

84500

745
Nov. No

MANWELL & WES

ATTORNEYS AT LAW
CITICORP CENTER
ONE SANSOME STREET
14TH FLOOR

SAN FRANCISCO, CALIFORNIA 94104

- A
- B

TELEPHONE
(415) 362-2375

TELECOPY
(415) 362-1010

16661 B

16661

RECORDATION NO 16661

RECORDATION NO FILED 1425

DEC 21 1989 - 2 15 PM
INTERSTATE COMMERCE COMMISSION

DEC 21 1989 - 2 15 PM

December 21, 1989 INTERSTATE COMMERCE COMMISSION

Honorable Noretta R. McGee
Secretary
Interstate Commerce Division
Washington, D.C. 20423

16661
9-355A054
RECORDATION NO FILED 1425

Dear Ms. McGee:

DEC 21 1989 - 2 15 PM

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, five (5) executed counterparts of a primary document, not previously recorded, entitled Memorandum of Security Agreement, executed as of December 21, 1989, four (4) executed counterparts of a related secondary document, not previously recorded, entitled Memorandum of Lease of Railroad Equipment, executed as of February 2, 1989 and four (4) executed counterparts of a related secondary document, not previously recorded, entitled Assignment of Lease, executed as of December 21, 1989.

The executing parties to the enclosed Memorandum of Security Agreement ("Security Agreement") are:

Helm Financial Corporation - Debtor
One Embarcadero Center, Suite 3500
San Francisco, CA 94111

The Philadelphia National Bank - Secured Party
Broad and Chestnut Streets
Philadelphia, Pennsylvania 19101-8377

The Security Agreement, among other things, covers the granting of a security interest by the Debtor to the Secured Party in the diesel locomotives listed on Annex A to the Security Agreement and all rights of the Debtor in the leasing thereof, to secure the payment of a loan.

The equipment covered is the locomotives listed in Schedule 1 to the Security Agreement.

A short summary of the Security Agreement to appear in the ICC Index is as follows:

Handwritten signature/initials on the left margin.

Honorable Noretta R. McGee
December 21, 1989
Page 2

"Covers ten (10) H.P. 3000 GP40 diesel electric locomotives, Road Numbers UP 861-863, 872-877, 885."

The executing parties to the Memorandum of Lease of Railroad Equipment ("Lease") are:

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

Union Pacific Railroad Company - Lessee
1416 Dodge Street
Omaha, NE 68179

The Lease covers the lease of the locomotives listed on Annex A to the Lease by Lessor to Lessee.

The equipment covered is the locomotives listed on Annex A to the Lease.

The Lease should be filed as a secondary document to the above-referenced Security Agreement. A short summary of the Lease to appear in the ICC Index is as follows:

"Covers twenty (20) H.P. 3000 GP40 diesel electric locomotives, Road Numbers UP 861-863, 870-886."

The executing party to the enclosed Assignment of Lease ("Assignment") is:

Helm Financial Corporation - Assignor
One Embarcadero Center, Suite 3500
San Francisco, CA 94111

and the Assignment is executed in favor of:

The Philadelphia National Bank - Assignee
Broad and Chestnut Streets
Philadelphia, Pennsylvania 19101-8377

The Assignment covers the Assignment of the Lease to the Assignee.

The Assignment should be filed as a secondary document to the above-referenced Security Agreement. A short summary of the Assignment to appear in the ICC Index is as follows:

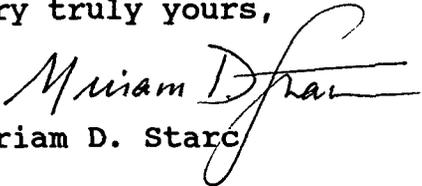
MANWELL & WES

Honorable Noretta R. McGee
December 21, 1989
Page 3

"Assignment of Lease relating to ten (10) H.P. 3000
GP40 diesel electric locomotives, Road Numbers UP 861-
863, 872-877, 885."

Enclosed are three checks in the amount of fifteen dollars
(\$15.00) each in payment of the filing fee. Once the filing has
been made, please return to bearer the stamped counterparts of
the Security Agreement not needed for your files, together with
the fee receipt, the letter from the ICC acknowledging the
filing, and the two extra copies of this transmittal letter.

Very truly yours,


Miriam D. Starc

MDS/mn
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

12/21/89

OFFICE OF THE SECRETARY

Miriam D. Starc
Manwell & Wes
Citicorp Center
One Sansome Street
San Francisco, Calif. 94104

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/21/89 at 2:15pm and assigned recordation number(s). 16168-H, 16661, 16661-A & 16661-B

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

16661

RECORDATION NO _____ FILED 1425

MEMORANDUM OF SECURITY AGREEMENT

DEC 21 1989 -2 15 PM

INTERSTATE COMMERCE COMMISSION

THIS MEMORANDUM OF SECURITY AGREEMENT is intended to evidence the Security Agreement, dated as of December 21, 1989 (the "Security Agreement") between Helm Financial Corporation, a California corporation (the "Debtor") and The Philadelphia National Bank, a national banking association (the "Secured Party"), for the purposes of satisfying the requirements of recordation with the Interstate Commerce Commission under Section 49 U.S.C. 11303. The Debtor is the owner of ten (10) GP40 3000 H.P. Locomotives, more fully described in Annex A hereto (the "Locomotives"). The Secured Party has a security interest in all the Locomotives and in a Lease of Railroad Equipment between Debtor and Union Pacific Railroad Company, a Utah corporation (the "Lessee"), dated as of February 2, 1989, a net master lease known as Lessee's C.D. No. 54792-30 upon the terms and conditions provided in the Security Agreement attached hereto as Annex B.

IN WITNESS WHEREOF, the Debtor and the Secured Party, each pursuant to due authority, have executed this Memorandum of Security agreement as of this 21st day of December, 1989.

"Debtor"

HELM FINANCIAL CORPORATION

Attest:

John J. Davis
Title: V.P. - FINANCE

By: [Signature]
Title: PRESIDENT

"Secured Party"

THE PHILADELPHIA NATIONAL BANK

Attest:

Geoffrey D. Finnett
Title: VP

By: C. Rogers Childs, Jr.
Title: C. ROGERS CHILDS, JR.
VICE PRESIDENT

ANNEX A

to

Memorandum of
Security Agreement

Dated as of December 21, 1989

Equipment Description

Lessee's Number

Ten (10) GP40 3000
H.P. Locomotives built
by General Motors Corporation
(Electro-Motive Division)

UP 861-863
872-877, 885

STATE OF CALIFORNIA)
) §
COUNTY OF SAN FRANCISCO)

I, LYNDA A. HERSKOVITZ, a Notary Public in and for the state and county aforesaid, do hereby certify that RICHARD C. KIRCHNER of HELM FINANCIAL CORPORATION, a California corporation, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he is PRESIDENT, he signed, sealed and delivered the aforesaid instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority of its Board of Directors, as his free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand notarial seal this 15th day of December, 1989.



Lynda A. Herskovitz
Notary Public

My commission expires
July 16, 1993

[Notarial Seal]

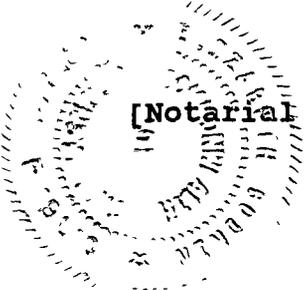
STATE OF PENNSYLVANIA)
) S
COUNTY OF PHILADELPHIA)

I, Elizabeth Bodkin a Notary Public in and for the state and county aforesaid, do hereby certify that Charles Childs Vice Pres of PHILADELPHIA NATIONAL BANK, a national banking association, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he is Vice President, he signed, sealed and delivered the aforesaid instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority of its Board of Directors, as his free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand notarial seal this 18th day of December, 1989.

Elizabeth Bodkin
Notary Public

My commission expires



[Notarial Seal]

NOTARIAL SEAL
ELIZABETH BODKIN, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA CO.
MY COMMISSION EXPIRES
MARCH 5, 1990

ANNEX B

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of December 21, 1989 between HELM FINANCIAL CORPORATION, a California corporation, (the "Debtor"), with an address at One Embarcadero Center, San Francisco, CA 94111 and THE PHILADELPHIA NATIONAL BANK, a national banking association (the "Secured Party").

I. To secure the due and punctual payment of the principal and interest payable under the Debtor's Promissory Note, dated as of December 21, 1989 (the "Note"), payable to the order of Secured Party, in the principal amount of ~~XXXXXXXXXX~~ and any and all other promissory notes hereafter at any time issued in replacement or extension thereof by Debtor, or in connection with any subsequent advance under Section II hereunder, and to secure Debtor's obligations hereunder all of such obligations hereinafter collectively referred to as the "Secured Obligations"), Debtor hereby transfers, mortgages and pledges to the Secured Party and grants to the Secured Party a security interest in the following described collateral and in all proceeds thereof (the "Collateral"):

- A. All of the Debtor's right, title and interest in that certain Lease of Railroad Equipment dated as of February 2, 1989, as amended (the "Lease"), in which Union Pacific Railroad Company, a Utah corporation, is lessee (the "Lessee") and the Debtor is lessor, and all rentals and other moneys payable thereunder insofar as they relate to the Equipment (as defined below), including proceeds from Casualty Occurrences as defined in Section 8(b) of the Lease, all the Debtor's rights, power and remedies therein and thereunder (but none of its duties or obligations) including, without limitation, all the Debtor's rights to give and receive any notice, consent, waiver, demand or approval under or in respect of such Lease, to exercise any election or option thereunder or in respect thereof, to accept any surrender of the Equipment subject to the Lease, to execute and deliver any bill of sale for any such property, and to do all other things which the Debtor is entitled to do under such Lease, and all renewals, substitutions and extensions of the Lease until the Secured Obligations hereunder are paid in full; and
- B. Group One equipment as defined in and as listed on Annex A of the Lease and Schedule 1 hereto (the "Equipment"), which Equipment is leased to the Lessee pursuant to the Lease, and all the Debtor's right, title and interest in the Equipment;

II. Debtor anticipates that the Lease will also cover the equipment listed as Group Two on Annex A to the Lease (the "Group Two Equipment") which may be financed with the proceeds of a subsequent advance or advances hereunder. To the extent that the

Secured Party makes any such subsequent advance(s) to finance the Group Two Equipment, the following shall apply:

- A. The obligation of the Debtor to repay such additional advance(s) and accrued interest thereon shall be evidenced by a promissory note in substantially the form of the Debtor's Promissory Note described in Section I hereof.
- B. At the time of any such subsequent advance, the Debtor shall deliver to the Secured Party a Supplement to Security Agreement in the form of Exhibit A hereof (the "Supplement"), which supplement shall add any Group Two Equipment financed with the proceeds of such advance to the Collateral pledged pursuant to this Agreement to secure the Secured Obligations, and a related supplement to Assignment of Lease in the form of Exhibit B hereto.
- C. Effective upon the financing hereunder by the Secured Party of any or all of the Group Two Equipment, all of the provisions of Sections IV and V hereof shall apply to the Group Two Equipment so financed, all references herein to the "Note" shall be deemed to include such additional notes as may be executed and delivered in connection with any subsequent advances and all references to the "Equipment" shall be deemed to include any financed Group Two Equipment.

III. In furtherance of the foregoing, Debtor has executed an Assignment of Lease (the "Assignment") dated the day hereof. Confirmatory of its grant of the Lease, Debtor hereby irrevocably assigns to the Secured Party, subject to the provisions of this Agreement, as security for the payment of all amounts payable under or in respect of the Note and this Agreement, and as security for compliance with the provisions hereof and thereof, all moneys payable under the Lease, including without limitation, all rental payments (commencing with the rental payment due February 1, 1990), damages and casualty value payments made pursuant to Section 8(b) of the Lease. After the date hereof Secured Party shall be entitled to exercise all the rights and remedies of the lessor under the Lease (to the exclusion of Debtor), including the right to receive all proceeds of the Lease directly from Lessee, but Secured Party shall have none of the obligations of the lessor under the Lease.

Notwithstanding the foregoing, Secured Party and Debtor agree that, until such time as the Secured Party finances all or part of the Group Two Equipment:

(i) Debtor shall be entitled to any moneys payable under the Lease insofar as they relate solely to or arise solely from

all unfinanced Group Two Equipment, including, without limitation, all rental payments, damages and casualty value payments made pursuant to Section 8(b) of the Lease;

(ii) Debtor shall be entitled to exercise all rights of the lessor under the Lease with respect to all unfinanced Group Two Equipment, provided that Debtor shall take no action in the course of exercising such rights which would impair Secured Party's interest in or rights as lessor under the Lease with respect to the Equipment or any financed Group Two Equipment and, provided further, that, should Debtor elect to exercise any remedies under the Lease upon default by the Lessee with respect to any Group Two Equipment, Debtor shall exercise such remedies only after it prepays the Note, unless Secured Party shall have otherwise consented to such exercise (which consent shall not be unreasonably withheld);

(iii) Debtor shall keep the Group Two Equipment which is not financed by Secured Party free of all liens and encumbrances other than (a) the security interest of the First National Bank of Boston in the unfinanced Group Two Equipment and those rights to payment under the Lease which relate thereto and (b) those liens which are permitted under Section V.A.4. of this Agreement;

(iv) Secured Party shall take no action which would interfere with Debtor's exercise of its rights under the Lease with respect to the unfinanced Group Two Equipment; and

(v) Secured Party shall not seek to enforce any of the rights or powers of the lessor under the Lease against or with respect to the unfinanced Group Two Equipment.

In the event that any or all of the Group Two Equipment is not financed by the Secured Party, Debtor shall have the right to amend the Lease to delete any unfinanced Group Two Equipment from Annex A of the Lease without the consent of Secured Party. Consent of the Secured party (which shall not be unreasonably withheld) is required for any other amendment to the Lease.

IV. The Debtor hereby irrevocably constitutes and appoints Secured Party as the Debtor's attorney-in-fact, with full power of substitution and revocation, in the name of the Debtor or otherwise, to demand, enforce, collect, receive and receipt and give releases for any payment or indemnity becoming due or arising under the Lease or any policy of insurance relating to the Equipment or any Collateral (including any return of insurance premiums), to endorse and collect any checks, drafts or other instruments payable to the Debtor therefor, and to do and take all such other actions as are referred to above relating to the Lease, the Equipment or other Collateral and, with the written consent of Debtor, unless and until a default shall have occurred in the Note or hereunder, to file any claims or institute any proceedings for the foregoing which Secured Party deems necessary, and to compromise any such demand, claim or

action; provided however, that Secured Party hereby agrees with Debtor that Secured Party shall not as long as no Event of Default (as hereinafter defined) or other event which with the giving of notice or the lapse of time or both could become an Event of Default under the Lease or this Agreement shall have occurred and be continuing without the written consent of the Debtor, seek to enforce any of the rights, powers or remedies of Secured Party under the Lease, except that nothing herein shall prevent Secured Party from seeking to enforce any payment or indemnity at or after the time it is due under the Lease or any policy of insurance relating to the Equipment or the Collateral before the failure to make said payment becomes an Event of Default hereunder or under the Lease. Debtor hereby ratifies all that said attorneys shall do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest, shall be irrevocable and shall terminate only upon payment in full of the obligations secured hereby and termination of the Note, the Assignment and the Security Agreement. The powers conferred on Secured Party hereunder are solely to protect the Secured Party's interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Debtor for any action taken or omitted to be taken in good faith pursuant to the powers, except for its gross negligence.

V. REPRESENTATIONS, WARRANTIES AND AGREEMENTS - Debtor represents, warrants and agrees that:

1. The Lease provides for the payment, on or before the Installment Payment dates of the Note, of rentals in amounts at least equal to the amounts of such installments of principal and interest under the Note;
2. the Debtor has marketable title to the Equipment listed on Schedule 1 hereto and any Supplement hereto, free and clear of all liens, claims and encumbrances, subject only to the interests therein of the Lessee under the Lease, persons claiming under or through the Lessee which Lessee is obligated to discharge under the Lease, and the Secured Party hereunder;
3. the Debtor has filed all tax returns, federal, state, municipal or otherwise, required of the Debtor and is not in default in respect of the due and punctual payment of any taxes payable by Debtor; and no liens for nonpayment of taxes by Debtor exist upon any property, including the Equipment, or other assets of Debtor other than property taxes, assessments or similar charges

incurred in the ordinary course of business that are not yet due and payable;

4. the Debtor has all requisite power and authority to enter into and perform the Lease, this Agreement, the Assignment, the Note and any other supplements or amendments thereto; such documents have been duly executed and delivered by Debtor, and constitute the legal, valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with their terms (except insofar as enforcement thereof may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium, or other similar laws or judicial decisions affecting the rights of creditors generally or by the application of usual equitable principles when equitable remedies are sought); the Debtor's right to receive any payments under the Lease and the Debtor's right, title and interest in and to the Equipment, the Lease and the other Collateral are, and will continue to be, free and clear of any and all liens, agreements or encumbrances except this Agreement and the rights of the Lessee under the Lease and of persons claiming under or through the Lessee which Lessee is obligated to discharge under the Lease provided however, that a property tax lien may remain on the Collateral so long as the Debtor or the Lessee discharges the lien on or before the date a penalty attaches for nonpayment of the tax, provided further that the following liens, mortgages, pledges, charges, security interests and other encumbrances may remain on the Collateral:
- a) liens of mechanics, materialmen, warehousemen, carriers, or other like liens, securing obligations incurred in the ordinary course of business that are not yet due and payable;
 - b) liens existing as of the date hereof or which the Secured Party has knowledge and has consented to in writing;
 - c) the following if the validity or amount thereof is being contested in good faith by appropriate and lawful proceedings, so long as levy and execution thereon have been stayed and continue to be stayed and they do not in the aggregate materially detract from the value of the Collateral, or materially impair the use thereof in the operation of Debtor's or Lessee's business or violate the

Lessor's obligation to Lessee under the Lease, and provided that Lessor shall maintain such reserve or other appropriate provision therefor as is required by generally accepted accounting principles:

- 1) claims or liens for taxes, assessments or charges due and payable and subject to interest or penalty;
 - 2) claims, liens or encumbrances upon the Collateral including any attachment of the Collateral or other legal process prior to adjudication of a dispute on the merits;
 - 3) claims or liens of merchants, materialmen, warehousemen, carriers, or other like liens; and
 - 4) adverse judgments on appeal;
5. the Debtor has received no advance rental or other payments under the Lease and the Debtor will not accept any payments under the Lease after the date hereof for the Debtor's own account except as permitted in this Agreement; the Debtor has performed all obligations on the Debtor's part to be performed under the Lease on or prior to the date hereof and will perform any such obligations during the term of the Lease; and to the knowledge of the Debtor, there has not occurred on the date hereof any Event of Default under the Lease or this Agreement;
6. the making and performance by the Debtor of this Agreement, the Assignment, the Note, the Lease, any other supplements or amendments thereto and the borrowing and execution and delivery of the Note will not violate any provision of law, or constitute a default under or result in the creation of any lien, charge or encumbrance upon any property or assets of the Debtor pursuant to any agreement, indenture or other instrument to which the Debtor is a party or by which the Debtor may be bound;
7. there are no actions, suits or proceedings pending or, to the knowledge of the Debtor, threatened against or affecting the Debtor in any court or by or before any government department, agency or instrumentality in which any adverse decision might materially affect the ability of the Debtor to perform the Debtor's obligations under the

Note, this Agreement, the Assignment, and the Lease;

8. except as permitted in this Agreement, without Secured Party's prior written consent so long as the Note remains unpaid, Debtor will not (i) grant any consent under the Lease (ii) give any notice thereunder or otherwise exercise any rights, powers or remedies of the Lessor thereunder, or (iii) agree to any release of any obligation of the Lessee thereunder or to any modification or any termination thereof;
9. the Debtor will defend the Collateral and the interest of Secured Party therein against the claims and demands of all persons;
10. the Debtor is duly qualified to do business in each jurisdiction where failure to so qualify would adversely affect Debtor's rights in the Equipment or the enforceability of the Lease;
11. Debtor has obtained and will maintain all consents, approvals, authorizations of or by any court, administrative or other governmental authority required in connection with the execution, delivery and performance by Debtor of the Lease and by Debtor as owner and lessor of the Equipment;
12. all units of Equipment have been delivered and accepted by the Lessee at the time of execution hereof;
13. the Lease which has been delivered to Secured Party constitutes the entire agreement between Debtor and Lessee with respect to the lease of the Equipment;
14. Debtor will execute and deliver any and all papers or documents which Secured Party may reasonably request from time to time in order to carry out the purpose hereof, or to facilitate the collection of monies due or to become due from the Lessee;
15. Debtor will duly fulfill or cause to be fulfilled all of the obligations if any to be performed and assumed by it under the Lease including, but not limited to, its warranty of quiet enjoyment, and shall remain liable thereunder;

16. Debtor will keep or cause the Lessee to keep the Equipment in good repair and operating condition without any cost or liability to Secured Party;
17. Debtor will cause all accessions which are or become attached to or part of the Equipment to become subject to the terms of the Note and Security Agreement, to the extent permitted in the Lease;
18. Debtor will notify Secured Party upon its knowledge of any Lessee defaults in the payment or performance of any of its obligations under the Lease;
19. Debtor will not sell, assign, transfer, mortgage or in any way encumber the Collateral without Secured Party's prior written consent, nor secrete or abandon the Equipment;
20. Debtor will allow Secured Party and its representatives free access and right of inspection of the Equipment at all reasonable times, provided however, that Secured Party shall not interfere with Lessee's quiet enjoyment of the Equipment, and in an Event of Loss agrees to send written notice thereof to the Secured Party within of receipt of such notice from the Lessee. The Debtor will execute and deliver to Secured Party such documents identifying the Equipment as Secured Party may from time to time reasonably request;
21. Debtor will not remove its records concerning the Lease except to a jurisdiction where the Uniform Commercial Code shall be in effect, and upon 30 days' prior written notice to the Secured Party, and will permit Secured Party and its representatives to examine Debtor's books and records with respect to the Collateral and make extracts therefrom and copies thereof at any reasonable time from time to time;
22. Debtor will keep or cause the Lessee to keep the Equipment insured against public liability and loss by fire, theft and casualty, by self-insurance or by insurers and in form, amount and coverage customary for such Equipment in businesses similar to Lessee's business;
23. Debtor will indemnify and save harmless Secured Party against any charges or claims made against Secured Party and against any expenses, loss or liability, which the Lessee would be obligated to

indemnify or save Secured Party harmless from pursuant to Section 10 of the Lease but for Debtor's sole or joint negligence. The indemnity contained in this paragraph shall survive the payment or performance of all other obligations under this Agreement or the termination of this Agreement;

24. simultaneously with the disbursement of the proceeds of the Debtor's Promissory Note dated December 21, 1989, Debtor will cause this Agreement to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 and will file or cause to be filed with the Secretary of State of the State of California a UCC-1 statement. Debtor represents and warrants that no other filing or recording or deposit (or giving of notice) with any federal state or local government or agency thereof is necessary in order to protect the rights of the Secured Party under this Agreement and in the Collateral. Debtor agrees to pay the cost of filing and depositing this Security Agreement. Debtor agrees, at its own cost and expense, to make supplemental filings as may from time to time become necessary or desirable to protect the rights of the Secured Party. Debtor agrees, at its own cost and expense, to make the filings described herein for any substitutions or replacement units of Equipment. Debtor will at its own cost and expense cause legal opinions as to the first priority security interest of the Secured Party in the Collateral to be issued to Secured Party prior to the disbursement under the Note. Debtor hereby irrevocably constitutes and appoints Secured Party the Debtor's attorney-in-fact for such purposes, with full power of substitution. The Debtor also will execute and deliver such instruments and take all such other action as Secured Party may reasonably request to effectuate the purposes of this Agreement and to secure the rights and remedies conferred upon the Secured Party hereunder.

25. Debtor will cause to be enforced all provisions of Section 6 of the Lease "Identification Marks."

B. DEFAULT - Each of the following will constitute an event of default hereunder ("Event of Default"):

1. the failure by Debtor to pay any amount of principal of or interest on any Note hereunder when due, whether at the maturity thereof or by reason of any requirement for the prepayment

- thereof, by acceleration or otherwise, and such failure shall continue for after written notice to Debtor;
2. the failure by Debtor to pay any other amount when due hereunder or perform any other obligation required by this Agreement, the Assignment or any supplement or amendment hereto or any Note hereunder, and such failure shall continue for after the Debtor shall have written notice thereof;
 3. the occurrence and continuance of an Event of Default under the Lease as it applies to the Equipment (as defined therein);
 4. any proceeding shall be commenced by or against the Debtor for any relief which includes any modification of the obligations of the Debtor hereunder or under any Note hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and (unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective, but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Debtor under this Security Agreement, the Assignment, any supplement or amendment hereto and any Note hereunder shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Debtor or for the property of the Debtor in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within after such proceeding shall have been commenced;
 5. the occurrence of a breach of any of the Representations, Warranties and Agreements under Paragraph A hereof and such breach is not cured within after Debtor shall have written notice thereof; or
 6. any report, certificate, financial statement or other instrument furnished by Debtor in connection

with any Note hereunder, the Assignment, this Agreement and any supplement or amendment hereto shall prove to be materially false or misleading prior to giving such information.

- C. REMEDIES - At any time after the occurrence of an Event of Default Secured Party may declare, by written notice to the Debtor, the entire unpaid balance of the principal of the defaulting Debtor's Note and any other Note hereunder and interest accrued thereon and the prepayment fee (as defined in the Note), if any, to be immediately due and payable, and, in addition, Secured Party shall have and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code or other applicable law, including the right to take possession of any Equipment or other Collateral not then in Secured Party's possession and to dispose of it, or the Debtor's interest therein (to the extent permitted by and in accordance with the terms and conditions of the Lease), at public or private sale, at which Secured Party, subject to the provisions of applicable law, may be the purchaser.

Any notice of any such sale required by law shall be deemed reasonably and sufficiently given to the Debtor if given at least ~~thirty (30) days~~ prior to the date thereof at the address and in the manner herein provided for notices. The proceeds realized by the Secured Party upon the exercise of any of its remedies shall be applied to the Secured Obligations in accordance with the provisions of Paragraph G and Debtor will be entitled to any surpluses thereafter. No delay or omission on Secured Party's part to exercise any right hereunder will impair any such right or be construed as a waiver of any default or any acquiescence therein.

No waiver of any default hereunder will affect any later default or impair any of Secured Party's rights hereunder. No single, partial or full exercise of any rights by Secured Party will preclude further or other exercise thereof. The remedies provided for herein shall not be deemed exclusive, but are cumulative and in addition to all other remedies available under applicable law.

It is understood and agreed that except for any breach by Debtor of its representations, warranties and covenants hereunder, Debtor shall not be personally liable for the payment of the Note or the indebtedness evidenced thereby and that any judgement entered against the Debtor in any action for the recovery of the amounts due and payable thereunder shall be applied only against the Collateral. Nothing contained herein, however, shall (i) preclude Secured Party from

exercising any right or enforcing any remedy, whether upon default or otherwise, under this Agreement, the Lease, or any other Collateral, or (ii) prejudice the right of Secured Party hereof against Debtor or any subsequent owner as such of any Collateral.

- D. PREPAYMENT OF NOTE UPON A CASUALTY OCCURRENCE - If any amount shall become due and payable to the Debtor or the Secured Party as assignee pursuant to the Lease because of a Casualty Occurrence (as defined in the Lease) with respect to any units of Equipment ("Casualty Value"), then, thereupon, an amount, computed as hereinafter set forth, will be due and payable on account of the principal of and interest accrued on the Note being amortized by the rentals for the Equipment suffering the Casualty Occurrence on the date the Casualty Value is due and payable under the Lease. The Secured Party will accept all sums paid to it pursuant to the Lease with respect to Casualty Occurrences and, unless an Event of Default or event which with the lapse of time or the giving of notice or both would become an Event of Default under this Agreement or under the Lease shall have occurred (in which event all such amounts shall be held by Secured Party to satisfy the obligations of the Debtor as provided in Paragraph G), shall apply those portions of such sums hereinafter stated for the account of the Debtor and, immediately following application of rentals to the payment of principal and interest accrued on such date, to the prepayment of principal of the Note amortized by the rentals for the Equipment suffering the Casualty Occurrence. The portion of such sums to be so applied to prepayment of the principal of the Note in respect of any Casualty Occurrence shall be an amount which will reduce the principal of the Note so that said principal, after prepayment, bearing interest at the rate set forth in the Note will be amortized by the remaining rental payments due under the Lease, after any reduction due to the Casualty Occurrence, which have been assigned to Secured Party by Debtor as security for the Note. The remainder of such sums shall be paid to Debtor. In the event of any partial prepayment of the principal of the Note pursuant to the preceding sentences of this Paragraph D, the amount of each such installment payment thereafter coming due will be reduced by an amount which bears the same proportion to the amount of such installment which would have been due in the absence of such prepayment as the amount of such principal prepayment bears to the unpaid principal balance outstanding immediately prior to such prepayment.
- E. COLLECTION EXPENSES - In addition to all other amounts payable hereunder and under the Note, the Debtor will pay all Secured Party's reasonable expenses, including attorneys' fees, incurred from time to time in enforcing its rights and remedies hereunder, under the Note, or under the Lease and in repossessing, storing and disposing of the

Equipment including the cost of discharging all liens, taxes and assessments on the Collateral. If Secured Party brings suit (or files any claim or petition in any bankruptcy, reorganization, insolvency or other proceeding) to enforce any of its rights (or other recovery or relief), Secured Party may recover in such action (or other proceeding), in addition to all other amounts payable hereunder and thereunder, its reasonable expenses, including attorneys' fees, in connection therewith, and the same shall be included in such judgment (or other form of award).

- F. COLLECTION OF RENTALS - Secured Party will, on behalf of Debtor, collect and receive from the Lessee all rentals and other money payable pursuant to the Lease, and the Secured Party, except as otherwise provided in this Agreement, may take all such action as may be necessary or desirable to demand and enforce compliance by Lessee with all terms and provisions of the Lease. To the extent indefeasibly received, the Secured Party will apply such payments first, in the manner specified in Paragraph G hereof, and second, so long as no Event of Default or event which with the lapse of time or the giving of notice or both provided for in the Lease or hereunder could constitute an Event of Default thereunder or hereunder shall have occurred any balance shall be paid to the Debtor. All payments received by Secured Party at such time as an Event of Default shall have occurred which otherwise, in whole or in part, would be remitted to Debtor as aforesaid shall be retained by Secured Party and applied to satisfy Debtor's obligations under the Note and this Agreement. All payments received by Secured Party at such time as there shall have occurred an event which with the lapse of time or the giving of notice or both could constitute an Event of Default in the Lease or hereunder, which otherwise, in whole or in part, would be remitted to Debtor as aforesaid shall be retained by Secured Party until such event shall either become an Event of Default (in which case such monies shall be applied to satisfy Debtor's obligations under the Note and this Agreement as aforesaid), or be cured or otherwise not be capable of maturing into an Event of Default (in which case such monies shall be remitted to Debtor as aforesaid). The Debtor agrees that any payments received by the Debtor from the Lessee which are payable to the Secured Party pursuant to this Agreement shall be held in trust for the Secured Party and shall be immediately paid to the Secured Party.
- G. APPLICATION OF PAYMENTS - All payments indefeasibly received by the Secured Party which are to be applied in satisfaction of the Debtor's obligations under any Note hereunder and this Agreement shall be applied, first, to the payment of costs and expenses due to the Secured Party pursuant to Paragraph E, if any, second to the payment of accrued interest on such Note, and, third, to the payment of principal and all other amounts payable thereunder and

hereunder with respect to such Note. Payments indefeasibly received by Secured Party in excess of the amounts necessary to satisfy Debtor's obligations as aforesaid shall be remitted to Debtor and/or, upon receipt of written proof thereof, any other party legally entitled thereto.

- H. NOTICES - All notices, declarations, requests, consents and other communications given hereunder or in connection herewith or with the Note shall be in writing and shall be deemed to have been given when delivered or deposited in the United States mail, registered or certified, postage prepaid, or by overnight courier addressed to Debtor at its address stated above, and to the Secured Party at its address stated below, or to such other address as any such party may hereafter specify by written notice to the other.
- I. APPLICABLE LAW - This Agreement, the Assignment, and the Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Commonwealth of Pennsylvania; provided however that the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303 and such additional rights arising out of the filing or depositing hereof.
- J. SEVERABILITY - Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- K. SUCCESSORS AND ASSIGNS - This Agreement will bind and inure to the benefit of the respective successors and assignees of the parties hereto, including any holder, as such, of the Note, by acceptance of an assignment hereof or of the Note. Each of the Secured Party's successors or assigns (including any holder, as such, of the Note) will be deemed to have agreed to be bound by the provisions hereof, and of the Note and Secured Party's undertakings hereunder and thereunder.
- L. TRANSFER OF DEBTOR'S AND SECURED PARTY'S INTEREST - The Debtor shall not assign, convey or otherwise transfer any of its right, title or interest in, to or under any of the Collateral without the prior written consent of the Secured

Party in its discretion and subject to such terms and conditions as the Secured Party may then specify. This Agreement and the Note related hereto may be sold, transferred and assigned by Secured Party without notice to or consent of Debtor; provided however that Debtor will have no obligation to such successor in interest except upon written notice of such sale, transfer and assignment by Secured Party. All rights and benefits of the Secured Party shall inure to the benefit of Secured Party's transferee and Debtor agrees to provide any reasonable documentation requested by Secured Party in connection with any such transfer.

M. TERMINATION OF SECURITY INTEREST, ETC. - Upon payment in full of the principal of and interest on the Note and all other sums payable to the Secured Party under the Note, the Assignment, this Agreement, and any supplements or amendments hereto, the Secured Party shall execute and deliver to the Debtor, at the expense of the Debtor, such documents as the Debtor shall reasonably request to evidence the termination of this Agreement and all interests of the Secured Party in the Collateral.

IN WITNESS WHEREOF, this Security Agreement has been duly executed and delivered as of the date first above written.

[Corporate Seal]

Attest: HELM FINANCIAL CORPORATION
By: _____ By: _____
Title: _____ Title: _____

THE PHILADELPHIA NATIONAL BANK
By: _____
Title: _____

Address for notices:
The Philadelphia National Bank
Leasing Department
P.O. Box 8377
Broad and Chestnut Streets
Philadelphia, PA 19101-8377

SCHEDULE 1

to

a Security Agreement dated as of December 21, 1989
between Helm Financial Corporation, as Debtor and
The Philadelphia National Bank, as Secured Party.

<u>Equipment Description</u>	<u>Number of Units</u>	<u>Equipment Numbers</u>
General Motors EMD, 3,000 H.P. GP40 Locomotives	10	UP 861-863 UP 872-877; 885

STATE OF CALIFORNIA)
) §
COUNTY OF SAN FRANCISCO)

On this ___ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ 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.

Notary Public

My Commission Expires: _____

[Notarial Seal]

STATE OF _____)
) §
COUNTY OF _____)

On this ___ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of _____, 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.

Notary Public

My Commission Expires: _____

[Notarial Seal]

EXHIBIT A

SUPPLEMENT TO SECURITY AGREEMENT

This Supplement to Security Agreement (the "Supplement") is entered into as of the date set forth below between The Philadelphia National Bank, a national banking association (the "Secured Party") and Helm Financial Corporation, a California corporation (the "Debtor").

Section 1. Recitals of Fact.

Secured Party and Debtor have entered into a Security Agreement dated as of December 21, 1989 (the "Security Agreement"). Capitalized terms used herein which are not otherwise defined shall have the meanings given to such terms in the Security Agreement. The purpose hereof is to add certain collateral to the Collateral to secure the Secured Obligations.

Section 2. Additional Collateral.

Debtor does hereby transfer, mortgage and pledge to the Secured Party and grant to the Secured Party a security interest in the following described collateral, all of which shall be added to the Collateral and shall secure the full performance by the Debtor of the Secured Obligations:

1. Group Two Equipment as listed on Schedule 1 hereto (the "Group Two Equipment"), which Group Two Equipment is leased to the Lessee pursuant to the Lease and described in Annex A thereto, and all the Debtor's right, title and interest in the Group Two Equipment;

2. All rentals and other moneys payable under the Lease insofar as they relate to the Group Two Equipment, including proceeds from Casualty Occurrences as defined in Section 8(b) of the Lease, all the Debtor's rights, power and remedies (but none of its duties or obligations) in and under the Lease with respect to the Group Two Equipment, including, without limitation, all the Debtor's rights to give and receive any notice, consent, waiver, demand or approval under or in respect of such Lease, to exercise any election or option thereunder or in respect thereof, to accept any surrender of the Group Two Equipment, to execute and deliver any bill of sale for any such property, and to do all other things which the Debtor is entitled to do under such Lease with respect to such Group Two Equipment, and all renewals, substitutions and extensions of the Lease until the Secured Obligations are paid in full; and

3. All proceeds of any kind of the foregoing items of Collateral and, to the extent not otherwise included, all

payments under insurance (whether or not Debtor is the loss payee thereof), or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral.

Section 3. Supplement to Assignment of Lease.

In furtherance of the foregoing, Debtor shall execute a Supplement to Assignment of Lease dated the date hereof, pursuant to which Debtor shall assign to Secured Party all rights to payments and other rights and remedies under the Lease which payments, rights and remedies relate to the Group Two Equipment, as more specifically set forth in the Supplement to Assignment of Lease.

Section 4. Miscellaneous.

(a) Except as specifically supplemented here, the Security Agreement remains in full force and effect.

(b) This Supplement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, Secured Party and Debtor have caused this Supplement to be executed by their duly authorized officers as of the ____ day of _____, 19__.

HELM FINANCIAL CORPORATION

By: _____

Title: _____

THE PHILADELPHIA NATIONAL BANK

By: _____

Title: _____

EXHIBIT B

SUPPLEMENT TO ASSIGNMENT OF LEASE

FOR VALUE RECEIVED, Helm Financial Corporation, a California corporation ("Assignor"), hereby assigns and transfers to the Philadelphia National Bank, a national banking association ("Assignee"), its successors and assigns, the following:

1. All of Assignor's right, title and interest in and to any moneys payable under the Lease (as defined in the Assignment of Lease dated as of December 21, 1989 made by Assignor in favor of Assignee (the "Assignment of Lease")) insofar as they relate to or arise from the Group Two Equipment as listed on Schedule 1 hereto (the "Group Two Equipment") which Group Two Equipment is leased pursuant to the Lease and described in Annex A thereto, including, without limitation, all rental payments, damages and casualty value payments made pursuant to Section 8(b) of the Lease; and

2. All of Assignor's right to exercise all the rights and remedies of the lessor under the Lease with respect to all Group Two Equipment.

3. Effective upon the execution hereof, all of the provisions of the Assignment of Lease shall apply to the Group Two Equipment.

4. Except as specifically supplemented here, the Security Assignment of Lease remains in full force and effect.

5. This Supplement is made pursuant to and for the purposes of that certain Supplement to Security Agreement of even date herewith, given by Assignor to Assignee to secure the obligations of Assignor under the Security Agreement dated as of December 21, 1989 between Assignor and Assignee and the related promissory notes, and shall remain in full force and effect until the obligations evidenced thereby have been paid and discharged in full.

IN WITNESS WHEREOF this Supplement has been duly executed and delivered as of the _____ day of _____, 1989.

HELM FINANCIAL CORPORATION

By: _____

STATE OF CALIFORNIA)
) §
COUNTY OF SAN FRANCISCO)

On this ___ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ 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.

Notary Public

My Commission Expires: _____

[Notarial Seal]

STATE OF _____)
) §
COUNTY OF _____)

On this ___ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of _____, 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.

Notary Public

My Commission Expires: _____

[Notarial Seal]

STATE OF CALIFORNIA)
) §
COUNTY OF SAN FRANCISCO)

On this ___ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ 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.

Notary Public

My Commission Expires: _____

[Notarial Seal]

STATE OF _____)
) §
COUNTY OF _____)

On this ___ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of _____, 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.

Notary Public

My Commission Expires: _____

[Notarial Seal]