

OSTER Researching Services

12897 Colonial Dr. • Mt. Airy, Md. 21771
301-253-6040

RECORDATION NO 16282 FILED 1423 9-102A003

April 12, 1989

APR 12 1989 - 9 45 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

4/12/89

13.00

ICC Washington, D.C.

MOTOR OPERATING UNIT
APR 12 9 34 AM '89

Dear Ms. Lee:

Please find enclosed a Lease of Railroad Equipment dated March 1, 1989, between the following parties:

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

Lessee: Westmoreland Coal Sales Co.
700 The Bellevue
200 South Broad Street
Philadelphia, PA 19102

The equipment involved in this agreement is as follows:

Equipment: 115, 3420 cf 100-ton 3-Pocket
Open-top Hoppers
See Annex A

Please file this agreement as a primary document. The filing fee of \$13 is enclosed. Thank you.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosure

Completed by Mary Ann Oster

Interstate Commerce Commission
Washington, D.C. 20423

4.12.89

OFFICE OF THE SECRETARY

Mary Ann Oster
Oster Researching Services
12897 Colonial Dr.
Mt Airy, Maryland 21771

Dear: Mrs. Oster:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4.12.89, at 9:45am, and assigned recordation number(s). 16282

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

16282

REGISTRATION NO. FILED 1426

APR 12 1989 -9 45 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

BETWEEN

HELM FINANCIAL CORPORATION

AND

WESTMORELAND COAL SALES COMPANY

APR 12 9 34 AM '89
MOTOR OPERATING UNIT

LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of March 1, 1989 between HELM FINANCIAL CORPORATION, a California corporation, (hereinafter called the "Lessor") and the WESTMORELAND COAL SALES COMPANY (hereinafter called the "Lessee"), a Delaware corporation.

WHEREAS, the Lessor hereby represents that it has the right to lease the one-hundred fifteen (115) open top coal hopper cars more fully described in Annex A hereto (hereinafter called the "Units");

WHEREAS, the Lessee desires to lease from the Lessor all the Units at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

1. Delivery and Acceptance of Units. The Lessee hereby accepts the Units at a CSX Transportation interchange point to be determined (hereinafter called the "Acceptance Point") whereupon each Unit shall be subject thereafter to all terms and conditions of this Lease. Lessee will provide Lessor with a certificate of acceptance for the Units provided in Annex B (hereinafter "Certificate of Acceptance"). The Lessee further agrees to be responsible for any transportation cost of moving the Units from the Acceptance Point. The Lessor agrees to furnish the Units in compliance with now existing FRA and AAR rules of interchange. Lessee, at its expense, shall have the right to inspect and reject the Units subject to this Lease, prior to the Lessor's transporting the Units from their present location.

2. Rentals. The Lessee agrees to pay the Lessor rental for each Unit subject to this Lease in monthly installments, payable on the fifteenth day of each month in arrears. The monthly payments shall be in the amount of [REDACTED] each per Unit. Rental shall become effective with regard to each Unit as of the date of delivery to the Acceptance Point. The effective date of the Lease shall begin on the date the last Unit is delivered to the Acceptance Point (hereinafter referred to as "Effective Date") and shall continue in effect with regard to each of the Units until returned to the Lessor at the end of the term of this Lease, as hereafter provided in Paragraph 3. Payment of Lease Rental shall be made to the Lessor at the address specified in Paragraph 14, or to such other place as Lessor may direct, with the first month's payment due on the fifteenth day of the month following the month the last car is delivered to the Acceptance Point and is to include prorated payment for any Units received prior to the Effective Date. Rental for any Unit for any partial month shall be prorated on a daily basis. Lessee shall pay to Lessor as additional Lease Rental [REDACTED] per mile per Unit for

each mile a Unit travels in excess of [REDACTED] miles on an annualized basis. Any costs incurred by the Lessor in collecting Rental wrongfully withheld by Lessee, including reasonable attorney fees, will be paid by the Lessee.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, the Lessee shall pay the Lessor, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessee at a rate equal to [REDACTED] per annum.

This Lease is a lease that includes maintenance, however, the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent under this Lease except as otherwise herein provided. This Lease shall not terminate, or the respective obligations of the Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, and present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided.

3. Term of Lease. The term of this Lease with respect to each Unit shall begin on the Effective Date, and, unless sooner terminated in accordance with the provisions of the Lease, shall end on March 31, 1991.

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Paragraphs 5, 7 and 9 hereof) shall survive the expiration or sooner termination of this Lease.

4. Identification Marks. The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word

or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership.

5. Taxes. Lessor agrees to pay any personal property taxes associated with the Units, so long as the Units are utilized by Lessee in the carriage of coal from various origins in West Virginia to the Newport News, Virginia terminals. Lessee agrees to assume responsibility for, and to pay, all other taxes, costs, fines and assessments of every kind upon the Units, and to file all reports relating thereto; provided, however, that Lessee shall not be responsible for federal or state taxes based upon the income of Lessor. In the event that Lessee utilizes such Units from loading points which increase the tax liability as contemplated herein (exclusive of any taxes based upon any income of Lessor), such additional liability shall be paid by the Lessor and reimbursed and paid in full by the Lessee. Any such additional taxes shall be invoiced by the Lessor as a separate item.

6. Loss, Damage or Destruction.

(a) Risk of Loss, Damage or Destruction. As between Lessee and Lessor and any Assignee of Lessor, Lessee hereby assumes all risk of loss, damage, theft, destruction, partial or complete, of or to each Unit, however caused or occasioned (provided that Lessor shall be responsible for any and all damage and liabilities caused by Lessor), such risk to be borne by Lessee with respect to each Unit from its Acceptance Date, and continuing until such Unit has been returned to Lessor in accordance with the provisions of Paragraph 9 hereof. Lessee agrees that, except as otherwise provided herein, no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee under this Lease, including, without limitation, the obligation to pay rent.

(b) Casualty Occurrence. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete from any cause whatsoever, or any Unit shall be condemned, or the title to or use of any Unit shall be requisitioned for a period of forty-five (45) continuous days (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the Lessor an amount

equal to the accrued and unpaid rental for such Unit to the date of such payment. A settlement value payment pursuant to Rule 107 of the Field Manual of the AAR Interchange Rules and Car Hire Agreement Code will also be made as of that date. Upon the making of such payment by the Lessee in respect of a Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit provided however that if the Lessor does take possession of such Unit, Lessee shall be credited with the actual salvage value of the Unit. Lessor has the right, in its sole discretion, to replace any and all Units subject to a Casualty Occurrence and such replacement Units will be subject to this Lease as if originally a part thereof.

Except as hereinabove in this Paragraph 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

7. Compliance with Laws and Rules; Maintenance; Insurance and Indemnification. Lessor warrants that Lessor has lawful right to lease the Units for the term of this Lease and that the Units have good and marketable title. Lessor hereby assigns to Lessee for the term of this Lease the benefit of all warranties and indemnities of the manufacturer, reconditioner, repairer or maintainer of the Units. Otherwise, except for the aforesaid, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNITS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNITS ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS.

The Lessee agrees to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and in the event such laws or rules require the alteration or repairs of any such Unit, the Lessee will conform therewith; provided, however, that the Lessee may, in good faith, contest the validity or application of any such Law or rule in any reasonable manner which does not, in the reasonable opinion of the

Lessor, adversely affect the property or rights of the Lessor hereunder.

During the term of this Lease, commencing with the Effective Date with respect to each Unit, Lessor shall perform or cause to be performed maintenance and repair work necessary to maintain the Units in good operating condition in conformity with all applicable laws and regulations including the AAR Code of Interchange Rules and FRA Railroad Freight Unit Safety Standards, 49 CFR Part 215, as amended, except for the following:

(1) repairs required as a result of damage caused by the Lessee, its agents, representatives, customers or independent contractors or any third party; or

(2) repairs required because of damage caused to the Units by any corrosive or abrasive substance except coal, coke, iron ore or aggregates loaded therein or used in connection therewith; or

(3) repairs required because of excessive, unusual or avoidable damage caused to the Units by open flames, vibrators, sledges or other similar devices during loading or unloading operations; or

(4) repairs required because of excessive or unbalanced loading; or

(5) repairs required because of damage to safety appliances beyond that which is expected normal wear and tear of the Units.

If Units in possession of Lessee are in need of repairs for which Lessee is responsible hereunder, Lessee shall contact Lessor and advise, at Lessee's sole option, whether Lessee desires to perform such repairs or have such repairs performed at its expense. If Lessee decides not to repair such Units, Lessor will either repair the Units or subcontract for the repairs. Lessee shall be responsible only for the invoice price, if repairs are subcontracted, or for actual costs (but not to exceed AAR charges) if performed by Lessor.

Lessee will make the Units available to Lessor or its contractor at any reasonable repair shop specified by Lessor at any reasonable time for the purpose of repairs. Lessee shall as promptly as practical deliver Units requiring repairs which Lessor is required to make to a reasonable repair shop specified by Lessor. Lessee shall make Units available for inspection or maintenance in accordance with its operating convenience and at its own expense.

If there is any dispute as to who is responsible for repairs to any Unit, the completion of such repairs by a party shall not

constitute an admission of responsibility, but instead such party may still assert its claims that the other party was responsible.

Lessee will review any suggestions made by Lessor regarding operating conditions that might be causing undue and avoidable wear or damage to the Units and to use all reasonable efforts to implement or cause the operating railroad to implement those suggested changes that are reasonable under the circumstances.

Lessor reserves the right to retire any Unit that in its sole opinion it deems uneconomical to repair. Lessee's obligation to pay rent shall abate for any Unit retired by Lessor as of the date on which it is retired or when such Unit is delivered to the repair shop, whichever occurs first.

Subject to Paragraph 6, the Lessee agrees it will return the Units to the Lessor at the expiration of the term or sooner termination of this Lease in good order, ordinary wear and tear excepted, suitable for movement in the interchange system in conformity with all applicable laws and regulations including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards.

Neither party to this Lease will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Units without the other party's written consent.

Any and all additions to any Unit and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to such Unit and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in such Unit.

Lessee hereby acknowledges that it has elected to be self-insured to [REDACTED] for public liability and for property damage an amount sufficient to cover the settlement value (as defined in paragraph 6b) of all Units referenced in Annex A hereto. These amounts may fluctuate during the term of the Lease but Lessee agrees that it will maintain during the term of the Lease a net worth sufficient to meet its self insurance obligations. Lessee agrees to give immediate notice to Lessor of any material adverse change in its financial condition that would preclude meeting its financial obligation under this Lease during the term of this Lease.

The Lessee agrees to indemnify save harmless and defend the Lessor against any charges or claims made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (unless resulting from the Lessor's sole or to the extent of Lessor's joint negligence) by reason of entering into or the performance of this Lease or the ownership of, or which

may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, any Unit until such Unit is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on the account of any accident (unless resulting from the Lessor's sole or to the extent of Lessor's joint negligence) in connection with the operation, use, condition, possession or storage of such Unit resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

8. Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Units, any Unit or any part thereof, owner's title thereto, or any interest therein, except (i) any lien resulting from an independent act of or claim against Lessor which does not result from, arise out of, or relate to the manufacture, acquisition, ownership or leasing of the Units or this Lease or any Lease supplement or any Event of Default, (ii) liens for taxes either not yet delinquent or being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units or any part or item thereof, and (iii) materialmen's, mechanics', workmen's, repairmen's, employees' storage or other like liens arising in the ordinary course of business, which are not delinquent or are being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units, or any part thereof. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Units free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Lessor (and any assignee of Lessor), any such lien not excepted above if the same shall arise at any time. Lessee will notify Lessor (and any assignee of Lessor) in writing promptly upon becoming aware of any tax or other lien (other than any lien excepted above) that shall attach to the Units or any Unit, and of the full particulars thereof.

9. Return of the Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost, risk and expense, transport and deliver possession of such Unit(s) to a mutually agreeable CSX Transportation interchange point as mutually agreed to by Lessor and Lessee. The condition of the Units upon such return shall be as required, pursuant to Paragraph 7 hereof.

The assembling, delivery and transporting of the Units as provided in this Paragraph 9 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee

requiring specific performance of the covenants of the Lessee so to assemble, deliver and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice and Lessor shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances whatsoever.

10. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur;

(a) default shall be made in the payment of any part of the rental provided in Paragraph 3 hereof and such default shall continue for ten (10) days after written notice is sent to Lessee;

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

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for thirty (30) days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

(d) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that the status of such shall be the same as expense of trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(e) any material representation made by the Lessee herein or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

then, in any such case, the Lessor, at its option may:

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

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon, the Lessor may in a reasonable manner and without damage to the property of the Lessee or injury to any person by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as representing actual loss incurred by the Lessor, damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit which represents the then present value of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed in each case on a basis of a ██████ per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, expenses of resale or re-leasing (including incidental transportation costs incurred by Lessor). In connection with the damages set out in (a) and (b), Lessor shall use reasonable efforts to mitigate its damages and Lessee shall be entitled to a reduction or set off in the amount of the damages set out in (a) and (b) as a result of any resale, release or other activities performed by Lessor to sustain its obligation to mitigate.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf except the Lessee shall be credited with any present value payments made pursuant to subparagraph 10 (e)(ii)(a).

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

11. Return of Units Upon Default. If this Lease shall terminate pursuant to Paragraph 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. The Lessee shall, at its own expense and risk, transport and deliver possession of such Units, to any reasonable CSX transportation interchange point as reasonably directed by Lessor. The condition of the Units upon such return shall be as required pursuant to Paragraph 7 hereof.

The assembling, delivery and transporting of the Units as provided in this Paragraph 11 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Paragraph 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

12. Force Majeure. Neither party to this Lease shall be liable for nonperformance or delay in performance hereunder to the extent caused by unforeseen acts of God, government restraint, acts of the public enemy, civil commotion, strikes, nuclear or other disasters, labor disputes, fire, explosion or flood (any of such events herein called "**Force Majeure**"). If affected by Force Majeure, the party so affected will give notice to the other party as promptly as practicable, but no later than five (5) business days, of the nature and expected duration of such Force Majeure. If, because of Force Majeure, either party hereto is prevented from carrying out any

of its obligations under this Lease, then the obligations of such party shall be suspended to the extent made necessary by such Force Majeure. The party affected shall exercise all reasonable efforts to eliminate or eliminate the effect of such Force Majeure as promptly at possible.

13. Assignment; Possession and Use. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Units during the term of this Lease, provided, that no Event of Default has occurred and is continuing.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under Paragraphs 5, 7 and 10) shall inure to the benefit of the Lessor's assigns. If such assignee is to assume any obligations of Lessor hereunder, it shall execute an assumption agreement expressly assuming such obligations. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to provide any reasonable documentation requested by Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee may without any prior consent of the Lessor sublease any one or more of the Units or assign this Lease to any one or more of the Lessee's Affiliates, or with the prior written consent of the Lessor sublease the Units to third parties; provided, that (i) such sublease or assignment shall provide that the subject Units shall be operated and maintained in accordance with the terms hereof; (ii) the Lessee shall provide the Lessor with ten (10) days advance notice of any such sublease or assignment and a copy of such sublease or assignment; (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of the Lessor; and (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety.

The Lessee represents and warrants that: (i) Lessee (or any assignee or sublessee) will not at any time during the term of this Lease use or fail to use any Unit, in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48 of the United States Internal Revenue Code; (ii) Lessee (or any assignee or sublessee) will at all times during the term of this Lease use each Unit in such a way that for federal income tax purposes, all amounts includable in the gross income of Lessor with respect to each Unit and all deductions allowable to Lessor with respect to each Unit will be treated as derived from, or allowable to, sources within the

United States; and (iii) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within thirty (30) days after receipt of a written demand therefor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the Lessee shall not assign or transfer (except as otherwise permitted by this Paragraph 13) or encumber its leasehold interest under this Lease in the Units and, in addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit or the interest of the Lessor, or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provision of the next succeeding paragraph hereof.

Nothing in this Paragraph 13 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder.

In connection with any sublease or assignment by Lessee under this Paragraph 13, whether or not Lessee is required to obtain the consent of the Lessor to any such transaction, Lessor agrees, at its expense, to cause any such assignment or sublease to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 in order to protect its interest in and to the Units under this Lease.

The Lessee agrees that during the term of this Lease, the Lessee will not assign any Unit to service involving the operation and maintenance thereof outside the United States of America and that during such term of any Unit outside the United States of America will be limited to incidental and temporary use in Canada.

14. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

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

If to the Lessee: Westmoreland Coal Sales Company
700 The Bellevue
200 South Broad Street
Philadelphia, PA 19102
ATTN: Vice President Administration

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

15. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition of unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16. Effect and Modification of Lease. This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

17. Successors and Assigns. This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

18. Execution. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

19. Law Governing. This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of West Virginia; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

HELM FINANCIAL CORPORATION

By William M. Fitter
Title Executive Vice President

WESTMORELAND COAL SALES COMPANY

By [Signature]
Title VP Adm

STATE OF CALIFORNIA)
) S
COUNTY OF SAN FRANCISCO)

On this 31st day of March, 1989, before me personally appeared William M. Peterson, to me personally known, who, being by me duly sworn, says that he is E.V.P. of **HELM FINANCIAL CORPORATION**, that said instrument was signed and sealed on behalf of said corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elena F. Gary
Notary Public

My Commission Expires: July 24, 1992



[Notarial Seal]

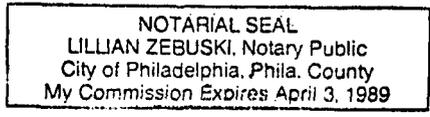
STATE OF PENNSYLVANIA)
) S
COUNTY OF PHILADELPHIA)

On this 21st day of March, 1989, before me personally appears R.J. Chesnos, to me personally known, who, being by me duly sworn says that he is a Vice President of Westmoreland Coal Sales Co., that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lillian Zebuski
Notary Public

My Commission Expires: April 3, 1989

[Notarial Seal]



ANNEX A

to

Lease of Railroad Equipment

Dated as of March 1, 1989

Equipment Description

Equipment Numbers

One-hundred fifteen (115) 3,420 cubic foot, 100-ton capacity, roller bearing, three-pocket, open top coal hopper railcars built in 1975/76.	ATSF 179013	ATSF 179338	ATSF 179552
	179023	179340	179554
	179024	179342	179556
	179028	179346	179557
	179035	179347	179584
	179037	179352	179594
	179053	179355	179601
	179056	179364	179615
	179062	179365	179622
	179069	179366	179626
	179071	179368	179631
	179075	179370	179640
	179079	179371	179644
	179081	179373	179651
	179094	179386	179656
	179096	179404	179660
	179098	179407	179664
	179104	179411	179669
	179113	179412	179672
	179118	179417	179680
	179121	179421	179691
	179126	179429	179712
	179142	179441	179713
	179144	179443	179719
	179151	179453	179739
	179166	179459	179747
	179167	179485	179749
	179198	179486	179755
	179205	179501	179758
	179206	179506	179763
	179230	179508	179769
	179239	179512	179780
	179253	179514	179787
179279	179517	179797	
179285	179518	179951	
179286	179525		
179296	179531		
179314	179533		
179317	179540		
179333	179549		

ANNEX B

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of Westmoreland Coal Sales Company (the "Lessee"), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of the Lessee the following described Units of equipment, which Units are in good order, condition and repair (except for latent defects) and conform in all respects to the terms, provisions, requirements and standards of the certain Lease of Railroad Equipment dated as March 1, 1989 between Helm Financial Corporation and Lessee.

<u>Equipment Description</u>	<u>No. of Cars</u>	<u>Car Number</u>	<u>Date Accepted</u>
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Authorized Representative