry equipment shall be for Lessee's account.

(d) **EPA Tier O Compliance.** In order for Lessor, as the owner of locomotives manufactured on or after January 1, 1973, to comply with existing EPA guidelines Lessor must maintain records of any power assembly replacement. Therefore, if at any time during the Term Lessee replaces one or more power assemblies on any subject Unit Lessee shall promptly notify Lessor in writing with the following information: (i) Unit number; (ii) date of replacement; (iii) position; (iv) liner serial number removed; (v) liner serial number applied; and (vi) shop location.

(e) **Emissions Related Maintenance.** For any Unit which is (i) a remanufactured EMD locomotive powered by a turbocharged 645 series engine and (ii) Tier 0 compliant in accordance with the regulations of the Environmental Protection Agency, Lessee agrees to comply with the maintenance instructions supplied by Lessor for the Unit if applicable.

12. Insurance. During the Term and so long as Lessee retains possession of any Unit, Lessee shall maintain: (a) all-risk, physical loss or damage insurance for each such Unit in a minimum amount equal to the aggregate Settlement Value; and (b) public liability insurance, including, but not limited to, "Broad Form General Liability, Railroad Liability," in a minimum amount of [REDACTED] per occurrence for personal or bodily injury, wrongful death and property damage, in each case for such risks and with such insurance companies as are reasonably satisfactory to Lessor. All insurance policies shall be in the name of Lessee and shall (a) name Lessor as loss payee for the all risk insurance and as additional insured for liability insurance, and (b) provide

Lessor with thirty (30) days' prior written notice before coverage lapses, is canceled or materially changes. If Lessee fails to obtain insurance, or if said insurance lapses or is canceled, Lessor has the right to purchase the insurance described above and Lessee shall pay the cost thereof. Lessee's insurance policies shall be primary to any insurance of Lessor, and Lessee shall require its insurers to specifically waive subrogation, claim and recovery against Lessor's insurance. Any deductibles in the above described policies shall be paid by Lessee. Lessee shall furnish to Lessor upon execution of this Lease and thereafter at Lessor's request, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a certified copy of each insurance policy upon written request.

13. Indemnification. Lessee shall indemnify, defend and hold harmless Lessor and its officers, partners, shareholders, affiliates, directors, attorneys, employees and agents from and against any and all costs, expenses, losses, taxes, penalties, obligations, claims, damages, actions or other liabilities (including but not limited to reasonable counsel fees and expenses, and tort and strict liability claims) which Lessor may incur (unless resulting from Lessor's gross negligence or willful misconduct) in any way relating to, arising from or by reason of (a) this Lease or the use, operation, condition, delivery, storage, or return of any Unit, until such Unit is returned to Lessor in accordance with the terms of this Lease, or (b) any accident, personal injury, death, property damage or other liability involving any Unit, on or after the Delivery Date until such Unit is returned to Lessor in accordance with the terms of this Lease. The indemnities hereunder shall survive payment or performance of all other obligations under this Lease or the expiration or earlier termination of this Lease. Lessee shall give Lessor prompt written notice of any event or condition in connection with which Lessor may be entitled to indemnification hereunder.

14. Liens. At its sole expense, Lessee will keep the Units or any part thereof free and clear of any and all liens, security interests, charges, claims or other encumbrances ("**Liens**"), except for any Liens arising by, through or under Lessor. Lessee will promptly pay, satisfy and otherwise take such actions as may be reasonably necessary to keep the Units free and clear of, and to duly discharge, eliminate or bond in a manner satisfactory to Lessor, any Liens which may arise. Lessee will promptly notify Lessor in writing if it has knowledge of any Lien that shall attach to any Unit, and of the full particulars thereof.

15. Return. On or about the expiration or other termination of the Term of this Lease Lessee shall notify Lessor in writing of when the Units will be available at Lessee's Locomotive Facility for conducting a joint end-of-Lease inspection ("**EOL Inspection**"). Lessee shall return the Units to Lessor (i) in as good condition, order and repair as when delivered to Lessee, ordinary wear and tear excepted, (ii) in condition suitable for movement in the interchange system free from all FRA defects and in conformity with all applicable laws, rules and regulations, (iii) with a minimum of thirty (30) days remaining on its Blue Card, and (iv) with the same Fuel Level as required by Section 2(b) hereof (collectively, the "**Return Condition**"). The Return Condition of each Unit will be determined at the EOL Inspection and Lessee shall be responsible for the cost and expense to bring each Unit to the Return Condition. Lessee shall continue to pay Rent and this Lease shall remain in full force and effect with respect to each Unit until such Unit is inspected and accepted by Lessor at the EOL Inspection. If upon the expiration or other termination of this Lease Lessor demands in writing the return of any Unit and Lessee fails to deliver such Unit to Lessor within ten (10) calendar days of receipt of such notice, Rent shall cease and Lessee shall immediately commence to pay to Lessor (as liquidated damages and not as a penalty) a daily late fee equal to [REDACTED] of the daily rent for such Unit then in effect until such Unit is delivered to Lessor, and all other terms and conditions of this Lease shall remain in force. The provisions of this Section are without prejudice to, and in addition to, any other remedies of Lessor. If Lessee shall for any reason fail to deliver any Unit to Lessor within ninety (90) days of the expiration or other termination of the Term, Lessor shall have the option to declare that such Unit has suffered a Casualty Occurrence. Following the EOL Inspection and, if required, any end of lease repairs that are Lessee's responsibility under this Lease, Lessee shall, at its sole expense and as directed by Lessor, return the Units to Lessor at the Metro East Industries, Inc. facility in East St. Louis, IL ("**MEI**"), or at an interchange point of a comparable distance from Lessee's lines to MEI (any such location the "**Return Point**").

16. Default. Each of the following shall constitute an "**Event of Default**" under this Lease:

(a) Lessee fails to make any payment of any part of the Rent or any other amount payable to Lessor under this Lease and such nonpayment continues for ten (10) calendar days after the due date thereof;

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

(c) Lessee fails to perform or observe any term, covenant, condition or agreement contained in this Lease and such failure continues uncured for ten (10) calendar days after written notice thereof from Lessor;

(d) Any representation or warranty made by Lessee in this Lease shall be false or misleading at any time in any material respect;

(e) Lessee ceases doing business as a going concern or transfers all or a substantial part of its assets; or becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of creditors; or Lessee applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer is appointed without the consent of Lessee; or Lessee institutes any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding is instituted against Lessee and is not dismissed within thirty (30) calendar days; or any judgment, writ, warrant or attachment or execution of similar process is issued or levied against a substantial part of Lessee's property and remains unsatisfied for thirty (30) calendar days.

17. **Remedies.**

(a) **Events of Default.** Upon the occurrence of any Event of Default, Lessor may, with or without notice to Lessee, exercise any one or more of the following remedies, as Lessor in its sole discretion shall elect:

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

(ii) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Units shall absolutely cease and terminate, but Lessee shall remain liable as herein provided;

(iii) require Lessee, at Lessee's expense, to return any or all of the Units in accordance with the return provisions of this Lease, or Lessor or its agent, at its option may in a reasonable manner and without damage to the property of Lessee or any third party enter upon the premises of 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 Lessee, or its sublessee(s), successors or assigns, to use the Units for any purposes whatsoever;

(iv) declare immediately due and payable all Rents and other amounts due and to become due under this Lease;

(v) sell by public or private sale, release, hold, retain, or otherwise dispose of the Units in any manner Lessor chooses, free and clear of any claims or rights of Lessee; and

(vi) exercise any other right or remedy then available to Lessor at law or in equity.

(b) **Interest.** In the event Lessee shall be in default in the payment of Rent or any other amount due under, or in connection with, this Lease, Lessee shall pay Lessor as additional rental interest on such unpaid sum from its due date to the date of payment by Lessee at a rate equal to [REDACTED] compounded monthly or the maximum rate permitted by law, whichever is less.

(c) **Cumulative Remedies.** No remedy referred to in this Lease is intended to be exclusive, but each shall be cumulative and concurrent to the extent permitted by law, and shall be in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. No failure or delay on the part of Lessor to exercise any right or remedy hereunder shall operate as a waiver thereof. No express or implied waiver by Lessor of any default or breach shall constitute a waiver of any other or subsequent default or breach by Lessee. If Lessee fails to pay or otherwise perform any of its obligations under this Lease, Lessor may, but shall not be obligated to, pay such amounts or perform such obligations for the account of Lessee without thereby waiving Lessor's right to declare an Event of Default. In any such event, Lessee shall immediately upon demand reimburse Lessor for any such costs and expenses incurred by Lessor.

(d) **Costs of Default.** In addition to the above and in all cases, Lessee shall be liable for all costs, expenses and damages incurred by Lessor by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including, but not limited to, all reasonable attorneys' fees and costs whether or not court proceedings are brought, costs related to the repossession, storage, repair and transportation or other disposition of the Units.

18. Assignment and Use.

(a) **Assignment by Lessor.** Lessor may, without the consent of and without notice to Lessee, assign or sell its interest in, grant a security interest in, or otherwise transfer in whole or in part this Lease, any Unit or any of its rights, interests or obligations with respect thereto, including, without limitation, all Rent and other sums due or to become due to one or more persons or entities. Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to promptly provide any reasonable documentation requested by Lessor. Lessee shall not assert against any assignee any claim, defense, counterclaim or set-off that Lessee may at any time have against Lessor.

(b) **Assignment by Lessee.** So long as Lessee shall not be in default hereunder, Lessee may with the prior written consent of Lessor, which consent shall not be unreasonably withheld, sublease or assign any one or more of the Units. For purposes hereof an assignment shall be deemed to include any sale, transfer or assignment of this Lease by operation of law or otherwise or any material change in the beneficial ownership of Lessee. Without said prior written consent of Lessor, Lessee may not otherwise transfer or encumber its leasehold interest under this Lease in the Units and Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units. The only exception to this assignment clause is that the Lessee may sublease the Units to any railroad that is under common ownership with the Lessee. Notwithstanding the foregoing, Lessee may without the prior written consent of Lessor sublease the Units to any railroad that is under common ownership with Lessee. Lessee shall promptly provide Lessor with a copy of any sublease documentation.

(c) **Restrictions on Use.** Lessee covenants and agrees at all times that: (i) Lessee will not sublease or assign this Lease to any person or entity that is not a United States citizen or incorporated under the laws of a state of the United States, (ii) Lessee will not use or operate the Units outside of the United States (other than incidental and temporary use in Canada not to exceed ninety (90) days in any one year period), (iii) Lessee will use and operate the Units only in the ordinary conduct of its business by qualified employees of Lessee and in accordance with all applicable operating instructions for any Unit, and (iv) 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 request therefor.

19. Representations & Warranties of Lessee. Lessee represents and warrants to Lessor that (a) Lessee is a corporation duly organized, validly existing and in good standing under applicable state law, with adequate corporate power to enter into this Lease; (b) this Lease has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms; (c) the execution and performance of this Lease will not contravene, breach or create a material default under any legal, organizational or contractual obligation of Lessee or any law, rule, regulation, judgment or order binding upon Lessee or its property; (d) there are no pending or threatened actions or proceedings before any court or administrative agency that could have a material adverse effect on Lessee, nor is Lessee in default under any material loan, lease or purchase obligation; and (e) the financial statements and other information furnished and to be furnished to Lessor are and will be true and correct.

20. Notices. Any notices given or required to be given hereunder shall be sufficient if transmitted and received by facsimile (with a confirmation copy sent by overnight air courier or certified mail), sent by overnight air courier, or deposited in the United States mail, postage prepaid, certified, return receipt requested, to the addresses set forth below or at such other address as the parties shall have specified in writing:

If to Lessor:

Helm Financial Corporation
505 Sansome Street, Suite 1800
San Francisco, CA 94111
FAX: (415) 398-4816
Attn: President and CEO

If to Lessee:

Pan Am Railways
1700 Iron Horse Park
North Billerica, MA 01862
FAX: (978) 663-6955
Attn: James Patterson, Executive Vice President Operations

21. Miscellaneous.

(a) **Further Assurances.** Upon Lessor's request and at its sole expense, Lessee shall promptly execute, acknowledge and deliver such further documents, and take any and all other action reasonably requested by Lessor from time to time as is necessary for the purpose of effectuating the intent and purposes of this Lease, as required by law or to protect the interests of Lessor in the Units and this Lease, including, without limitation, a Memorandum of Lease to be filed with the STB and UCC-1 Financing Statements.

(b) **Severability.** If any term, provision, covenant or restriction of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. It is hereby stipulated and declared to be the intention of the parties hereto that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such which may be hereafter declared invalid, void or unenforceable.

(c) **Entire Agreement; Amendment.** This Lease, together with all exhibits and schedules attached hereto, contains the entire agreement of the parties regarding the subject matter hereof and supersedes all other agreements and understandings, oral or written, with respect thereto. This Lease may not be amended, modified or changed, or any provision of this Lease waived, except by instruments in writing signed by the parties hereto. No course of dealing between the parties will be deemed to modify, amend or discharge any part of this Lease or any rights or obligations of any party.

(d) **Successors and Assigns.** This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

(e) **Counterparts.** This Lease and any documents collateral thereto may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original, but all such counterparts taken together shall constitute but one agreement.

(f) **Law Governing; Waiver of Jury Trial.** This Lease shall be construed and enforced, in accordance with the laws of the State of California, without reference to its choice of law provisions; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11301. **THE PARTIES EACH IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY MATTER RELATING DIRECTLY OR INDIRECTLY TO THIS LEASE OR THE UNITS WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS LEASE.**

(g) **Construction.** The language used in this Lease will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against either party. Lessee acknowledges that it has been represented by counsel in connection with this Lease or that it has voluntarily declined to seek representation by counsel. Lessee has not received nor is Lessee relying on advice concerning tax and legal matters from Lessor or its counsel.

(h) **Brokers.** Each party represents and warrants that it has not employed, authorized or appointed a broker in connection with the transactions contemplated by this Lease.

(i) **Survival.** The respective representations, warranties, indemnities, covenants, obligations and agreements of the parties shall survive the expiration or earlier termination of this Lease or any extensions thereof.

(j) **Attorneys' Fees.** If any legal action is brought for the enforcement of this Lease or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Lease, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceeding.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized representative as of the day and year first above written.

LESSOR

LESSEE

HELM FINANCIAL CORPORATION

PAN AM RAILWAYS

By: Courtney A. O'H. Williams

By: James F. Olson

Name: Courtney A. O'H. Williams

Name: James F. Olson

Title: President and CEO

Title: VP Mechanical

SCHEDULE A

To the Locomotive Lease Agreement dated as of January 15, 2013 between Helm Financial Corporation and Pan Am Railways. _____

THE UNITS

Description of Units: Ten (10) SD40-2 locomotives

Unit Mark, Numbers, and Location:

HLCX 7014 – CSX Waycross, GA
HLCX 7180 – CSX Waycross, GA
HLCX 7192 – CSX Waycross, GA
HLCX 7843 – CSX Waycross, GA
HLCX 7860 – CSX Waycross, GA
HLCX 8070 – CSX Waycross, GA
HLCX 8072 – CSX Waycross, GA
HLCX 8145 – CSX Waycross, GA
HLCX 8147 – CSX Waycross, GA

HLCX 7842 – NS Columbus, OH

SCHEDULE B

To the Locomotive Lease Agreement dated as of January 15, 2013 between Helm Financial Corporation and Pan Am Railways. _____

LOCOMOTIVE START-UP ITEMS & PROCEDURES

RETURN TO SERVICE PROCEDURES: Normal and customary return to service procedures shall include but not be limited to:

1. Remove all covers from exhaust stack.
2. Drain condensation from fuel tank.
3. Apply blanking plates on air compressor, low pressure cylinder heads.
4. Close all water drain valves.
5. Fill engine cooling system with corrosion inhibitor treated water (used hot water if it's possible).
6. Pre-lube diesel engine as per OEM recommendation.
7. Bar engine with cylinder test plug open.
8. Check the condition of engine air intake filters to ensure they are functional and that no external plugging has occurred.
9. Re-connect positive and negative battery leads. Close battery switch.
10. Inspect all electrical rotating equipment for visual defects. Ensure that all brushes move freely in brush holder(s).
11. Press and release starting button or switch a couple of times before going into full cranking.
12. After the engine is started, close all other breakers.
13. After engine is running, check for leaks and proper operation of equipment.
14. Wait until the engine has reached normal operating temperature before moving locomotive on its own power or increasing engine speed above notch 4.
15. Take lube oil sample for analysis.
16. Fill the FRA blue card with the out of service date.
17. Ensure that all inspections are performed as per FRA regulations.

