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

RECORDATION NO 16433 FILED 1425

July 17, 1989

JUL 17 1989 -9 45 AM

INTERSTATE COMMERCE COMMISSION

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

9-198A004

Dear Ms. Lee:

Please find enclosed a Lease of Railroad Equipment dated April 10, 1989, between the following parties:

Lessor: Kentucky Utilities Co.
One Quality Street
Lexington, KY 40507

Lessee: Tradewater Railway Co.
124 N. Monroe Street
Sturgis, KY 42459

The equipment involved in this transaction is as follows:

Equipment: 126, 4000 cf 100-ton Gondolas
KUCX 1-126

Please record this agreement as a primary document. The filing fee of $13 is enclosed. Thank you for your kind assistance.

JUL 17 9 49 AM '89
INTERSTATE COMMERCE COMMISSION

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosure

Counterparts Patricia J. Ward

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

OSTER RESEARCHING SERVICES

12897 COLONIAL DRIVE

MT. AIRY, MD. 21771

Dear: SIRS:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/17/89, at 9:45AM, and assigned recordation number(s). 16432 and 16433

Sincerely yours,

Noreta R. McGee

Noreta R. McGee
Secretary

Enclosure(s)

RECORDATION NO 16433 FILED 1425
JUL 17 1989 -9 45 AM
INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

BETWEEN

KENTUCKY UTILITIES COMPANY

AND

TRADEWATER RAILWAY COMPANY

LEASE OF RAILROAD EQUIPMENT

THIS LEASE OF RAILROAD EQUIPMENT, dated April ~~1~~ 10th, 1989, (hereinafter called **"Effective Date"**) is made by and between **KENTUCKY UTILITIES COMPANY**, a Commonwealth of Kentucky corporation, (hereinafter called the **"Lessor"**) and the **TRADEWATER RAILWAY COMPANY** (hereinafter called the **"Lessee"**), a Commonwealth of Kentucky corporation.

WHEREAS, the Lessor hereby represents that it is the Owner of and has free and clear title to the one hundred twenty-six (126) 100-ton, open top, coal gondola railcars 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. Subject to a right of inspection as set forth below, the Lessee agrees to accept the Units at the CSX Transportation interchange point at Trapp, Kentucky (hereinafter called the **"Acceptance Point"**) whereupon each Unit shall be subject thereafter to all terms and conditions of this Lease. 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, but only if such inspection and rejection is made prior to the Lessor's transporting the Units from their present location. After the Lessor has begun transporting a Unit, the Lessee's acceptance of that Unit is conclusively presumed.

2. Car Hire Earnings. Upon acceptance of the Units as set forth in Paragraph 1 hereof, with reporting marks on each Unit as set forth in Paragraph 5 and Annex A hereto, Lessee shall enjoy all car hire earnings (per diem and mileage) thereafter until the expiration or sooner termination of this Lease. If reporting marks are other than Lessors, Lessor shall not be responsible for collection of any car hire earnings and such responsibility shall lie solely with Lessee.

3. Rentals. The Lessee agrees to pay the Lessor rental for each Unit subject to this Lease for twelve (12) monthly installments, payable in advance at the beginning of each month. The monthly payments shall be in the amount of each per Unit. Rental shall become effective with regard to each

Unit as of the date of delivery to the Acceptance Point. Rental for any Unit for any partial month shall be prorated on a daily 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 per annum.

This Lease is a net lease and the Lessee, except as herein provided in this Lease, shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor except as provided in Paragraph 7(b) shall this Lease 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. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever.

4. Term of Lease. This Lease shall begin on the Effective Date, and shall remain in full force and effect, with respect to each Unit, for a period of one (1) year with an option to renew for one (1) additional year subject to availability and mutually agreeable price and terms.

The obligations of the Lessee hereunder arising prior to the expiration or termination of this Lease under Paragraphs 6, 8, 9,

10, 11, 12, and 14 hereof shall survive the expiration or termination of this Lease.

5. 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.

6. Taxes. The Lessee shall pay any local, state or federal taxes (other than income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than franchise taxes measured by gross or net income based on such receipts or based on capital employed by Lessor).

The Lessee will also pay promptly all assessments or licenses (and any charges, fines or penalties in connection therewith) which may be imposed upon any Unit or for the use or operation thereof or upon the Lessee's earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all taxes and assessments which might in any way affect the title of the Lessor or result in a lien upon any such Unit.

7. 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, taking, destruction, confiscation, requisition or commandeering, 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 to the extent such are directly caused by Lessor), such risk to be borne by Lessee

with respect to each Unit when Lessor begins transporting each Unit to the Acceptance Point until such Unit has been returned to Lessor in accordance with the provisions of Paragraph 11 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 lost, stolen, destroyed or irreparably damaged or economically unserviceable from any cause whatsoever, or any Unit shall be condemned, confiscated, or seized, or the title to or use of any Unit shall be requisitioned for a period of sixty (60) 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 at which point Lessee shall not be liable for any rental payments accruing after the month of the Casualty Occurrence. 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 by Lessee to the extent Lessee was the cause of the Casualty as of that date, except when the Casualty Occurrence involves the title to or use of any Unit having been requisitioned for a period of sixty (60) continuous days in which case the settlement value payment shall be net of the rental payments for such Unit for the sixty (60) continuous day period. Upon the making of such payment by the Lessee in respect of a Unit, 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. Lessor in its sole discretion has the right, but not the obligation, to replace any and all Units subject to a Casualty Occurrence and such replacement Units shall be similar in all respects (unless agreed to otherwise) and will be subject to this Lease as if originally a part thereof.

8. Warranty Disclaimer. Lessor warrants that Lessor is the lawful owner of the Units and has good and marketable title to the Units. 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 EXPRESS OR IMPLIED WARRANTIES REGARDING 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 TO LESSEE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS.

9. Compliance with Laws. The Lessee agrees, for the benefit of the Lessor, 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 Lessor will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the Lessor may, in its reasonable judgement based upon the cost and economic value of such repairs or alterations in relation to the then estimated fair market value of the Units, declare this Lease terminated for those so affected as of the date such repairs or alterations are required as a condition to use of the Units by Lessee.

10. Return Condition. Subject to Paragraph 7, the Lessee agrees it will return the Units to the Lessor at the expiration of the term or sooner termination of this Lease in substantially the same condition as received at the beginning of the Lease, 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 Agreement 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.

11. Insurance. Lessee shall, at all times while this Agreement is in effect at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to each Unit in a minimum amount equal to the settlement value (as defined in Paragraph 7b); and (ii) public liability insurance in a minimum amount of _____ per occurrence with respect to third party personal injury and property damage, in each case for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor named as additional insureds and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof.

With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance effected by, or for, the additional insureds. Any and all deductibles in the described policies shall be paid by the Lessee.

Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of any written request from Lessor, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request. In the event that, and only with Lessor's written approval, Lessee shall be permitted to self-insure on any specified interests, the Lessee hereby warrants to place the Lessor in the same position as if the relating insurance had been effected.

12. Indemnification. 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 (except to the extent of Lessor's 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 (except to the extent of Lessor's 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.

13. 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, Lessor's title thereto, or any interest therein, except (i) 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 (ii) 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 (other than any lien created, incurred or assumed by the Lessor) 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.

14. 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 and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee; when Lessor takes possession of any Unit it assumes the risk of loss. The condition of the Units upon such return shall be as required, pursuant to Paragraph 10 hereof. The Lessee shall permit the Lessor to store such Unit on its own tracks free of charge for a period not exceeding sixty (60) days after such expiration and shall transport the same to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as reasonably directed by the Lessor. The movement and storage of such Unit shall be at the expense and risk of the Lessee provided, however, that if the Lessor instructs the Lessee to store such Unit for a period beyond sixty (60) days after the expiration of this Lease with respect to such Unit, such additional storage shall be at the expense and risk of the Lessor except to the extent any loss, damage or destruction is caused by the negligence of Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative to inspect the same at such reasonable time or times as the Lessee shall agree to.

15. 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 immediately 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 henceforth 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 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 have an affirmative duty 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, re-lease or other activities performed to sustain its duty 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 mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments which are provided for hereunder, and agrees to make rental payments which have accrued as of the date of termination as a result of default, regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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.

16. Return of Units Upon Default. If this Lease shall terminate pursuant to Paragraph 11 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. The condition of the Units upon such return shall be as required pursuant to Paragraph 10 hereof. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense, and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may

designate or, in the absence of such designation, as the Lessee may select,

(b) permit the Lessor to store such Units on such tracks for a period not exceeding ninety (90) days at the risk of the Lessee, and

(c) transport the same, at any time within such ninety (90) day period, to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as reasonably directed by the Lessor. The assembling, delivery, storage and transporting of the Units as provided in this Paragraph 16 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, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Paragraph 16, 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.

17. 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 restraints, acts of the public enemy, civil commotion, strikes, nuclear or other disasters, labor disputes, labor or material shortage, fire, explosion, flood or breakdown of or damage to plant, equipment or facilities (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 the effect of such Force Majeure as promptly as possible.

18. 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 shall inure to the benefit of the Lessor's assigns. 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 with the prior written consent of the Lessor, which is not to be unreasonably withheld, 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 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 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.

Nothing in this Paragraph 18 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; <u>provided, however</u>, (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, whether or not Lessee is required to obtain the consent of the Lessor to any such transaction, Lessee 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 the interest of the Lessor 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.

19. Opinions of Counsel. Concurrently with or as soon as practicable after the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in scope and substance reasonably satisfactory to the Lessor and its counsel, to the effect that:

(a) the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;

(b) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

(c) the execution and performance of this Lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon the Lessee;

(d) this Lease has been duly filed and recorded with the Interstate Commerce Commission under 49 U.S.C. 11303; no other filing or recording is necessary to protect in the United States of America the right, title and interest of the Lessor in and to the Units.

At the same time as delivery of the foregoing opinion of counsel for the Lessee, the Lessor will deliver to the Lessee the written opinion of counsel for the Lessor, in scope and substance reasonably satisfactory to the Lessee and its counsel, substantial-

ly to the effect set forth in subparagraphs (a) through (c) above with respect to the Lessor.

20. Recording. Prior to the delivery and acceptance of the Units, and in connection with any sublease or assignment permitted by Paragraph 18 hereof, the Lessee will cause this Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection to the satisfaction of the Lessor of its title to the Units or for the purpose of carrying out the intention of this Lease.

21. 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: Kentucky Utilities Company
One Quality Street
Lexington, KY 40507
Attn: Director of Fuel Procurement

If to the Lessee: Tradewater Railway Company
124 N. Monroe Street
Sturgis, KY 42459
Attn: President

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

22. 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.

23. 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.

24. 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 the Commonwealth of Kentucky; 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.

KENTUCKY UTILITIES COMPANY

JM By Wayne T Lucas

Title Vice President

TRADEWATER RAILWAY COMPANY

By Bill Monach

Title Pres.

STATE OF KENTUCKY)
) §
COUNTY OF FAYETTE)

On this 19th day of June, 1989, appeared before me being duly sworn, states that he is Vice President of **KENTUCKY UTILITIES COMPANY**, that said instrument was signed and sealed on behalf of said corporation.

Marilyn B. Ballard
Notary Public

My Commission Expires: 10/27/90

[Notarial Seal]

STATE OF KENTUCKY)
) §
COUNTY OF UNION)

On this 15th day of June, 1989, appeared before me being duly sworn, states that he is a President of **TRADEWATER RAILWAY COMPANY**, that said instrument was signed and sealed on behalf of said corporation.

Martha J. Martin
Notary Public

My Commission Expires: 11/29/91

[Notarial Seal]

H\RREQUIP\KEN-TRADE

ANNEX A

to

Lease of Railroad Equipment

Dated as of April 1, 1989.

Equipment Description	Equipment Numbers
One-hundred twenty-six (126) 4,000 cubic foot, 100-ton capacity, roller bearing coal gondola railcars. Built by Thrall Car in 1976.	KUCX 1-126

6/6/89

H\RREQUIP\KEN-TRADE