

1908

ASSIGNMENT OF LEASES AND RENTALS

From WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP ("Assignor"), a Delaware limited partnership, having an address at 601 Jefferson Street, 40th Floor, Houston, Texas 77002, to THE TRAVELERS INSURANCE COMPANY ("Assignee"), a Connecticut corporation, having a place of business at 2250 Lakeside Blvd., Suite 500, P. O. Box 650252, Dallas, Texas 75265-0252.

FOR VALUE RECEIVED, and intending to be legally bound, Assignor hereby grants, sells, assigns, transfers, sets over and delivers unto Assignee, its successors and assigns, and to the extent the same is subject to the Uniform Commercial Code of Alabama (the "Code") a security interest is hereby granted in, all right, title and interest of Assignor in and to all the Leases (as hereinafter defined) covering all or any part of Assignor's interest in those certain premises and the improvements now or hereafter erected thereon (the "Alabama Premises") described in Exhibit A attached hereto and made a part hereof, together with all the Rents (as hereinafter defined) due and to become due to Assignor under the Leases.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever or for such shorter time as is hereinafter set forth, for the purpose of securing the performance and discharge by Assignor of the Obligations (as hereinafter defined).

Assignor hereby covenants, promises and agrees as follows:

1. As used in this Assignment, the following terms shall have the meanings indicated, unless the context otherwise requires:

(a) "Leases" shall mean (i) all present and future leases (including subleases) covering all or any portion of the Alabama Premises, including but not limited to those present leases which are listed on Exhibit B attached hereto, (ii) all agreements for use or occupancy of any portion of the Alabama Premises, (iii) all modifications, extensions and renewals of any Lease and any and all further Leases, lettings or agreements (including rights in respect of tenants holding over and tenancies following attornment) of all or any part of the Alabama Premises, (iv) any and all guaranties of the performance of any lessee under any Lease, and (v) any extensions, modifications or supplements to any Lease (including any guaranty or other item included in this definition of "Leases").

(b) "Obligations" shall include (i) the prompt and punctual payment of each installment of interest, or of

David E. Hudgen

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principal and interest coming due under that certain Note of even date herewith in the principal amount of \$70,000,000, and under that certain Note of even date herewith in the principal amount of \$35,000,000, each of which Notes (the "Notes") has been issued by Assignor to Assignee pursuant to a certain Loan Agreement dated December 3, 1987 (the "Loan Agreement") (ii) the performance of all obligations of Assignor under the Loan Agreement and under that certain Mortgage of even date herewith (the "Mortgage") encumbering the Alabama Premises and securing the Notes and under each other instrument and document given by Assignor to Assignee to evidence, secure or support the indebtedness evidenced by the Notes (the Notes, the Loan Agreement, the Mortgage and each such other instrument and document being herein collectively called, the "Loan Documents").

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(c) "Rents" shall include all rentals, royalties, security deposits and other sums of money due or becoming due to Assignor under any Lease, all of the rents, income, receipts, revenues, issues and profits now due or which may hereafter become due to Assignor under any Lease and all moneys due and to become due to Assignor under any Lease for services, materials or installations supplied, whether or not the same were supplied under the terms of any Lease, and all rights and remedies which Assignor may have against any tenant under the Leases or others in possession of any portion of the Alabama Premises for the collection or recovery of moneys so assigned hereby, and the proceeds of all such Rent, both cash and noncash; including but not limited to any minimum rents, additional rents, percentage rents, concession fees, parking maintenance, insurance and tax contributions, any damages following default by tenant under any Lease, any penalties or premiums payable by tenant under any Lease and the proceeds of any policy of insurance covering loss of rents resulting from destruction or damage to any portion of the Alabama Premises.

2. To induce Assignee to accept this Assignment and to advance funds on account of the Obligations, Assignor hereby represents and warrants to Assignee:

(a) That Assignor has full right and power to assign the Leases and Rents to Assignee, and, has not executed any prior assignment of any of its rights under any Lease or to any portion of the Rents to any person other than Assignee;

(b) That Assignor has not done any act or thing which might prevent Assignee from enjoying the benefits of the Leases and Rents assigned hereby;

(c) That each of the Leases now existing is valid and enforceable;

(d) That, except as stated in the Certificate and Indemnification of Assignor dated December 15, 1987, designated Exhibit J-2 to the Loan Agreement, neither the tenants nor Assignor, where applicable, under any existing Leases as described in the Attachment to Exhibit J-1 to the Loan Agreement are in default under any of the terms of any of the Leases; and

(e) That no Rents have been collected or accepted by Assignor in advance of the time when the same become due under the terms of the Leases as described in the Attachment to Exhibit J-1 to the Loan Agreement.

3. Assignor hereby covenants, promises and agrees that Assignor will:

(a) Observe, fulfill and perform each and every condition, covenant and provision of each of the Leases to be fulfilled or performed by Assignor;

(b) Give prompt notice to Assignee of any notice of default given or received by Assignor under any Lease, together with a true copy of such notice and any supporting materials;

(c) Enforce, short of termination, at the sole cost and expense of Assignor, the performance or observance of each and every material covenant and condition of each of the Leases to be performed or observed by the tenant thereunder;

(d) At the sole cost and expense of Assignor, appear in and defend any action growing out of or in any manner connected with any of the Leases, Rents or the obligations or liabilities of Assignor thereunder; and

(e) From time to time, upon request by Assignee, execute and deliver to Assignee, acknowledge when appropriate, and record or file in the public records when appropriate, any and all writings, including without limitation further assignments of any Lease or Leases, financing statements and other writings that Assignee may deem necessary or desirable to carry out the purpose and intent of this Assignment, or to enable Assignee to enforce any right or rights hereunder.

4. Assignor will not, without the prior written consent of Assignee:

(a) Materially modify or alter the terms of any of the Leases;

(b) Terminate the term of any of the Leases or accept a surrender thereof;

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(c) Accept prepayment of Rents for more than thirty (30) days prior to the accrual thereof under the terms of the Leases;

(d) Waive, or release any tenant, or if applicable, any lessor, under any of the Leases from, any material obligations or conditions to be performed by such tenant or lessor under its Lease; or

(e) Pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents.

5. Assignee shall not be obligated to perform or discharge any obligation of Assignor under any of the Leases, or under or by reason of this Assignment. Assignor hereby agrees to indemnify and defend Assignee against, and hold Assignee harmless from, (i) any and all liability, loss or damage which Assignee may or might incur under any of the Leases or under or by reason of this Assignment and (ii) any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation on Assignee's part to perform or discharge any obligation under any of the terms of any of the Leases. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the higher of the Default Rates specified in the Notes, shall be added to the Obligations secured hereby and Assignor shall reimburse Assignee therefor, immediately upon demand.

6. Notwithstanding this Assignment or any exercise by Assignee of any of Assignee's rights hereunder, or any law, usage or custom to the contrary, Assignor shall, subject to the provisions of the Leases, retain full responsibility for the care, control, management and repair of the Alabama Premises, and Assignor hereby agrees to indemnify and defend Assignee against, and hold Assignee harmless from, (i) any and all liability, loss or damage which Assignee may or might incur by reason of any deficiency or alleged deficiency in the care, control, management or repair of the Alabama Premises or any part thereof by Assignor and (ii) any and all claims and demands whatsoever which may be asserted against Assignee by reason thereof. Should Assignee incur any liability, loss or damage described in the preceding sentence, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the interest rate specified in the Notes, shall be added to the Obligations secured hereby and Assignor shall reimburse Assignee therefor, immediately upon demand.

7. Except as limited by the provisions of Sections 10(b) and 11 of the Loan Agreement, any default by Assignor in the performance or observance of any covenant, obligation or undertaking of Assignor hereunder shall constitute and be deemed to be an Event of Default (as defined in the Loan Agreement) and shall entitle Assignee to exercise any and all of the rights and remedies hereunder and thereunder. .

8. These presents shall not be deemed or construed to constitute Assignee as a mortgagee in possession of the Alabama Premises nor to obligate Assignee to take any action hereunder, nor to incur any expenses or perform or discharge any obligation, duty or liability hereunder or under the Leases. However, should Assignor fail to make any payment or to perform any obligation of Assignor hereunder, then Assignee, but without obligation so to do and without notice to or demand on Assignor and without releasing Assignor from any obligation herein, may make or do the same, including specifically, without limiting Assignee's general powers, appearing in and defending any action purporting to affect the security hereof or the rights or powers of Assignee and performing any obligation of Assignor in any of the Leases contained, and in exercising any such powers paying necessary costs and expenses, employing counsel and incurring and paying reasonable attorneys' fees; and Assignor will pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the higher of the Default Rates specified in the Notes, and the same shall be added to the Obligations secured hereby and shall be secured by all the security given for any of the Obligations.

9. At any time that an Event of Default shall have occurred and be continuing and all applicable cure periods have expired, Assignee, at its option, without further notice, may: enter upon, take possession of, and operate the Alabama Premises; make, enforce, modify or accept a surrender of any of the Leases; obtain and evict tenants; fix or modify rents; make any alterations, renovations, repairs and replacements to the Alabama Premises which Assignee deems necessary or desirable for the successful operation of the Alabama Premises; bring or defend any suits in connection with the Alabama Premises, Leases or Rents in its own name or in the name of Assignor; obtain such insurance as Assignee deems desirable; and do any acts which Assignee deems proper to protect the security hereof until all Obligations secured hereby are paid or performed in full, and either with or without taking possession of the Alabama Premises, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any Obligations secured hereby in such order as Assignee may determine. The entering upon and taking possession of the Alabama Premises, the collection of the Rents, and the

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application thereof as aforesaid, shall not cure or waive any default or waive, modify or affect any notice of default hereunder.

10. Notwithstanding any agreement, law, custom or usage to the contrary, Assignor hereby assigns to Assignee any award made hereafter to it in any court procedure involving any of the tenants in any bankruptcy, insolvency, or reorganization proceedings in any state or Federal court; and any and all payments made by the tenants in lieu of rent. Assignor hereby appoints Assignee as its irrevocable attorney-in-fact to appear in any such proceeding and/or to collect any such award or payment.

11. To the extent the same is subject to the Code, a security interest is hereby granted in the Rents and Leases. Notwithstanding any provision herein to the contrary, this Assignment of Leases and Rentals is intended to be an absolute assignment from Assignor to Assignee and not merely the granting of a security interest. The Rents and Leases are hereby assigned absolutely by Assignor to Assignee; nevertheless, as long as an Event of Default shall not have occurred and be continuing, Assignor shall have the right to collect upon, but not prior to, accrual, the Rents and to retain, use and enjoy the same.

12. At any time that an Event of Default shall have occurred and be continuing and all applicable cure periods have expired, Assignee, upon notice to Assignor, may elect to have all Rents assigned hereunder paid directly to Assignee and Assignee may notify the tenants or any other party or parties in possession of the Alabama Premises to pay all of the Rents directly to Assignee, for which this Assignment shall be sufficient warrant. Upon such notice from Assignee to the tenants, the tenants are hereby authorized and directed to pay all Rents directly to Assignee, unless or until Assignee otherwise directs the tenants. Each tenant's account with Assignor shall be credited with the amount of all Rents so paid by such tenant to Assignee. Assignor covenants and agrees to release and hold harmless all tenants from any claim on account of any such payments made directly to Assignee.

13. Assignee may take or release other security, may release any party primarily or secondarily liable for any Obligations secured hereby, may grant extensions, renewals or indulgences with respect to such Obligations, and may apply any other security therefor held by it to the satisfaction of such Obligations without prejudice to any of its rights hereunder. The rights of Assignee to collect said Obligations and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action by it hereunder. The failure of Assignee to avail itself of any of the terms, covenants and conditions

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hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee shall have the full right, power and authority to enforce this Assignment or any of the terms, covenants or conditions hereof, at any time or times that Assignee shall deem fit.

14. This Assignment of Leases and Rentals shall terminate and become void automatically upon the Mortgage being satisfied and discharged of record or upon the recording of an instrument releasing all of the Alabama Premises from the lien of the Mortgage.

15. As used herein, each gender shall include the other genders, the singular number shall include the plural, and conversely.


16. These presents shall be construed in accordance with the laws of the State of Alabama and shall be binding upon Assignor, its heirs, personal representatives, successors and assigns, and shall inure to the benefit of Assignee and its successors and assigns.

17. All notices required or permitted to be given hereunder shall be deemed to have been duly given if (a) sent by United States Mail, postage prepaid, to Assignor at its address hereinabove set forth, and to Assignee at its address set forth above, or to such other place or places as the parties hereto may from time to time designate for the purpose of receiving notices hereunder, or (b) given in the manner provided for the giving of notice under the Mortgage.

WITNESS the due execution hereof this 16th day of December, 1987.

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:

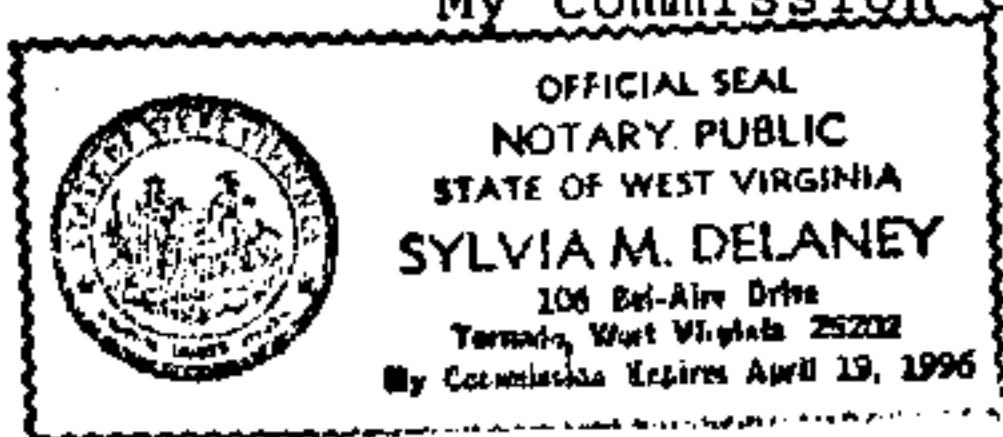
I, the undersigned authority a Notary Public in and for the State and County, hereby certify that Corbin J. Robertson, Jr., whose name as Chairman of the Board of Directors and Chief Executive Officer of WESTERN POCAHONTAS CORPORATION, a Texas corporation, the General Partner of WESTERN POCAHONTAS PROPERTIES 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 19th 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.

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EXHIBIT A

EXHIBIT A TO ALABAMA ASSIGNMENT OF LEASES

<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 Assignment of
Leases and Rentals

(present Alabama leases)

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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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
87 DEC 30 AM 11:37

Thomas A. Snowden, Jr.
CLERK OF PROBATE

RECORDING FEES

Recording Fee	\$25.00
Index Fee	1.00
TOTAL	\$26.00