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MORTGAGE

THIS MORTGAGE, Made as of this 16th day of December, 1987, by WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, a limited partnership organized and existing pursuant to the laws of the State of Delaware, whose address and principal place of business in West Virginia is 1035 3rd Avenue, Suite 300, Huntington, West Virginia 25701 (hereinafter referred to as the "Mortgagor"), and The Travelers Insurance Company, a Connecticut corporation whose address is 2250 Lakeside Boulevard, Suite 500, Richardson, Texas 75081 (hereinafter sometimes referred to as "Mortgagee" and sometimes referred to as "Travelers").

WHEREAS, pursuant to a Purchase Agreement dated December 31, 1986 (the "Purchase Agreement"), Mortgagor acquired from the CSX Corporation, a Virginia corporation, and certain of its subsidiaries (collectively "CSX") certain real property and related interests in West Virginia, Kentucky, Maryland, Alabama, Indiana, Ohio and Pennsylvania (collectively, the "Properties"), which property and related interests located in the State of Alabama are more particularly described in the conveyances to Mortgagor listed on Exhibit A attached hereto (the "Conveyances"); and

WHEREAS, pursuant to the Conveyances and a Deferred Interest Agreement dated December 31, 1986, CSX retained a reversionary interest in the Properties, to be effective July 1, 2001, of 25% (28% in the case of one subsidiary of the CSX Corporation); and

WHEREAS, the Conveyances generally conveyed all of the coal and other mineral lands and related interests owned by CSX, subject to reservations of (i) the reversionary interest described herein above, (ii) the oil and gas rights and interests in the Properties, and (iii) certain limitations and conditions on mining activities near or under railroad rights of way of CSX; and

WHEREAS, simultaneously with the execution and delivery of this Mortgage (hereinafter referred to as the "Mortgage") and substantially similar deeds of trust and mortgages of even date herewith with respect to the Properties which are recorded or to be recorded in Kentucky, Maryland, West Virginia, Indiana and Pennsylvania (the "Additional Deeds of Trust"), the Mortgagor has borrowed from the Mortgagee pursuant to the terms of a Loan Agreement dated December 3, 1987 between the Mortgagor and Travelers, the terms of which are incorporated herein by reference (the "Loan Agreement"), the aggregate sum of \$105,000,000.00, and as evidence of which loan the Mortgagor has issued its Promissory Notes of even date herewith, in substantially the form attached hereto as

Exhibits B and C, respectively, payable to the order of Travelers, one in the principal amount of \$70,000,000 and the other in the principal amount of \$35,000,000 (which Promissory Notes, together with any extensions or renewals thereof or substitutions therefor, are hereinafter collectively referred to as the "Notes"; Travelers is the beneficial owner of the Notes and Travelers, its successors and assigns, or any other person who may at any time or from time to time be the holder of the Notes, is hereinafter sometimes referred to as the "Mortgagee"), the principal amount of such loan and interest thereon to be payable at the time or times, in the manner and at the rate or rates stated in the Notes; and

WHEREAS, the Mortgagor wishes and intends, by the execution and delivery of this Mortgage, along with the Additional Deeds of Trust, as herein defined, to secure (a) the full and punctual payment of (i) the Notes and the interest thereon according to the terms of the Notes, and (ii) certain other indebtedness as hereinafter set forth, and (b) the performance of, and compliance with, all of the terms, covenants, conditions, stipulations and agreements contained in the Notes, this Mortgage, the Loan Agreement and all other documents executed and delivered in connection with the borrowing hereinabove described and pursuant to the Loan Agreement.

NOW, THEREFORE, THIS MORTGAGE WITNESSETH, that the Mortgagor, in consideration of the premises and the sum of Ten Dollars (\$10.00) lawful money of the United States of America, to it in hand paid, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED, SOLD, ASSIGNED and CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL, ASSIGN AND CONVEY unto the Mortgagee, its successors or assigns, the following:

(i) all real property rights, titles and interests in the Properties acquired by Mortgagor pursuant to the Conveyances listed on Exhibit A attached hereto, subject to and diminished by the out-conveyances and reservations reflected in Exhibit D (the "Mortgaged Lands");

(ii) all of the coal mining leases, timber cutting contracts, wheelages, contract rights, permits, licenses, servitudes, easements, rights of ways, and surface leases, to the extent owned by Mortgagor, in whole or in part, and which are (A) appurtenant to the Mortgaged Lands, or (B) used or held for use in connection with the ownership or operation of the Mortgaged Lands, including specifically but not by way of limitation all of the interests of the Mortgagor in and under the leases described in Exhibit E hereto (the "Leases"); and

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(iii) all properties, rights and interests of the Mortgagor, real, personal or mixed, including but not limited to all growing timber, wherever situated in the State of Alabama and however held, now or hereafter located or contained in or upon or attached to, the Mortgaged Lands, whether similar to or dissimilar from those enumerated in the preceding subparagraphs (i) and (ii) and whether now or hereafter acquired by Mortgagor, as fully and with the same effect as if specifically enumerated herein, including but not limited to all improvements, structures and buildings now or hereafter erected or placed on the Mortgaged Lands and all replacements thereof (hereinafter sometimes referred to collectively as the "Improvements"); and

(iv) all of Mortgagor's right, title or interest in building materials, fixtures, equipment and tangible personal property of every kind and nature whatsoever, now or hereafter located or contained in or upon or attached to, the Mortgaged Lands or the Improvements or any part thereof, and used or usable in connection with any present or future use or operations of the Mortgaged Lands or the Improvements or any part thereof, whether now owned or hereafter acquired by the Mortgagor (all of the foregoing, together with all replacements thereof, substitutions therefor and additions thereto, being hereinafter sometimes referred to collectively as the "Equipment"). All of the Equipment, so far as permitted by law, shall be deemed to be fixtures and part of the Mortgaged Lands and of the Improvements; and

(v) all of Mortgagor's reversions, remainders, rents, royalties, issues, profits, revenues and other income, and products and proceeds, of the properties subjected or required to be subjected to the lien of this Mortgage, and all right, title and interest of every kind and nature whatsoever of the Mortgagor in and to the same and every part thereof ("Proceeds"), including specifically but not by way of limitation the rents and royalties payable to Mortgagor under and pursuant to the Leases; and

(vi) all property of every kind or character and/or every interest therein, whether hereinabove described or not, owned by Mortgagor during the term hereof which by its nature may be subjected to the lien of this instrument.

TOGETHER with Mortgagor's interest in all and singular the tenements, hereditaments and appurtenances belonging or in any way appertaining to any of the Mortgaged Properties, or any part thereof, together with all rents, revenues, issues, proceeds, earnings, incomes, products and profits thereof.

TOGETHER with all right, title and interest of the Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues and alleys adjoining the Mortgaged Properties.

TOGETHER with all and singular the rights, alleys, ways, easements, passages, waters, water rights, water courses, riparian rights, liberties, advantages, accessions and privileges now or hereafter appertaining to the Mortgaged Properties or any part thereof, including, but not limited to, any homestead or other claim at law or in equity, the reversion or reversions, remainder or remainders thereof, and also all the estate, property, claim, right, title or interest now owned or hereafter acquired by the Mortgagor in or to the Mortgaged Properties or any part thereof.

Unless specifically designated otherwise, the Mortgaged Lands, the Improvements, the Leases, the Equipment, the Proceeds and all other items and property described in the preceding paragraphs hereof shall hereinafter be collectively referred to as the "Mortgaged Properties".

TOGETHER with Mortgagor's interest in any and all judgments, awards of damages (including but not limited to severance and consequential damages), payments, proceeds, settlements or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, in connection with, or in lieu of (a) any taking of the Mortgaged Properties or any part thereof under the power of eminent domain, either temporarily or permanently, (b) any change or alteration of the grade of any street, and (c) any other injury or damage to, or decrease in value of, the Mortgaged Properties or any part thereof (all the foregoing being hereinafter sometimes referred to collectively as the "Condemnation Awards", or singularly a "Condemnation Award"), to the extent of all Indebtedness (as hereinafter defined) which may be secured by this Mortgage at the date of receipt of any such Condemnation Award by the Mortgagee, and of the reasonable counsel fees, costs and disbursements, if any, incurred by the Mortgagee in connection with the collection of such Condemnation Award or payment.

TOGETHER with Mortgagor's interest in any and all payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to receive the same, from any and all insurance policies covering the Mortgaged Properties or any portion thereof. All the interests described in this and the preceding paragraphs shall be included in the definition of the Mortgaged Properties.

TO HAVE AND TO HOLD the Mortgaged Properties together with all and singular the rights, privileges, and appurtenances

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in any way appertaining or belonging thereto, and all other interests described above, subject to those matters set forth in Exhibit F attached hereto ("Permitted Encumbrances") and the terms and conditions of this Mortgage, unto the Mortgagee, its successors and assigns forever.

For the purpose of securing to the Mortgagee (a) the payment of all sums of money secured hereby (hereinafter referred to as the "Indebtedness") which Indebtedness shall include, but not be limited to, (i) all moneys and all sums of principal and interest due or to become due under the Notes, (ii) any other sums for which the Mortgagor may now or hereafter be indebted to the Mortgagee with respect to the Loan evidenced by the Notes, (iii) to the extent the same may be secured by this instrument under applicable law, all other moneys now or hereafter advanced or expended by the Mortgagee as provided for herein, in the Loan Agreement or in any other of the Loan Documents (as hereinafter defined), or by law applicable to this Mortgage, and (iv) to the extent the same may be secured by this instrument under applicable law, all costs, expenses, charges, liabilities, commissions, and attorney's fees now or hereafter chargeable to, or incurred by, or disbursed by, the Mortgagee or the Mortgagor as provided for herein, or in any other of the Loan Documents, or by law applicable to this Mortgage, and (b) the performance of, observance of and compliance with, by the Mortgagor, or, in the case of the Partnership Security Agreement, by the Partners, all of the terms, covenants, conditions, stipulations and agreements contained herein or in any of the following documents (which documents, as the same may be modified or amended from time to time as approved by the Mortgagee, together with this Mortgage and any and all other documents which the Mortgagor, or any third party or parties, has executed and delivered, or may hereafter execute and deliver, to evidence or secure the Indebtedness, or any part thereof, or in connection therewith, are hereinafter referred to collectively as the "Loan Documents"):

(a) The Notes.

(b) This Mortgage and the Additional Deeds of Trust by and between the Mortgagor, Travelers and, where appropriate, certain Trustees therein named, pursuant to which the Mortgagor has granted to Travelers an interest in and has assigned its rights in certain real and personal property and leases owned by Mortgagor and located in the states of Pennsylvania, Maryland, Kentucky, Indiana and West Virginia, to secure repayment of the Notes.

(c) The Loan Agreement.

(d) The Security Agreements (Partnership Interests) of even date herewith (hereinafter sometimes referred to as the "Partnership Security Agreement"), by and between the partners of Mortgagor (the "Partners") and Travelers, pursuant to which the Partners have granted to Travelers a security interest in their partnership interests in the Mortgagor.

(e) The Security Agreement of even date herewith (hereinafter sometimes referred to as the "Security Agreement") by and between the Mortgagor as debtor and Travelers as secured party pursuant to which the Mortgagor has granted to Travelers a security in all of Mortgagor's tangible and intangible personal property now owned or hereafter acquired to secure repayment of the Notes.

(f) The Assignments of Rents and Leases of even date herewith (hereinafter sometimes referred to as the "Assignments of Leases") by and between the Mortgagor and Travelers, pursuant to which the Mortgagor has assigned to Travelers its rights in all leases on property owned by Mortgagor and located in the states of Pennsylvania, Maryland, Kentucky, West Virginia, Indiana and Alabama to secure repayment of the Notes.

(g) The Pledge Agreement of even date herewith (hereinafter sometimes referred to as the "Gauley Stock Pledge Agreement") by and between the Mortgagor and Travelers, pursuant to which the Mortgagor has pledged to Travelers all of its shares of the stock of New Gauley Coal Corporation, to secure repayment of the Notes.

(h) The Pledge Agreement of even date herewith (hereinafter sometimes referred to as the "Pledge Agreement") by and among Travelers and all of the shareholders of Western Pocahontas Corporation, a Texas Corporation, the general partner of the Mortgagor (the "General Partner"), pursuant to which said shareholders have pledged to Travelers all of their shares of the stock of the General Partner, to secure repayment of the Notes.

(i) The Collateral Assignment of Contracts of even date herewith (hereinafter sometimes referred to as the "Contract Assignment") by and between the Mortgagor and Travelers, pursuant to which the Mortgagor has assigned to Travelers its rights in certain contracts to secure repayment of the Notes.

(j) The Pledge Agreement of even date herewith (hereinafter sometimes referred to as the "Collateral Reserve Pledge") by and between the Mortgagor and Travelers, pursuant to which the Mortgagor has granted to Travelers a security interest in certain certificates of deposit and a collateral reserve account to secure repayment of the Notes.

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(k) The other Loan Documents.

PROVIDED, HOWEVER, that until the occurrence of an event of default hereunder, and subject to any provisions hereof to the contrary, the Mortgagor shall have the right to remain in peaceful possession of the Mortgaged Properties and take the rents, royalties, revenues and profits thereof to the Mortgagor's own use.

PROVIDED, FURTHER, that if the Mortgagor shall pay or cause to be paid to Mortgagee the Indebtedness in full at the time and in the manner stated in the Notes and in this Mortgage and the other Loan Documents at any time before the sale hereinafter provided for, and shall well and truly perform, comply with and observe each and every covenant, agreement, term and condition of this Mortgage and of the other Loan Documents, then these presents and the estate granted hereby shall cease, determine and become void, and upon proof given to the satisfaction of the Mortgagee that the Indebtedness has been so paid or satisfied in full, the Mortgagee shall (at the expense of the Mortgagor), release and discharge this Mortgage of record.

AND THIS MORTGAGE FURTHER WITNESSETH, that the Mortgagor hereby represents, warrants, covenants and agrees as follows, and stipulates that a breach of any of the following representations, warranties, covenants and agreements shall be deemed a breach of a material condition of this Mortgage and of the other Loan Documents:

I. REPRESENTATIONS AND WARRANTIES

Warranty of Title. The Mortgagor represents and warrants that at the time of the execution and delivery of this Mortgage, the Mortgagor is the owner of the fee simple legal title to, and is lawfully seized and possessed of, the Mortgaged Properties, except for the Permitted Encumbrances as set forth in Exhibit F. The Mortgagor has the right and authority to convey the Mortgaged Properties and does hereby warrant generally, and agrees to defend, the Mortgaged Properties and the title thereto, whether now owned or hereafter acquired, against all claims and demands by any person.

II. COVENANTS AND AGREEMENTS

Section 2.01. Payment of Indebtedness and Performance. The Mortgagor will punctually pay to the Mortgagee the principal of and all interest on the Notes according to the terms of the Notes and all other Indebtedness secured hereby as the same shall become due, and shall

punctually keep and perform each and every term, provision, covenant and agreement contained in the Loan Documents.

Section 2.02. Insurance. The Mortgagor shall promptly obtain and maintain all insurance policies and comply with all other requirements as to insurance as required under the provisions of the Loan Agreement. If the Mortgagor fails to promptly obtain or maintain such insurance policies in the manner provided in said Loan Agreement, the Mortgagee may at its option, pay to obtain or maintain such policies, and the Mortgagor shall, upon request, pay to the Mortgagee the amount of any such payment, with interest thereon, as provided in Section 2.11 hereof.

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Section 2.03. Taxes. (a) The Mortgagor will promptly pay in full and discharge before delinquency and before any penalty for non-payment attaches thereto (and under protest in the manner required by statute of any thereof which the Mortgagor desires to contest), all taxes, water rents, sewer rents, assessments, utility charges (whether public or private) and other governmental or municipal or public or private dues, charges and levies (all of which are hereinafter collectively referred to as the "Taxes") and any prior liens (including federal tax liens) for such Taxes which are or may be levied, imposed or assessed upon the Mortgaged Properties or any part thereof or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes. Upon payment thereof, the Mortgagor will exhibit to the Mortgagee, upon demand, the receipted bills therefor, prior to the day upon which the same shall become delinquent. If the Mortgagor fails to pay the Taxes at the times or in the manner provided in this paragraph, the Mortgagee may, at its option, pay such Taxes, and the Mortgagor shall pay to the Mortgagee the amount of any Taxes so paid, with interest thereon, as provided in Section 2.11 hereof.

(b) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting any such taxes so as to adversely affect the Mortgagee (including, without limitation, a requirement that internal revenue stamps be affixed to the Notes or to this Mortgage), the Mortgagor will promptly pay any such tax. If the Mortgagor fails to make such prompt payment, or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits the Mortgagor from making such payment or would penalize the Mortgagee if the Mortgagor makes such payment, then the entire unpaid balance of the principal sum secured by this Mortgage and all unpaid interest accrued thereon shall, without notice, immediately become due and

payable at the option of the Mortgagee. In no event, however, shall any income taxes of the Mortgagee or franchise taxes of the Mortgagee measured by income, or taxes in lieu of such income taxes or franchise taxes, be required to be paid by the Mortgagor.

Section 2.04. Restrictive Covenants, Zoning, etc. Without the prior written consent of the Mortgagee, the Mortgagor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Mortgaged Properties or any part thereof. The Mortgagor will promptly perform and observe and use its best efforts to, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments affecting the Mortgaged Lands, noncompliance with which may affect the security of this Mortgage, or which may impose any duty or obligation upon the Mortgagor or any lessee or other occupant of the Mortgaged Properties, or any part thereof, and the Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Mortgaged Properties.

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Section 2.05. Condemnation. The Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. If an Event of Default shall have occurred and is continuing and all applicable cure periods have expired, the Mortgagee may settle or compromise any claim in connection with any damage or taking through condemnation without the prior written consent of the Mortgagor. No settlement for the damages sustained thereby shall be made by the Mortgagor without the Mortgagee's prior written approval thereof. All proceeds of a full or partial taking of the Mortgaged Properties by eminent domain shall be payable to the Mortgagee and at the Mortgagee's option may be applied in whole or part to payment of the Indebtedness (including accrued but unpaid interest and other amounts secured by the Loan Documents or payable thereunder). Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Properties by any public or quasi-public authority or corporation, the Mortgagor will continue to pay the Indebtedness as and when the same shall become due and payable until the Condemnation Awards hereinbefore assigned and granted to the Mortgagee are actually received by the Mortgagee, and any reduction in the Indebtedness resulting from the application by the Mortgagee of the Condemnation Awards shall be deemed to take effect only on the date of such receipt. All or any part of any Condemnation Awards so received by the Mortgagee may, at the option of the Mortgagee

(a) be retained and applied by the Mortgagee as a credit upon any portion, as selected by the Mortgagee, of the Indebtedness secured hereby, notwithstanding the fact that the amount owing thereon may not be then due and payable or that the Indebtedness is otherwise adequately secured, or (b) be paid over wholly or in part to the Mortgagor for the purposes of altering, restoring and rebuilding any part of the Mortgaged Properties other than Equipment which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Mortgaged Properties, or for any other purpose or object satisfactory to the Mortgagee, provided that (i) the Mortgagee shall not be obligated to see to the application of any amount paid over to the Mortgagor, and (ii) the amount so paid over shall not be deemed a payment on any of the Indebtedness secured hereby. If prior to the receipt by the Mortgagee of such Condemnation Award the Mortgaged Properties or any part thereof shall have been sold pursuant to the provisions of Section 4.02 of this Mortgage, the Mortgagee shall have the right to receive such Condemnation Award to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and of the reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such Condemnation Award. The Mortgagor agrees to execute and deliver, from time to time, upon the request of the Mortgagee, such further instruments or documents as may be requested by the Mortgagee to confirm the grant and assignment to the Mortgagee of any such Condemnation Award.

Section 2.06. Title Defects and Title Failures. The Mortgagee is authorized under the provisions of the Loan Agreement, at its option and to the extent it elects to do so, and at Mortgagor's expense, to defend, commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceeding relating to any title defect, title objection or Title Failure, as the latter is defined in the Loan Agreement. The Mortgagor shall reimburse the Mortgagee within 10 days of written demand therefor for such expenses advanced by the Mortgagee.

Section 2.07. Additions to Security. All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Properties, hereafter acquired by or released to the Mortgagor, or constructed, assembled or placed by the Mortgagor on the Mortgaged Properties, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further Mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this

Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clauses hereof, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as the Mortgagee may require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

Section 2.08. Subrogation. To the extent permitted by law and the provisions of the Loan Agreement, the Mortgagee shall be subrogated, notwithstanding their release of record, to any mechanic's or vendor's lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities, and charges of all kinds heretofore or hereafter existing on the Mortgaged Properties to the extent that the same are paid or discharged by the Mortgagee whether or not from the proceeds of the Notes; provided, however, this Section shall not be deemed or construed to obligate the Mortgagee to pay or discharge the same.

Section 2.09. Security Agreement. Mortgagor, for valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, hereby grants to the Mortgagee a security interest in, and agrees and acknowledges that the Mortgagee has and shall continue to have throughout the term hereof a security interest in the Equipment and in all other Mortgaged Properties subject to the Uniform Commercial Code of Alabama (the "Code"). The Mortgagor hereby agrees to execute and deliver on demand, and hereby irrevocably constitutes and appoints the Mortgagee the attorney-in-fact of the Mortgagor, to execute, deliver and, if appropriate, to file with the appropriate filing office or offices, such financing statements or other instruments as the Mortgagee may request or require in order to perfect the security interest granted hereby or to continue the effectiveness of the same. The Mortgagor hereby acknowledges that no timber which is subject to the security interest described and granted herein may be cut or removed from the Mortgaged Lands except in accordance with that certain Cutting Privilege letter described in the Loan Agreement.

Section 2.10. Right to Perform. If the Mortgagor shall fail to make any payment or perform, observe, or comply with any of the conditions and covenants herein contained, the Mortgagee, without notice to or demand upon the Mortgagor, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Mortgagor, and may enter upon the Mortgaged Properties or any part thereof for that purpose and take all such action thereon as the Mortgagee may consider necessary or appropriate for such purpose. All such sums so paid or advanced by the Mortgagee and all costs and expenses

(including, without limitation, reasonable attorney's fees and expenses) so incurred, together with interest thereon, shall be repaid by the Mortgagor to the Mortgagee as provided in Section 2.11 hereof.

Section 2.11. Expenses. If the Mortgagee shall incur or expend any sums, including reasonable attorney's fees and expenses, whether or not in connection with any action or proceeding, to sustain the lien or security interest of this Mortgage or their priority, or to protect or enforce any of its rights hereunder, or to recover any of the Indebtedness hereby secured, or for any other purpose set forth in any Section of this Mortgage, all such sums shall on notice and demand be paid by the Mortgagor, together with interest thereon at the interest rate equal to higher of the Default Rates provided in the Notes, and shall, if not so paid on demand, be a part of the Indebtedness secured by this Mortgage, provided, however, that in any action or proceeding to foreclose this Mortgage or to recover or collect the Indebtedness secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

### III. EVENTS OF DEFAULT.

The occurrence of one or more of the following events (herein sometimes referred to as "events of default", or singularly an "event of default") shall constitute an event of default hereunder, and all such events of default are individually and collectively included in the term "default" as used herein:

Section 3.01. Default Under Loan Documents. An event of default shall occur under the Loan Agreement, the Notes or any of the Loan Documents, and such event of default is not cured within any applicable grace period provided therein.

Section 3.02. Failure to Pay Other Indebtedness. The Mortgagor shall fail to promptly pay any of the other Indebtedness secured hereby as and when the same shall be due and payable in accordance with the terms hereof, the Loan Agreement, the Loan Documents or of the Notes.

Section 3.03. Failure to Comply with Mortgage Provisions. The Mortgagor shall fail to duly and promptly perform, comply with or observe the terms, covenants, stipulations, conditions and agreements set forth in this Mortgage and such failure shall continue for a period of 30 days after notice thereof in writing from the Mortgagee to the Mortgagor.

Section 3.04. Sale. There shall occur without the Mortgagee's prior written consent any sale, conveyance, further encumbrance, or other transfer of title to the Mortgaged Properties or any interest therein (whether voluntarily or by operation of law), including without limitation:

(a) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, all or any part of the legal and/or equitable title to the Mortgaged Properties or all or substantially all of Mortgagor's assets (except as provided in Paragraphs 13, 14 and 15 of the Loan Agreement);

(b) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any portion of any general partner interest in Mortgagor; or

(c) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, 1% or more of any limited partnership interest in Mortgagor.

The purpose of this Section 3.04 is to protect the Mortgagee's security, keep the Mortgaged Properties free from subordinate liens, and/or allow the Mortgagee to raise the interest rate and collect assumption fees; therefore the prohibitions contained herein shall not apply to the sale, conveyance, assignment, gift or other transfer of a general or limited partner interest in Mortgagor to descendants of Corbin J. and Wilhelmina C. Robertson or to descendants of Stanley R. Morian or to descendants of William L. Mullen, or to trusts for such persons or entities directly or indirectly controlled by such persons or their descendants, provided however that the Mortgagee must be notified in advance of any such transfer.

Any consent by the Mortgagee permitting a transaction otherwise prohibited under this Section 3.04 shall not constitute a consent to or waiver of any right, remedy or power of the Mortgagee to withhold its consent on a subsequent occasion to a transaction not otherwise permitted by the provisions of this Section 3.04, and notwithstanding the giving of such consent Mortgagor shall not engage in any "prohibited transaction" with any "party-in-interest" as such terms are defined in the Employee Retirement Income Security Act of 1974, as amended from time to time.

No such consent shall be considered by the Mortgagee unless the appropriate service fees and legal fees are paid in advance and no such consent shall be given unless Mortgagor agrees, inter alia, that immediately upon closing of the subject sale or transfer, Mortgagor will provide the Mortgagee with a copy of the deed or other instrument conveying title to the subject property to transferee.

Section 3.05. Execution; Attachment. (a) Any execution or attachment shall be levied against the Mortgaged Properties, or any part thereof, and such execution or attachment shall not be set aside, discharged or stayed within 30 days after the same shall have been levied, unless adequate cash reserves are available in the opinion of the Mortgagee to satisfy the execution or attachment and Mortgagor is diligently and in good faith disputing the validity of such execution or attachment, or (b) an order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor adjudicating the Mortgagor a bankrupt or insolvent, or appointing a receiver, trustee for the Mortgagor or of the property, or of all or substantially all of the other assets of the Mortgagor and such order, judgment or decree shall continue unstayed and in effect for a period of 90 days or shall not be discharged within 10 days after the expiration of any stay thereof unless adequate cash reserves are available in the opinion of the Mortgagee to satisfy the order, judgment or decree and the Mortgagor is diligently and in good faith disputing the validity of such order, judgment or decree.

Section 3.06. Change in Zoning. Any change in any zoning ordinance or regulation or any other public restriction materially affecting the Mortgaged Properties as a whole shall be enacted, adopted or implemented, limiting or defining the uses which may be made of the Mortgaged Properties, or any portion thereof, such that the then current use of the Mortgaged Properties would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Section 3.07. Default Under Other Mortgages or Deeds of Trust. An event of default and acceleration (as defined therein) should exist or occur under any other mortgage, deed of trust or other instrument encumbering all or any portion of the Mortgaged Properties, in favor of a party other than Mortgagee, regardless of whether or not the creation of such mortgage, deed of trust or other encumbrance has been previously consented to by Mortgagee.

#### IV. RIGHTS AND REMEDIES.

Except as limited by the provisions of Sections 10(b) and 11 of the Loan Agreement, if one or more of the events of default set forth in Article III above shall occur, and shall not be cured then in each and every such case, the Mortgagee may at any time thereafter exercise any of the following powers, privileges, discretions, rights or remedies:

Section 4.01. Acceleration. Declare (without notice to the Mortgagor) the entire unpaid balance of the Notes and all other Indebtedness secured hereby to be immediately due and

payable, whereupon the same, together with interest accrued thereon and unpaid, shall forthwith become due and payable, without presentment, demand, protest or notice of protest or of dishonor, all of which the Mortgagor hereby waives. In the event the Mortgagee exercises its right to accelerate the Indebtedness, Mortgagor may elect to make payments into the Defeasance Trust, as defined in the Notes, rather than prepayments on the Notes.

Section 4.02. Foreclosure. Take possession of and sell the Mortgaged Properties, or any part thereof as may be determined by the Mortgagee, and in connection therewith the Mortgagor hereby authorizes and empowers the Mortgagee to take possession of and sell the Mortgaged Properties, or any part thereof, all in accordance with the laws of the State of Alabama. In connection with any foreclosure, the Mortgagee may procure such title reports, surveys, tax histories and appraisals as they reasonably deem necessary, and all costs and expenses incurred in connection therewith shall be payable by the Mortgagor or from the proceeds of sale. In case of any sale under this Mortgage, the Mortgaged Properties may be sold as an entirety or in parcels, by one sale or by several sales, as may be deemed by the Mortgagee to be appropriate and without regard to any right of the Mortgagor or any other person to the marshalling of assets. The Mortgagee may, at its sole option, elect to foreclose hereunder before, after or simultaneously with foreclosure or exercise of any one or more other right or remedy available to Mortgagee under the terms of the Additional Deeds of Trust, without regard to any right of the Mortgagor or any other person to the marshalling of assets. Mortgagee shall have the right and is authorized with or without taking possession of the Mortgaged Properties to sell the same before the Court House Door in the City of Birmingham, County of Jefferson, Alabama, at public outcry, for cash, first giving notice of the time, place and terms of said sale by publication once a week for three successive weeks prior to said sale in some newspaper of general circulation published in each of the counties where said property is located, and the Mortgagee or any person conducting said sale for it is authorized to execute to the purchaser at said sale a deed to the property so purchased and such purchaser shall not be held to inquire as to the application of the proceeds of such sale. The Mortgagee may bid at the sale and purchase said property the same as if it was a stranger to this conveyance and the auctioneer or person making said sale is hereby authorized and empowered to make and execute a deed to the purchaser in the name of the Mortgagor. The proceeds of such sale or sales under this Mortgage, shall be held by the Mortgagee and applied as follows: First, to pay all costs, charges and expenses attending the foreclosure of this Mortgage or any sale made as aforesaid, including the costs of any title evidence, advertising said property and a reasonable attorney's fee; Second, to the repayment of any money, with interest thereon,

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which the Mortgagee may have paid or become liable to pay, or which it may then be necessary to pay, for taxes, assessments, insurance and other charges, liens or debts herein provided; Third, to pay all Indebtedness secured hereby and all interest then due and accrued thereon, in such order and manner as the Mortgagee in its sole discretion may determine; and lastly, to pay the surplus, if any, to the Mortgagor or any person entitled thereto upon surrender and delivery to the purchaser or purchasers of the Mortgaged Properties, and less the costs, if any, of obtaining possession.

Section 4.03. Receiver. As a matter of right and to the extent permitted by law, without notice to the Mortgagor, and without regard to the adequacy of the security, and upon application to a court of competent jurisdiction, the Mortgagee shall be entitled to the immediate appointment of a receiver for all or any part of the Mortgaged Properties, and of the rents, income, profits, issues and proceeds thereof and therefrom, whether such receivership be incidental to a proposed sale of the Mortgaged Properties or otherwise, and the Mortgagor hereby consents to the appointment of such a receiver. The Mortgagor will pay to the Mortgagee, upon demand, all expenses, including receiver's fees, attorney's fees, costs and agents' compensation, advanced by the Mortgagee and incurred pursuant to the provisions contained in this Section 4.03; and all such expenses shall be (1) a lien against the Mortgaged Properties, (2) added to the Indebtedness secured by this Mortgage, and (3) payable on demand with interest at the Default Rate.

Section 4.04. Entry and Operation. To the extent permitted by law, and with or without the appointment of a receiver, or an application therefor, Mortgagee may enter upon, and take possession of (and the Mortgagor shall surrender actual possession of), the Mortgaged Properties or any part thereof, without notice to the Mortgagor and without bringing any legal action or proceeding, or, if necessary by legal proceedings, ejectment or otherwise, and may remove and exclude the Mortgagor and its agents and employees and all other persons therefrom, and having and holding the same may make all necessary or proper repairs, replacements and useful or required alterations, additions, betterments or improvements to or upon the same, operate, maintain, control, make secure and preserve the same and receive all earnings, income, profits, rents (including rents accrued and unpaid), and proceeds accruing with respect thereto or any part thereof, such earnings, income, profits, rents and proceeds being hereby assigned to the Mortgagee as additional security for the repayment of the Indebtedness. In so doing, the Mortgagee shall have the right to manage the Mortgaged Properties and to carry on the business of the Mortgagor and may exercise all of the rights and powers of the Mortgagor, either in the name of the Mortgagor, or otherwise, including, but without limiting

the generality of the foregoing, the right to lease the Mortgaged Properties or any part thereof, to cancel, modify, renew or extend any lease or sublease of the Mortgaged Properties or any part thereof and to complete the construction of any unfinished improvements, subject, however, to the rights of any lessees under any lease then in full force and effect. The Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, holding, removal, maintaining, operation or management, except for willful misconduct. Any amounts so received by the Mortgagee shall be applied (i) first, to pay all costs and expenses of so entering upon, taking possession of, holding, operating, maintaining, preserving and managing the Mortgaged Properties or any part thereof including, but not in limitation of the foregoing, reasonable compensation to the attorneys, employees or agents of the Mortgagee engaged or employed with regard thereto, (ii) second, to pay the cost and expense of all repairs, renewals, replacements, alterations, additions, betterments and improvements to or upon the Mortgaged Properties or any part thereof, and (iii) the balance, if any, to such part of the Indebtedness as selected by the Mortgagee. The Mortgagor shall pay on demand to the Mortgagee the amount of any deficiency between (1) the amounts so received by the Mortgagee and (2) all moneys paid or advanced and all costs and expenses incurred (including without limitation reasonable attorney's fees and expenses) by the Mortgagee in exercising the rights provided in this paragraph, and the same shall bear interest at the higher of the Default Rates provided in the Notes and shall be a part of the Indebtedness secured hereby. The exercise of the remedies provided in this Section shall not cure or waive any event of default or notice of an event of default hereunder or invalidate any act done pursuant to such notice, and the enforcement of such remedies, once commenced, shall continue for so long as the Mortgagee shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original event of default.

Section 4.05. Other Remedies. The Mortgagee shall have the right from time to time to enforce any legal or equitable remedy against the Mortgagor and to sue the Mortgagor for any sums (whether interest, damages for failure to pay principal or any installments thereof, Taxes, or any other sums required to be paid under the terms of this Mortgage, as the same become due), without regard to whether or not the Notes secured or any other Indebtedness secured by this Mortgage shall be due, and without prejudice to the right of the Mortgagee thereafter to enforce any appropriate remedy against the Mortgagor, including an action of foreclosure, or any other action, including an action for specific performance, for a default or defaults by the Mortgagor existing at the time such earlier action was commenced. Nothing contained in this Mortgage shall preclude the Mortgagee from exercising or enforcing any rights it may now or hereafter have under or pursuant to any separate instrument of guaranty.

Section 4.06. Uniform Commercial Code. The Mortgagee shall have the right to proceed under the Code as to all or any part of the Equipment or any other Mortgaged Property subject to the Code, and in conjunction therewith to exercise all of the rights, remedies and powers of a secured party under the Code.

Section 4.07. Remedies, etc. Cumulative. Each right, power or remedy of the Mortgagee as provided for in this Mortgage or in any of the other Loan Documents, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage or in any of the Loan Documents, and the exercise or beginning of the exercise by the Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Mortgagee of any or all such other rights, powers or remedies.

Section 4.08. No Waiver, etc. No failure or delay by the Mortgagee to insist upon the strict performance of any term, condition, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, covenant or agreement or of any such breach, or preclude the Mortgagee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any amount payable under this Mortgage or under any of the other Loan Documents, the Mortgagee shall not be deemed to waive the right either to require prompt payment when due of all other amounts payable under this Mortgage or under any of the other Loan Documents, or to declare a default for failure to effect such prompt payment of any such other amount. Neither the Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the Indebtedness now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Properties or any part thereof, or by the Mortgagee extending the time of payment or modifying the terms of the Notes or this Mortgage without first having obtained the consent of the Mortgagor or such other person, and in the latter event, the Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Properties, the Mortgagee may release the

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obligation of any person at any time liable for any of the Indebtedness secured by this Mortgage or any part of the security held for the Indebtedness and may extend the time of payment or otherwise modify the terms of the Notes or this Mortgage without, as to the security or the remainder thereof, in anywise impairing or affecting the lien or security interest of this Mortgage or the priority of such lien or security interest, as security for the payment of the Indebtedness as it may be so extended or modified, over any subordinate lien. The holder of any subordinate lien shall have no right to terminate any lease affecting the Mortgaged Properties whether or not such lease be subordinate to this Mortgage. The Mortgagee may resort for the payment of the Indebtedness secured hereby to the property or to any other security or collateral therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

#### V. MISCELLANEOUS

Section 5.01. Notice. If any party desires or is required under this Mortgage to give any notice to any other party, such notice must be written and may be personally delivered, mailed or sent by such other delivery service which provides dated proof of receipt to the address set forth below for such party. Such notice shall be deemed given on the date shown on the proof of receipt. Addresses for notices may be changed by a notice delivered or mailed as herein provided. The addresses are:

##### To Mortgagee

The Travelers Insurance Company  
2250 Lakeside Boulevard, Suite 500  
Richardson, Texas 75081

P. O. Box 650252  
Dallas, Texas 75265-0252

Attention: Regional Director  
Agricultural Department

With a copy to:

Jackson, Kelly, Holt & O'Farrell  
1600 Laidley Tower  
P. O. Box 553  
Charleston, West Virginia 25322

Attention: Harvey A. Siler, Esq.

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To Mortgagor

Western Pocahontas Properties Limited Partnership  
40th Floor  
601 Jefferson Street  
Houston, Texas 77002

Attention: Corbin J. Robertson, Jr.

With copies to:

Vinson & Elkins  
1001 Fannin Street  
Houston, Texas 77002-6760

Attention: Bert L. Campbell, Esq.

and

W. W. Scott  
Suite 2300  
601 Jefferson Street  
Houston, TX 77002

Section 5.02. Definitions. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the words "Mortgage" shall mean this Mortgage and any supplement or supplements hereto, the word "person" shall mean "an individual, corporation, partnership, unincorporated association, or any other legal entity," and pronouns of any gender shall include the other genders, and either the singular or plural shall include the other.

Section 5.03. Successors and Assigns. All of the grants, covenants, terms, provisions and conditions herein shall run with the Mortgage Properties and shall apply to, and bind the heirs, personal representatives, successors and assigns of the Mortgagor (including any permitted subsequent owner of the Mortgaged Properties, or any portion thereof), and inure to the benefit of the Mortgagee, its successors and assigns.

Section 5.04. Amendments. This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 5.05. Illegality. If fulfillment of any provision hereof or any transaction related hereto or to the Notes, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or

provisions herein contained, other than the provisions requiring the Mortgagor to pay interest, principal, principal and interest, or any other of the Indebtedness secured by this Mortgage, operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be void, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect; and if such clause or provision requires the Mortgagor to pay interest, principal, principal and interest or any other of the Indebtedness secured by this Mortgage, then at the option of the Mortgagee, the entire unpaid principal of the Notes, with all unpaid interest accrued thereon and all other unpaid Indebtedness secured by this Mortgage shall become due and payable.

Section 5.06. Governing Law. This Mortgage shall be construed, governed and enforced in accordance with the laws in effect from time to time in the State of Alabama.

Section 5.07. Headings. The section headings in this Mortgage are for convenience only, and shall not limit or otherwise affect any of the terms hereof.

Section 5.08. Entire Agreement. The Loan Documents contain the entire agreement between the Mortgagor and the Mortgagee relating to or connected with the Loan, as defined in the Loan Agreement. Any other agreements relating to or connected with the Loan not expressly set forth in the Loan Documents are null and void and superseded in their entirety by the provisions of the Loan Documents.


Section 5.09. Counterparts. This Mortgage may be executed in any number of separate counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed under seal the day and year first written above.

WESTERN POCAHONTAS PROPERTIES LIMITED  
PARTNERSHIP, a Delaware limited  
partnership

By: Western Pocahontas Corporation, a  
Texas corporation, its General  
Partner

By:

  
Corbin J. Robertson, Jr.  
Chairman of the Board of Directors  
and Chief Executive Officer

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STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

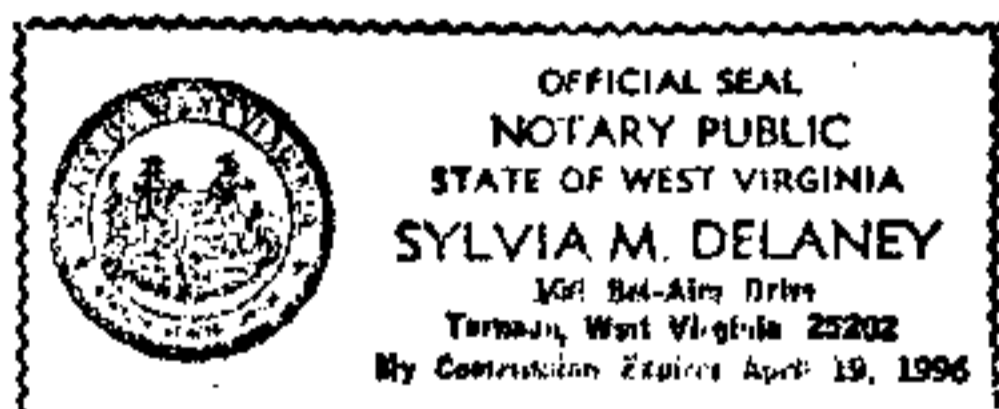
BOOK 165 PAGE 360  
I, the undersigned authority a Notary Public in and for the State and County, hereby certify that Corbin J. Robertson, Jr., whose name as Chairman of the Board of Directors and Chief Executive Officer of WESTERN POCAHONTAS CORPORATION, a Texas corporation, the General Partner of WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, as General Partner of Western Pocahontas Properties Limited Partnership, a limited partnership.

Given under my hand and official seal, this 16th day of December, 1987.

[SEAL]

*Sylvia M. Delaney*  
Notary Public

My commission expires the 19<sup>th</sup> day of April, 1994.



This instrument was prepared by John R. Lukens, Jackson, Kelly, Holt & O'Farrell, 1600 Laidley Tower, P. O. Box 553, Charleston, West Virginia 25322.

EXHIBIT A

EXHIBIT A TO ALABAMA MORTGAGE

<u>Deed dated</u> <u>December 31, 1986, from:</u>	<u>County</u>	<u>DB/VOL</u>	<u>PG</u>
CSX Transportation Inc.	Bibb	123	236
CSX Transportation Inc.	Blount	317	229
CSX Transportation Inc.	Chilton	25	886
CSX Transportation Inc.	Cullman	389 (Fiche)	A-1 (Frame)
CSX Transportation Inc.	Jefferson	3083	870
CSX Transportation Inc.	Morgan	1207	360
CSX Transportation Inc.	St. Clair	159	133
CSX Transportation Inc.	Shelby	112	876
CSX Transportation Inc.	Tuscaloosa	939	385
CSX Transportation Inc.	Walker	1283	712

Exhibit B

Exhibit B to Mortgage

PROMISSORY NOTE

\$70,000,000

Charleston, West Virginia  
December 16, 1987

FOR VALUE RECEIVED, the undersigned, Western Pocahontas Properties Limited Partnership, a Delaware limited partnership ("Borrower"), does hereby promise to pay to the order of The Travelers Insurance Company, a Connecticut corporation ("Travelers"), c/o Chase Manhattan Bank, One Chase Manhattan Plaza, New York, New York 10081, Account No. 910-2-524155, The Travelers Insurance Company, REID Remittance Account, Reference: Loan No. 204660-2, Attention: Southern Region; or at such other address and in such other manner as the holder hereof may designate in writing, the principal sum of Seventy Million Dollars (\$70,000,000) (this Note is issued pursuant to the Loan Agreement dated December 3, 1987 (the "Loan Agreement")) together with interest on the unpaid principal balance outstanding on this Note which shall be calculated on the basis of a year of 365 days at an annual rate of 11.35% (the "Note Rate"), payable as follows:

(a) Commencing on the first day of February, 1988, and on the same day of each of the next succeeding 143 calendar months thereafter, a payment of principal and interest in the amount of \$811,069.73 shall be due and payable.

(b) On January 1, 2000 (the "Maturity Date") a payment in the amount of all accrued interest and all principal remaining unpaid shall be due and payable.

Terms which are defined in the Loan Agreement are used herein as so defined.

If any payment coming due on this Note is not paid on or before the second business day after its due date, Travelers may impose a late charge equal to 1% of the delinquent amount (the "Late Charge"). If the period of non-payment exceeds 10 days and the Loan has not been accelerated, in addition to the Late Charge Travelers may impose interest of 4% per annum IN ADDITION TO THE NOTE RATE (such total being sometimes herein called the "Default Rate") on the delinquent amount from the due date of the payment to the date such delinquent amount is

paid. If Travelers accelerates the Loan, the Default Rate shall apply to the entire Loan balance.

Borrower specifically waives all demands for payment, presentation for payment, notices of non-payment, protests, notices of intention to accelerate maturity and notices of acceleration of maturity, with respect to any acceleration of the maturity of the principal of this Note resulting from an Event of Default under the terms of this Note or the Loan Agreement.

A failure to pay principal and interest coming due on this Note will not be an Event of Default if it is paid within 10 days of its due date, but Travelers may, nonetheless, impose a Late Charge.

All payments on account of the indebtedness evidenced hereby shall be applied first to the payment of any Late Charge, then to interest and then to the reduction of principal.

This Note may be prepaid under the following terms and conditions but not otherwise:

(1) On prepayments of principal made during the period beginning on December 31, 1987 and ending January 31, 1998, a prepayment premium shall be payable in an amount equal to the product of the following factors:

(i) The amount by which the interest rate which this Note bears on the prepayment date exceeds the yield of the 11 3/4% United States Treasury Notes maturing February of 2001, as reported in the Wall Street Journal or other daily financial publication of national circulation on the fifth business day preceding the prepayment date; multiplied by

(ii) The number of years and any fractions of years (based on a 365 day year) remaining between such prepayment date and the Maturity Date; multiplied by

(iii) The principal amount being prepaid on this Note.

(2) On prepayments of principal made during the period beginning February 1, 1998 and ending January 31, 1999, a prepayment premium shall be payable in an amount equal to 5% of the prepaid principal amount.

(3) On prepayments of principal made during the period beginning February 1, 1999 and ending December 31, 1999, a prepayment premium shall be payable in an amount equal to 4% of the prepaid principal amount.

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(4) There shall be no prepayment premium at maturity.

(5) No prepayments shall be made on this Note until the \$35,000,000 Note made by Borrower payable to Travelers dated of even date herewith has been paid in full (said payment in full to include principal, interest, any Late Charge, prepayment premium and all costs and expenses).

(6) In no event shall any prepayment premium be less than an amount equal to 3% of the principal amount being prepaid except as otherwise herein expressly provided for.

(7) Prepayment shall mean any event whereby the Loan is fully or partly satisfied prior to its Maturity Date in any manner, whether voluntarily or involuntarily (other than by receipt of insurance or condemnation proceeds) including without limitation any reduction in principal as a result of the release of any of the collateral securing payment of the Loan, any payment after default, any payment after the Maturity Date is accelerated, any payment by any holder of a subordinate interest in the Mortgaged Premises, any payment by any sale under court order or trustee's sale or deed in lieu thereof, or any payment by sale or other method under any bankruptcy or insolvency proceedings. Travelers shall not be required to accept any prepayment if it does not include payment of the required premium. Upon acceleration of the maturity of the Loan, the prepayment premium shall be the amount that would be due if a voluntary prepayment were allowed and made at the time of such acceleration, the date of acceleration being deemed to be the date of prepayment. Borrower and Travelers agree that if the Loan is prepaid for any reason (other than by application of insurance or condemnation proceeds) Travelers shall receive the applicable prepayment premium as compensation for the cost of reinvesting the prepayment proceeds and for the loss of the contracted-for return on the Loan and that the amount of the applicable prepayment premium is reasonable.

In order to permit the release of collateral held as security for this Note prior to the Maturity Date and for the payment of monies that otherwise would or could be prepaid on this Note and would result in a prepayment premium, Travelers and Borrower agree that on the occurrence of any event which would otherwise require or allow prepayment on this Note and a prepayment premium (a "Defeasance Event"), including, without limitation, (a) payments for partial or complete release of the Mortgaged Premises, (b) severance payments for timber, (c) excess mining, (d) the election of Borrower to obtain partial or complete release of the Mortgaged Premises, or (e) Borrower's voluntary payments. Borrower shall Defeasance that portion of the obligation evidenced hereby which Borrower desires to Defeasance or which would otherwise be required to be paid on such Defeasance Event. Unless otherwise specifically provided herein, the amount to be Defeased to obtain a partial

or complete release shall be an amount acceptable to Travelers. To Defease a portion of the obligation evidenced hereby, Borrower shall acquire and pledge Eligible Securities (as hereinafter defined) and place in a defeasance trust those Eligible Securities having cash flows from interest and principal which will assure timely payment of interest and principal on this Note and the fees of the trustee designated by Travelers (the "Trustee") allocable to the portion of the obligation so Defeased. The Defeasance provisions apply to (but are not limited to) timber Severance, excess mining and release of portions of the Mortgaged Premises. Notwithstanding any other provision in any Loan Document, Defeasance will be permitted only if Travelers shall have a valid, enforceable beneficial and security interest in the defeasance trust prior to any other rights or claims.

"Eligible Securities" are defined as U. S. Treasury Securities backed by the full faith and credit of the Government of the United States of America which mature on or prior to the Maturity Date of this Note or other securities approved in writing by Travelers. For the purpose of determining whether the cash flows from interest and principal on the Eligible Securities pledged to the Trustee will assure timely payment of principal and interest on this Note and fees of the Trustee, it shall be assumed that any Eligible Securities which mature prior to the Maturity Date will be reinvested in other Eligible Securities at an annual interest rate of 2-1/2%. To the extent that any Eligible Security matures prior to the Maturity Date, the Trustee will reinvest the proceeds in other Eligible Securities selected by Borrower and with the reasonable approval of Travelers.

In any event, and notwithstanding any other provision hereof, to the extent so required by applicable law at the time the Eligible Securities are pledged, the market value of securities pledged to the Trustee (at the time of each such pledge) shall not be less than the principal amount of the Loan defeased by such pledge.

Morgan Guaranty Bank (unless another trustee is chosen by Borrower and Travelers) shall be the Trustee of the defeasance trust and Travelers shall be the Beneficiary thereof. As a condition to any Defeasance, Travelers shall have a valid first priority security interest in the defeasance trust so that Travelers will have enforceable rights therein on the occurrence of an Event of Default and will be entitled to the proceeds thereof as required for payment of principal and interest on this Note.

The Trustee shall apply monthly any available income earned from investments by the defeasance trust to pay the Trustee's fees and interest on the Note as the same come due and the balance, if any, to principal installments on the Loan as the same come due.

Notwithstanding the pledge of Eligible Securities to the defeasance trust, Borrower shall (subject to such reductions as may result from application of funds from the defeasance trust to pay interest) continue to pay interest on this Note as it falls due and Borrower shall observe and perform all other obligations under the Note and Loan Documents as they fall due. At the Maturity Date of this Note the assets of the defeasance trust shall be liquidated and applied to pay the principal outstanding on this Note and any other sum due on the Loan, including accrued and unpaid interest. Any excess monies in the defeasance trust shall be paid to Borrower. Borrower shall provide Travelers with documents, reasonably satisfactory in form and substance to Travelers, creating a security interest in the defeasance trust and all proceeds thereof to Travelers as security for this Note free of any intervening or prior liens.

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If the debt evidenced by this Note is fully Defeased, and if Travelers then has a valid, enforceable beneficial and security interest in the defeasance trust prior and superior to any other rights or claims, existing or prospective, Travelers will release all of the Mortgaged Premises and all other collateral securing this Note from the lien of the Loan Documents, and all of Borrower's non-monetary covenants in the Loan Documents shall terminate except for the obligations to provide annual audited financial statements set forth in the Loan Agreement and such other matters as Travelers reasonably shall determine to be essential to preservation of its interest in the security of the defeasance trust, such determination to be set out in a written notice to Borrower. As used herein, the debt evidenced by this Note shall be "fully defeased" when there are sufficient Eligible Securities in the defeasance trust which have cash flows from interest and principal for payment of the principal balance owing on this Note as it falls due, for payment of interest on this Note as it falls due, for the balance of the term of this Note, and for payment of the Trustee's fees and other expenses of the Trust to be paid during the remaining term of the Trust. On full payment of all indebtedness evidenced by this Note, Travelers or the Trustee shall return the Note to Borrower.

This Note, together with Borrower's note of even date herewith in the original principal sum of \$35,000,000 to Travelers (the "Notes") evidence the Loan made available by Travelers to Borrower pursuant to the terms of the Loan Agreement.

Payment of the Notes is secured under and the Notes are described in the Loan Documents, including without limitation certain Mortgages, Security Agreements, Assignments of Rents and Leases dated of even date herewith.

In the event default shall be made in the payment of any installment of the principal or interest as and when due on this Note, or any part thereof, or upon the occurrence of an Event of Default under the terms of the Loan Agreement, then, upon the expiration of any applicable grace period herein or therein provided, the entire unpaid principal balance of this Note, together with all interest accrued thereon, shall, at the option of Travelers or the holder hereof, without notice, immediately become due and payable for all purposes, and Travelers or the holder may exercise the rights and remedies provided for in the Loan Agreement and the Loan Documents and under applicable law.

This Note may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Should the indebtedness represented by this Note or any part thereof be collected at law or in equity, or in bankruptcy, receivership or any other court proceedings (whether at the trial or appellate level), or should this Note be placed in the hands of attorneys for collection upon default, the Borrower agrees to pay, in addition to the principal, premium and interest due and payable hereon, all costs of collection or attempting to collect this Note, including reasonable attorneys' fees and expenses.

This Note is to be construed and enforced in accordance with the laws of the State of West Virginia.

WESTERN POCAHONTAS PROPERTIES  
LIMITED PARTNERSHIP, a Delaware  
limited partnership

By: Western Pocahontas Corporation,  
its General Partner, a Texas  
Corporation

By: \_\_\_\_\_  
Corbin J. Robertson, Jr.  
Chairman of the Board of  
Directors and Chief Executive  
Officer

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Exhibit C

Exhibit C to Mortgage

PROMISSORY NOTE

\$35,000,000

Charleston, West Virginia  
December 16, 1987

FOR VALUE RECEIVED, the undersigned, Western Pocahontas Properties Limited Partnership, a Delaware limited partnership ("Borrower"), does hereby promise to pay to the order of The Travelers Insurance Company, a Connecticut corporation ("Travelers"), c/o Chase Manhattan Bank, One Chase Manhattan Plaza, New York, New York 10081, Account No. 910-2-524155, The Travelers Insurance Company, REID Remittance Account, Reference: Loan No. 204660-2, Attention: Southern Region; or at such other address and in such other manner as the holder hereof may designate in writing, the principal sum of Thirty-Five Million Dollars (\$35,000,000) together with interest on the unpaid principal balance outstanding on this Note which shall be calculated on the basis of a year of 365 days at the annual rate(s) (the "Note Rate") set out below. This note is issued pursuant to the Loan Agreement dated December 3, 1987 (the "Loan Agreement"). The interest rate applicable to this Note shall be calculated as follows:

(a) The interest rate on this Note, subject to adjustment as hereinafter provided, shall be 10.05% per annum.

(b) Notwithstanding anything in this Note to the contrary, it is specifically agreed that Travelers shall have the right to adjust the rate of interest which will accrue upon the principal balance of this Note from January 1, 1991 until the Maturity Date subject to earlier adjustment as herein set forth, provided that in no event shall such rate of interest be increased above the highest rate of interest allowed by law to be charged on this Note. In the event Travelers so elects to adjust the interest rate, Travelers shall, on or before November 1, 1990, notify the Borrower of the adjusted interest rate which this Note will bear beginning January 1, 1991; and thereupon Borrower shall have until December 1, 1990 in which to either accept or reject the adjusted interest rate. If Borrower accepts the adjusted interest rate, Borrower shall, on or before December 1, 1990, deliver to Travelers Borrower's written agreement to the adjusted rate of interest which this Note will bear beginning January 1, 1991 until January 1, 2000 (the "Maturity Date") subject to earlier adjustment as

hereinafter provided, and Travelers shall adjust the monthly payment of principal and interest to an amount necessary to amortize the unpaid principal balance of this Note, at the then applicable interest rate over the remainder of a hypothetical loan term of 15 years. If Borrower rejects the adjusted interest rate, Borrower agrees to so notify Travelers in writing on or before December 1, 1990; provided however that if Borrower has not delivered to Travelers on or before December 1, 1990, the Borrower's written agreement to the adjusted interest rate, then Borrower shall be conclusively deemed to have rejected the adjusted interest rate. If Borrower rejects the adjusted interest rate, then the entire principal balance then remaining unpaid hereon together with accrued interest thereon shall mature and become due and payable on January 1, 1991.

(c) Notwithstanding anything in this Note to the contrary, it is specifically agreed that Travelers shall have the right to adjust the rate of interest which will accrue upon the principal balance of this Note from January 1, 1994 until the Maturity Date subject to earlier adjustment as herein set forth, provided that in no event shall such rate of interest be increased above the highest rate of interest allowed by law to be charged on this Note. In the event Travelers so elects to adjust the interest rate, Travelers shall, on or before November 1, 1993, notify the Borrower of the adjusted interest rate which this Note will bear beginning January 1, 1994; and thereupon Borrower shall have until December 1, 1993 in which to either accept or reject the adjusted interest rate. If Borrower accepts the adjusted interest rate, Borrower shall, on or before December 1, 1993, deliver to Travelers Borrower's written agreement to the adjusted rate of interest which this Note will bear beginning January 1, 1994 until the Maturity Date subject to earlier adjustment as hereinafter provided, and Travelers shall adjust the monthly payment of principal and interest to an amount necessary to amortize the unpaid principal balance of this Note, at the then applicable interest rate over the remainder of a hypothetical loan term of 15 years. If Borrower rejects the adjusted interest rate, Borrower agrees to so notify Travelers in writing on or before December 1, 1993; provided however that if, Borrower has not delivered to Travelers on or before December 1, 1993 the Borrower's written agreement to the adjusted interest rate, then Borrower shall be conclusively deemed to have rejected the adjusted interest rate. If Borrower rejects the adjusted interest rate, then the entire principal balance then remaining unpaid hereon together with accrued interest thereon shall mature and become due and payable on January 1, 1994.

(d) Notwithstanding anything in this Note to the contrary, it is specifically agreed that Travelers shall have the right to adjust the rate of interest which will accrue upon the principal balance of this Note from January 1, 1997 until the Maturity Date, provided that in no event shall such rate of

interest be increased above the highest rate of interest allowed by law to be charged on this Note. In the event Travelers so elects to adjust the interest rate, Travelers shall, on or before November 1, 1996, notify the Borrower of the adjusted interest rate which this Note will bear beginning January 1, 1997; and thereupon Borrower shall have until December 1, 1996 in which to either accept or reject the adjusted interest rate. If Borrower accepts the adjusted interest rate, Borrower shall, on or before December 1, 1996, deliver to Travelers Borrower's written agreement to the adjusted rate of interest which this Note will bear beginning January 1, 1997 until the Maturity Date and Travelers shall adjust the monthly payment of principal and interest to an amount necessary to amortize the unpaid principal balance of this Note, at the then applicable interest rate over the remainder of a hypothetical loan term of 15 years. If Borrower rejects the adjusted interest rate, Borrower agrees to so notify Travelers in writing on or before December 1, 1996; provided however that if, Borrower has not delivered to Travelers on or before December 1, 1996 the Borrower's written agreement to the adjusted interest rate, then Borrower shall be conclusively deemed to have rejected the adjusted interest rate. If Borrower rejects the adjusted interest rate, then the entire principal balance then remaining unpaid hereon together with accrued interest thereon shall mature and become due and payable on January 1, 1997.

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Borrower specifically waives all demands for payment, presentations for payment, notices of non-payment, protests, notices of intention to accelerate maturity and notices of acceleration of maturity, with respect to any acceleration of the maturity of the principal of this Note occasioned by Borrower's rejection of an adjusted interest rate as above provided.

Any notice of an adjustment in the interest rate to be given by Travelers to Borrower as above provided, or any other notice given by Travelers to Borrower, shall be delivered to Borrower as follows:

Such notice must be written and may be personally delivered, mailed or sent by such other delivery service which provides dated proof of receipt to the address set forth below for such party. Such notice shall be deemed given on the date shown on the proof of receipt. Addresses for notices may be changed by a notice delivered or mailed as herein provided. The address is:

Western Pocahontas Properties Limited Partnership  
40th Floor  
601 Jefferson Street  
Houston, Texas 77002

Attention: Corbin J. Robertson, Jr.

With copies to:

Vinson & Elkins  
1001 Fannin Street  
Houston, Texas 77002-6760

Attention: Bert L. Campbell, Esq.

and

Mr. W. W. Scott  
Suite 2300  
601 Jefferson Street  
Houston, Texas 77002

Any written agreement of Borrower to an adjusted interest rate, any notice of rejection of an adjusted interest rate, or any other notice to be given by Borrower to Travelers as above provided shall be delivered to Travelers as follows:

Such notice must be written and may be personally delivered, mailed or sent by such other delivery service which provides dated proof of receipt to the address set forth below for such party. Such notice shall be given on the date shown on the proof of receipt. Addresses for notices may be changed by a notice delivered or mailed as herein provided. The address is:

The Travelers Insurance Company  
2250 Lakeside Boulevard, Suite 500  
Richardson, Texas 75081

P. O. Box 650252  
Dallas, Texas 75265-0252

Attention: Regional Director,  
Agricultural Department

With copies to:

Jackson, Kelly, Holt & O'Farrell  
1600 Laidley Tower  
P. O. Box 553  
Charleston, West Virginia 25322

Attention: Harvey A. Siler, Esquire

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and

Mr. S. Plato Kirby, Jr.  
General Manager  
The Travelers Companies  
201 East Pine Street  
P. O. Box 3555  
Orlando, Florida 32802

The principal and interest on this Note shall be paid as follows:

(a) Commencing on the first day of February, 1988, and on the first day of each month thereafter until the Maturity Date, subject to earlier adjustment as herein provided, a payment of principal and interest on the principal balance in an amount of \$377,183.12.

(b) In any and all events, on the Maturity Date, all accrued interest and principal remaining unpaid shall be due and payable.

Terms which are defined in the Loan Agreement are used herein as so defined.

If any payment coming due on this Note is not paid on or before the second business day after its due date, Travelers may impose a late charge equal to 1% of the delinquent amount (the "Late Charge"). If the period of non-payment exceeds 10 days and the indebtedness evidenced by this Note has not been accelerated, in addition to the Late Charge Travelers may impose interest of 4% per annum IN ADDITION TO THE NOTE RATE (such total being sometimes herein called the "Default Rate") on the delinquent amount from the due date of the payment to the date such delinquent amount is paid. If Travelers accelerates the Loan, the Default Rate shall apply to the entire Loan balance.

Borrower specifically waives all demands for payment presentation for payment, notices of non-payment, protests, notices of intention to accelerate maturity and notices of acceleration of maturity, with respect to any acceleration of the maturity of the principal of this Note resulting from an Event of Default under the terms of this Note or the Loan Agreement.

A failure to pay principal and interest coming due on this Note will not be an Event of Default if it is paid within 10 days of its due date, but Travelers may, nonetheless, impose a Late Charge.

All payments on account of the indebtedness evidenced hereby shall be applied first to the payment of any Late Charge, then to interest and then to the reduction of principal.

This Note may be prepaid under the following terms and conditions but not otherwise:

(1) At any time during the month of December, 1990, or during the month of December, 1993, or during the month of December, 1996, Borrower may prepay the principal of this Note, or any part thereof, without payment of any prepayment premium; provided that on the date any such prepayment of principal is made Borrower shall also pay the unpaid interest accrued upon the principal amount prepaid through the month of December for that year; and

(2) At any other time prior to the Maturity Date, upon Borrower having given Travelers 30 days prior written notice thereof, Borrower may prepay the principal of this Note, or any part thereof, by paying on the prepayment date designated by Borrower, in addition to the principal amount prepaid, the unpaid interest accrued upon the principal amount prepaid to the prepayment date and a prepayment premium, which prepayment premium shall be computed as follows:

(a) On prepayments of principal made during the period beginning December 31, 1987 through and including November 30, 1990, a prepayment premium shall be payable in an amount equal to the product of the following factors:

(i) The amount by which the interest rate which this Note bears on the prepayment date exceeds the yield of the 11 3/4% United States Treasury Notes maturing January of 1991 as reported in the Wall Street Journal or other daily financial publication of national circulation on the fifth business day preceding the prepayment date; multiplied by

(ii) The number of years and any fractions of years (based on a 365 day year) remaining between such prepayment date and January 1, 1991; multiplied by

(iii) The principal amount being prepaid on this Note.

(b) On prepayments of principal made during the period of time beginning January 1, 1991 through and including November 30, 1993, a prepayment premium shall be payable in an amount equal to the product of the following factors:

(i) The amount by which the interest rate which this Note bears on the prepayment date exceeds the yield of the 7% United States Treasury Notes maturing January of

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1994, as reported in the Wall Street Journal or other daily financial publication of national circulation on the fifth business day preceding the prepayment date; multiplied by

(ii) The number of years and any fractions of years (based on a 365 day year) remaining between such prepayment date and January 1, 1994; multiplied by

(iii) The principal amount being prepaid on this Note.

(c) On prepayments of principal made during the period of time beginning January 1, 1994 through and including November 30, 1996, a prepayment premium shall be payable in an amount equal to the product of the following factors:

(i) The amount by which the interest rate which this Note bears on the prepayment date exceeds the yield of the 8 5/8% United States Treasury Notes maturing August of 1997 as reported in the Wall Street Journal or other daily financial publication of national circulation on the fifth business day preceding the prepayment date; multiplied by

(ii) The number of years and any fractions of years (based on a 365 day year) remaining between such prepayment date and January 1, 1997; multiplied by

(iii) The principal amount being prepaid on this Note.

(d) There shall be no prepayment premium at maturity. On prepayments of principal made during the period of time beginning January 1, 1997 up to the Maturity Date, a prepayment premium shall be payable in an amount equal to the product of the following factors:

(i) The amount by which the interest rate which this Note bears on the prepayment date exceeds the yield of the 11 3/4% United States Treasury Notes maturing February of 2001, as reported in the Wall Street Journal or other daily financial publications of national circulation on the fifth business day preceding the prepayment date; multiplied by

(ii) The number of years and any fractions of years (based on a 365 day year) remaining between such prepayment date and the Maturity Date; multiplied by

(iii) The principal amount being prepaid on this Note.

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(e) In no event shall any prepayment premium on this Note be less than an amount equal to 3% of the principal amount being prepaid, except as provided for herein.

(f) It is further agreed that in the event the Debtor prepays \$10,000,000 or more of the principal of this Note during the month of December, 1993, or during the month of December, 1996, under the provisions of subsection (1) hereof, Travelers shall adjust the monthly payment of principal and interest to an amount necessary to amortize the then unpaid principal balance of this Note, which balance shall reflect the prepayment of \$10,000,000 or more, at the then applicable interest rate over the remainder of a hypothetical loan term of 15 years. Otherwise, Travelers shall not be obligated to recalculate the amortization of the principal of this Note because of a prepayment of principal.

(g) Prepayment shall mean any event whereby the Loan is fully or partly satisfied prior to the Maturity Date in any manner, whether voluntarily or involuntarily (other than by receipt of insurance or condemnation proceeds) including without limitation any reduction in principal as a result of the release of any of the collateral securing payment of the Loan, any payment after default, any payment after the Maturity Date is accelerated, any payment by any holder of a subordinate interest in the Mortgaged Premises, any payment by any sale under court order or trustee's sale or deed in lieu thereof, or any payment by sale or other method under any bankruptcy or insolvency proceedings. Travelers shall not be required to accept any prepayment if it does not include payment of the required premium. Upon acceleration of the maturity of the Loan, the prepayment premium shall be the amount that would be due if a voluntary prepayment were allowed and made at the time of such acceleration, the date of acceleration being deemed to be the date of prepayment. Borrower and Travelers agree that if the Loan is prepaid for any reason (other than by application of insurance or condemnation proceeds) Travelers shall receive the applicable prepayment premium as compensation for the cost of reinvesting the prepayment proceeds and for the loss of the contracted-for return on the Loan and that the amount of the applicable prepayment premium is reasonable.

In order to permit the release of collateral held as security for this Note prior to the Maturity Date and for the payment of monies that otherwise would or could be prepaid on the Note and would result in a prepayment premium, Travelers and Borrower agree that on the occurrence of any event which would otherwise require or allow prepayment on this Note and a prepayment premium (a "Defeasance Event"), including, without limitation, (a) payments for partial or complete release of the Mortgaged Premises, (b) severance payments for timber, (c)

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excess mining, (d) on the election of Borrower to obtain partial or complete release of the Mortgaged Premises, or (e) Debtor's voluntary payments, Borrower shall Defease that portion of the obligation evidenced hereby which Borrower desires to Defease or which would otherwise be required to be paid on such Defeasance Event. Unless otherwise specifically provided herein, the amount to be Defeased to obtain a partial or complete release shall be an amount acceptable to Travelers. To Defease a portion of the obligation evidenced hereby, Borrower shall acquire and pledge Eligible Securities (as hereinafter defined) and place in a defeasance trust those Eligible Securities having cash flows from interest and principal which will assure timely payment of interest and principal on this Note and the fees of the trustee designated by Travelers (the "Trustee") allocable to the portion of the obligation so Defeased. The Defeasance provisions apply to (but are not limited to) timber severance, excess mining and release of portions of the Mortgaged Premises. Notwithstanding any other provision in any Loan Document, Defeasance will be permitted only if Travelers shall have a valid, enforceable beneficial and security interest in the defeasance trust prior to any other rights or claims.

"Eligible Securities" are defined as U. S. Treasury Securities backed by the full faith and credit of the Government of the United States of America which mature on or prior to the Maturity Date of this Note or other securities approved in writing by Travelers. For the purpose of determining whether the cash flows from interest and principal on the Eligible Securities pledged to the Trustee will assure timely payment of principal and interest on this Note and fees of the Trustee, it shall be assumed that any Eligible Securities which mature prior to the Maturity Date will be reinvested in other Eligible Securities at an annual interest rate of 2-1/2%. To the extent that any Eligible Security matures prior to the Maturity Date, the Trustee will reinvest the proceeds in other Eligible Securities selected by Borrower and with the reasonable approval of Travelers.

In any event, and notwithstanding any other provision hereof, to the extent so required by applicable law at the time the Eligible Securities are pledged, the market value of securities pledged to the Trustee (at the time of each such pledge) shall not be less than the principal amount of the Loan defeased by such pledge.

Morgan Guaranty Bank (unless another trustee is chosen by Borrower and Travelers) shall be the trustee of the defeasance trust and Travelers shall be the Beneficiary thereof. As a condition to any Defeasance, Travelers shall have a valid first priority security interest in the defeasance trust so that Travelers will have enforceable rights therein on the occurrence of an Event of Default and will be entitled to

the proceeds thereof as required for payment of principal and interest on this Note.

The Trustee shall apply monthly any available income earned from investments by the Defeasance Trust to pay the Trustee's fees and interest on this Note as the same come due and the balance, if any, to principal installments on this Note as the same come due.

Notwithstanding the pledge of Eligible Securities to the Defeasance Trust, Borrower shall (subject to such reductions as may result from application of funds from the Defeasance Trust to pay interest) continue to pay interest on this Note as it falls due and Borrower shall observe and perform all other obligations under the Note and Loan Documents, as they fall due. At the Maturity Date of this Note the assets of the defeasance trust shall be liquidated and applied to pay the principal outstanding on this Note and any other sum due on the Loan, including accrued and unpaid interest. Any excess monies in the defeasance trust shall be paid to Borrower. Borrower shall provide Travelers with documents, reasonably satisfactory in form and substance to Travelers, creating a security interest in the defeasance trust and all proceeds thereof to Travelers as security for this Note free of any intervening or prior liens.

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If the debt evidenced by this Note is fully Defeased, and if Travelers then has a valid, enforceable beneficial and security interest in the defeasance trust prior and superior to any other rights or claims, existing or prospective, Travelers will release all of the Mortgaged Premises and all other collateral securing this Note from the lien of the Loan Documents and all of Borrower's non-monetary covenants in the Loan Documents shall terminate except for the obligations to provide annual audited financial statements set forth in the Loan Agreement and such other matters as Travelers reasonably shall determine to be essential to preservation of its interest in the security of the defeasance trust, such determination to be set out in a written notice to Borrower. As used herein, the debt evidenced by this Note shall be "fully defeased" when there are sufficient Eligible Securities in the defeasance trust which have cash flows from interest and principal for payment of the principal balance owing on this Note as it falls due, for payment of interest on this Note as it falls due, for the balance of the term of this Note, and for payment of the trustee's fees and other expenses of the trust to be paid during the remaining term of the trust. On full payment of all indebtedness evidence by this Note, Travelers or the trustee shall return this Note to Borrower.

This Note, together with Borrower's note of even date herewith in the original principal sum of \$70,000,000 to Travelers (the "Notes") evidence the Loan made available by

Travelers to Borrower pursuant to the terms of the Loan Agreement.

The Notes are described in and payment of the Notes is secured by the Loan Documents including without limitation certain Mortgages, Security Agreements and Assignments of Rents and Leases dated of even date herewith.

In the event default shall be made in the payment of any installment of the principal or interest as and when due on this Note, or any part thereof, or upon the occurrence of an Event of Default under the terms of the Loan Agreement, then, upon the expiration of any applicable grace period herein or therein provided, the entire unpaid principal balance of this Note, together with all interest accrued thereon, shall, at the option of Travelers or the holder hereof, without notice, immediately become due and payable for all purposes, and Travelers or the holder may exercise the rights and remedies provided for in the Loan Agreement and the Loan Documents and under applicable law.

This Note may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Should the indebtedness evidenced by this Note or any part thereof be collected at law or in equity, or in bankruptcy, receivership or any other court proceedings (whether at the trial or appellate level), or should this Note be placed in the hands of attorneys for collection upon default, the Borrower agrees to pay, in addition to the principal, premium and interest due and payable hereon, all costs of collection or attempting to collect this Note, including reasonable attorneys' fees and expenses.

This Note is to be construed and enforced in accordance with the laws of the State of West Virginia.

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WESTERN POCAHONTAS PROPERTIES  
LIMITED PARTNERSHIP, a Delaware  
limited partnership

By: Western Pocahontas Corporation,  
its General Partner, a Texas  
Corporation

By: \_\_\_\_\_  
Corbin J. Robertson, Jr.  
Chairman of the Board of  
Directors and Chief Executive  
Officer

EXHIBIT D

EXHIBIT D TO ALABAMA MORTGAGE

There is excepted and reserved from this instrument, and not herein conveyed, the following property:

1. 3 acres, more or less, located in Shelby County, Alabama and more particularly described on Exhibit D-1.

EXHIBIT D-1

LEGAL DESCRIPTION

WILLIAM L. SMITH - SHELBY COUNTY, ALABAMA

Commence at the SW corner of the NW 1/4 of the NW 1/4 of Section 18, Township 20 South, Range 3 West, Shelby County, Alabama; thence run easterly along the south line of said 1/4-1/4 Section 16.28 feet to a point southeasterly right of way line of Shelby County Road #93; thence continue along the last described course and along said 1/4-1/4 line 1011.36 feet; thence turn 90 deg. 00' left and run northerly 142.37 feet; thence turn 90 deg. 00' left and run westerly 824.40 feet to a point on said southeasterly right of way line of Shelby County Road #93; thence turn 37 deg. 17' 21" left and run southwesterly along said right of way line 235.00 feet to the point of beginning. Less any part of said land lying in a public road.

Being a part of the same property conveyed to Western Pocahontas Properties Limited Partnership by deed of record in Shelby County, Alabama in Volume No. 112, at Page 876.

EXHIBIT E

Exhibit E to Alabama Mortgage

1. Lease No: 1705  
Lease Date: March 1, 1987  
Lessor: WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP  
Lessee: PHIL BLANKENSHIP AND GARY TRAVIS  
Amended: None.
2. Lease No: 1710  
Lease Date: December 29, 1978  
Lessor: LOUISVILLE AND NASHVILLE RAILROAD COMPANY  
Lessee: ALABAMA FUEL SALES CO. and DRUMMOND COAL COMPANY (Operator)  
Amended: Sublease Agreement dated December 28, 1982 between King Coal Company, Inc. and Drummond Coal Company.  
Amendment to coal mining Agreement dated November 17, 1983 between Seaboard System Railroad, Inc. and Drummond Coal Company, Inc.  
Notice of Lis Pendens dated December 29, 1978, executed by Drummond Coal Company recorded 8/23/79 in the probate office of Walker County, Alabama in Volume 4 at page 57.
3. Lease No: 1730  
Lease Date: July 31, 1987  
Lessor: WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP  
Lessee: NEW ACTON COAL MINING COMPANY, INC.  
Amended: None.

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EXHIBIT F

Exhibit F to Mortgage

1. Leases described on Exhibit E hereto.
2. Utility, public road, railroad and other easements and rights of way.
3. Reservation of the deferred interest and other reservations by CSX described in the Conveyances and the Deferred Interest Agreement dated December 31, 1986, as amended by that certain First Amendment to Deferred Interest Agreement dated June 1, 1987 among CSX Minerals, Inc., et als. and Western Pocahontas Properties Limited Partnership.
4. Matters approved in writing by Beneficiary.
5. Other matters of record or visible on the ground that do not materially adversely affect the Mortgaged Lands, as defined in the Mortgages.

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STATE OF ALABAMA:

COUNTY OF MONTGOMERY:

Before the State Department of Revenue:

Comes now the Petitioner, The Travelers Insurance Company, through its Alabama attorney, The Honorable David E. Hudgens, and asks the State Department of Revenue to fix and determine the amount of mortgage privilege tax due pursuant to the provisions of §40-22-2(8), Code of Alabama (1975), upon the recordation of a Mortgage and an Assignment of Leases and Rentals, both dated December 16, 1987, and both from Western Pocahontas Properties Limited Partnership, a Delaware limited partnership, to Petitioner and covering property located both within and without the State of Alabama.

Upon consideration of said petition and evidence offered in support thereof, the State Department of Revenue finds as follows:

1. That the total amount of indebtedness secured by the Mortgage is \$105,000,000.00, which amount represents a term loan. Therefore, Petitioner is not required to post a bond pursuant to §40-22-2(2)a, supra.

2. That the value of all real estate covered by the Mortgage both within and without the State of Alabama is \$112,881,207.22.

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3. That the value of the real estate conveyed under the Mortgage and located within the State of Alabama is \$11,089,848.42 or 9.82% of the total value of all property located both within and without the State of Alabama.

4. That the total amount of indebtedness allocable to Alabama upon which the mortgage privilege tax is due to be paid is \$10,311,000.00.

5. That the amount of mortgage privilege tax to be paid at the rate of \$.15 per each \$100.00, or fraction thereof, is \$15,466.50 to be distributed as follows:

Bibb County	.01%
Blount County	2.05%
Chilton County	.02%
Cullman County	77.53%
Jefferson County	2.58%
Morgan County	.07%
St. Clair County	1.31%
Shelby County	.52%
Tuscaloosa County	.03%
Walker County	<u>15.88%</u>
	100%

6. That pursuant to §40-22-2(4), *supra*, the Assignment of Leases and Rentals provides additional or substitute security

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for indebtedness secured by the Mortgage, therefore no additional mortgage privilege tax is due.

IT IS, THEREFORE ORDERED by the State Department of Revenue that the Judge of Probate of Cullman County in which county the Mortgage is to be first recorded, shall collect mortgage privilege tax in the amount of \$15,466.50, plus any recording fees which may be due, and make distribution in the percentages set forth in Paragraph 5 above.

IT IS FURTHER ORDERED that the Petitioner shall in September of each year hereafter make an annual report in accordance with §40-22-2(2)b, Code of Alabama 1975, to the Probate Judge and pay any additional mortgage tax due upon any advances made under the mortgage instruments during the preceding twelve month period. Mortgage tax shall be paid to the Probate Judges as herein directed in the same percentages as set out herein, provided that the relative property values have not changed substantially.

DONE at the Capitol, Montgomery, Alabama this 23rd day of December, 1987.

ALABAMA DEPARTMENT OF REVENUE

  
Assistant Commissioner

  
Approved -- Legal Division

165 MAR 385

ATTEST:

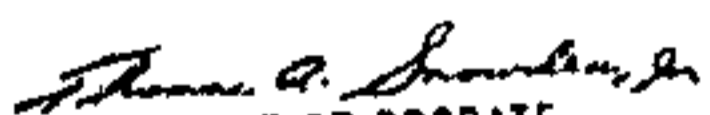
  
Secretary

4133w/ph

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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

87 DEC 30 AM 11:35

  
JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax		PD. IN CULLMAN CO.
3. Recording Fee		120.00
4. Indexing Fee		1.00
TOTAL		121.00