

S=C75AC12

WILLIAM L. BAILES, JR.  
SUITE 230, COAL BUILDING  
1130 SEVENTEENTH STREET, N.W.  
WASHINGTON, D. C. 20036

No. ....  
Date **MAR 16 1979**  
Fee \$50.00

RECEIVED

MAR 16 2 12 PM '79

AREA CODE 202  
638-3041

I. C. C.  
FEE OPERATION BR.

ICC Washington, D. C.

March 16, 1979

10208

RECORDATION NO. .... Filed 1425

Mr. H. G. Homme, Jr., Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

MAR 16 1979 - 2 15 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Attached is the original and enclosed are five additional executed copies of a security agreement, dated February 20, 1979, on railroad rolling stock between the following parties:

Mortgagor: South-East Coal Co., a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at Irvine (P.O.B. 332), Kentucky 40336; and South-East Coal Sales Co., a corporation organized and existing under the same jurisdiction, located at 88 E. Broad Street, Columbus, Ohio 43215.

Mortgagee: The City National Bank and Trust Company of Columbus, located at 100 East Broad Street, Columbus, Ohio 43215, not in its individual capacity but as agent for the banks hereunder.

Pittsburgh National Bank, Fifth Avenue and Wood Street, Pittsburgh, Pa. 15222.

Citizens Fidelity Bank and Trust Company, P.O.B. 33000, Louisville, Ky. 40232.

First National Bank of Louisville, P.O.B. 36030, Louisville, Kentucky.

I respectfully request that the original of this document be recorded in your files under the provisions of 49 USC 11303. I would also appreciate your receipting the five additional executed copies by both date stamp and letter and returning them to me for transmittal to the parties thereto.

*Diane O. Jaques*

H. G. Homme, Jr.

March 16, 1979

Page 2

A check in the amount of \$50.00 in payment of the required recordation fee is enclosed.

Thank you.

Yours very truly,

*William L. Bailes, Jr.*

William L. Bailes, Jr.

WLBjr:doj

Attachment

MAR 16 1979 -2 15 PM  
 INTERSTATE COMMERCE COMMISSION

MORTGAGE OF RAILROAD ROLLING STOCK  
 (Security Agreement)

Table of Contents

	<u>Page</u>
Recitals	2
1. Ownership of Units	2
2. Agreement to Finance	3
3. Agreement to Secure Advancements	3
4. Mortgagor's Obligations	3
Agreements	4
5. Mortgage (Security) Interests	4
6. Inspection, Selection and Delivery of Units	5
7. Repairs, Alterations, Additions, Improvements and Expenses	5
8. Use and Standards of Use and Repair	7
9. Supplemental Schedules and Identification	8
10. Mortgagor's Additional Obligations	9
11. Insurance	12
12. Loss or Damage	13
13. Substituted or Additional Collateral	14
14. No Assignment	15
15. Opinion of Counsel	15
16. Default	17
17. Enforcement of Security and Remedies	18
18. Concurrent Remedies	21

	<u>Page</u>
19. Mortgagee's Payment -- Late Payment	22
20. The Banks and the Agent	23
21. Notice	23
22. Miscellaneous	24
Signatures	27

MORTGAGE OF RAILROAD ROLLING STOCK  
(Security Agreement)

SOUTH-EAST COAL COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at Irvine (mailing, P.O. Box 332), Kentucky 40336 ("Coal Co."), SOUTH-EAST COAL SALES COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, located at 88 East Broad Street, Columbus, Ohio 43215 ("Sales Co."), THE CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS ("CNB"), a national banking association organized and existing under the laws of the United States, located at and with a mailing address of 100 East Broad Street, Columbus, Ohio 43215, PITTSBURGH NATIONAL BANK ("PNB"), a national banking association organized and existing under the laws of the United States, with an office at and mailing address of Fifth Avenue and Wood Street, Pittsburgh, Pennsylvania 15222, CITIZENS FIDELITY BANK AND TRUST COMPANY ("CFB"), a banking company organized and existing under the laws of the Commonwealth of Kentucky, with a mailing address of P.O. Box 33000, Louisville, Kentucky 40232, FIRST NATIONAL BANK OF LOUISVILLE ("FNB"), a national banking association organized and existing under the laws of the United States, with a mailing address of P. O. Box 36030, Louisville, Kentucky 40232 (CNB, PNB, CFB and FNB being hereinafter referred to collectively as the "Banks") and CNB, not in its individual capacity but as agent for the Banks hereunder (the "Agent"),

in consideration of the mutual covenants and agreements contained herein, hereby Recite and Agree as follows:

Recitals

1. Ownership of Units

Coal Co. ("Mortgagor" hereunder) is the owner of 692 railroad hopper cars specifically identified in Schedule 1 hereto, which number and description may be amended from time to time hereunder by means of the form attached hereto as Schedule 2 (all of which cars and any other railroad rolling stock covered hereby, whenever acquired, together with all replacements, replacement parts, additions, repairs, repair parts, accessions and accessories incorporated therein and/or affixed thereto, all special tools and devices incorporated thereinto, and all replacements and substitutions thereof are hereinafter referred to collectively in the plural as the "Units" and in the singular as "Unit").

Some of the Units are secured to CNB at the date hereof under and pursuant to the terms of Mortgages of Railroad Rolling Stock recorded with the Interstate Commerce Commission (the "Prior Mortgages").

2. Agreement to Finance

The Banks, acting individually and by and through the Agent (all collectively, "Mortgagee" hereunder), have agreed, subject to the terms and conditions of a loan agreement of even date herewith (the "Loan Agreement") by and among them, Mortgagor and Sales Co. ("Guarantor" hereunder) to make one or more Advancements to Mortgagor and Guarantor, such Advancements to be secured by the Units.

The Loan Agreement is hereby incorporated herein and all terms therein shall have the same meanings herein, except only as otherwise defined.

3. Agreement to Secure Advancements

Mortgagor and Guarantor have agreed to grant and have granted to Mortgagee security interests in certain collateral described in paragraph 5 hereto (all called collectively, including the Units, the "Collateral") to secure the Advancements previously made and to be made by Mortgagee.

4. Mortgagor's Obligations

Mortgagor's obligations hereunder shall include the total unpaid amount of the Advancements, together with any and all future obligations and indebtedness under (1) the Loan Agreement, the Equipment Security Agreement and hereunder, and (2) the Third Loan Agreement, Mortgage of Railroad Rolling Stock, Guaranty, and attendant documents

thereunder and (3) the First Loan Agreement, Security Agreement and attendant documents thereunder (such Agreements, Mortgage, Guaranty and documents being hereinafter referred to as the "Attendant Agreements"), all of whatever kind and whenever created of Mortgagor to Mortgagee, including interest, whether or not given pursuant to commitment, direct or indirect, absolute or contingent, now existing or hereafter arising, all of which are covered by this Mortgage and are herein collectively called "the Obligations."

#### Agreements

##### 5. Mortgage (Security) Interests

To secure payment and performance of the Obligations, Mortgagor grants to Mortgagee (including the Agent for the benefit of the Banks and to each Bank ratably in proportion to its Advancements) a continuing security interest in the following, and, if moved, sold, leased or otherwise disposed of, the proceeds thereof:

Whether now in existence or hereafter acquired, all of the following: The railroad rolling stock specifically identified in Schedule 1 hereto (to be further identified, supplemented and added to from time to time); together with all replacements, replacement parts, additions, repairs, repair parts, accessions and

accessories incorporated therein and/or affixed thereto, all special tools and devices incorporated thereinto or used in connection therewith; and together with all products, replacements, additions, substitutions and proceeds (including any claims or insurance payable by reason of loss or damage to the collateral) thereof.

6. Inspection, Selection and Delivery of Units

As to each Unit acquired after or not in service or compliance with Section 8 on the date hereof, Mortgagor will inspect and carefully select such Unit under the terms of any agreement affecting the purchase thereof and will take delivery thereof. By inspecting, selecting and taking delivery of such Unit, Mortgagor shall and does warrant to Mortgagee that each delivered Unit is in the condition, repair and of a value to be fully suitable for all purposes hereunder. Mortgagor will transport each such Unit of which it first takes delivery to its repair shop at Irvine, Kentucky, for further inspection and repair as necessary to insure compliance herewith, all at Mortgagor's cost and expense.

7. Repairs, Alterations, Additions, Improvements and Expenses

Mortgagor warrants that it has, will maintain the capability to, and will prior to and during use of each Unit under Section 8 hereof, mark and and maintain such marking

in compliance with Schedules 1 and 2, repair such Unit as necessary to insure compliance herewith and with all applicable laws, rules and regulations to which reference is made in Section 8 hereof, and obtain and keep in force from the Louisville and Nashville Railroad an appropriate certificate reciting and evidencing such compliance.

During the effectiveness hereof, Mortgagor will make such repairs, alterations, additions and improvements as are or may be required from time to time to insure compliance herewith and with all laws, rules and regulations to which reference is made in Section 8 hereof. In addition, and without limitation of any other obligation of Mortgagor hereunder, Mortgagor will refurbish the Units on a regular and systematic basis so that each Unit is refurbished between the date hereof and February 21, 1983. Without the prior written consent of Mortgagee, Mortgagor shall make no other alterations, additions or improvements to any Unit, unless such may be made without reduction of the value of that Unit below the amount which it would have been had no such alteration, addition or improvement been made, and without impairment to the condition and working order required hereby.

Mortgagor will keep each Unit in good repair, condition and working order and will furnish all parts, mechanisms and devices required to keep each Unit in good mechanical and working order and in compliance with the laws

to which reference is made in Section 8 hereof. Mortgagee shall have no responsibility for any cost arising under this Section or for any expense arising out of or necessary for the operation and use of the Units, including but not limited to maintenance, repairs and replacement parts, storage, tolls, tariffs, fines, registration and insurance fees for all insurance required hereby.

8. Use and Standards of Use and Repair

Mortgagor will repair, keep in repair, refurbish and use the Units in a careful and proper manner and will comply with and conform to and with all current and future federal, state, municipal, police and other laws, ordinances and regulations relating to the possession, use or maintenance of the Units. Mortgagor will comply and insure compliance with all rules, interpretations, codes and orders governing use, hire, condition, repair and all other matters interpreted as being applicable to the Units during the effectiveness hereof by and of the American Association of Railroads ("AAR") and any other organization, association, agency or governmental authority, including the Interstate Commerce Commission and the Department of Transportation, which may during the effectiveness hereof be responsible for or have authority to promulgate such rules, interpretations, codes and orders. Mortgagor agrees to indemnify and hold Mortgagee safe and harmless from and against any and all claims,

costs, expenses (including without limitation attorneys' fees), damages and liabilities claimed, arising from or pertaining to such laws, ordinances, regulations, rules interpretations, codes and orders.

It is understood that Mortgagor will use the Units in shipping its coal to various of its customers and that the Units, for that purpose, will be transported in interstate commerce by and upon property of various railroads and other entities operating in the continental United States only. Mortgagor will use those of the Units which are hopper cars, and will make its best effort to require their use by any such railroads and other entities, only in whole trains or units thereof of not less than 40 Units each and will not permit separate use of those Units or use thereof for any purpose other than the carrying of Mortgagor's coal to its customers or affiliates.

9. Supplemental Schedules and Identification

In the event of any addition or substitution of Collateral hereunder, and in compliance with any applicable requirement of the Loan Agreement, Mortgagor will forthwith prepare and submit to the Agent, with copies to each of the Banks, Supplemental Schedules in the form of Schedule 2 hereto. In addition, Mortgagor will affix to each Unit and maintain throughout the effectiveness hereof, labels, plates or other markings identifying the Units and Mortgagee's

interest therein, including without limitation the marks and stencils recited in the Supplemental Schedules. Mortgagor agrees to join with Mortgagee in the execution of any documents and to pay all recording costs, fees and taxes associated therewith which Mortgagee may request to give evidence of Mortgagee's interest in the Units and Mortgagor agrees that the Agent or any Bank may give notice of such interest to any and all of Mortgagor's creditors.

Notwithstanding the use of the Supplemental Schedules to better identify the Units, it is the intent of the parties hereto that the Banks' interests attach at the earliest time permitted by law.

10. Mortgagor's Additional Obligations

With respect to all of the Collateral (except only to the extent that the provisions of this Section are inconsistent with other sections hereof in respect of the Units), Mortgagor warrants and covenants:

(a) That Mortgagor will keep accurate and complete records of the Collateral, separate and distinct from those of Mortgagor's other property, its disposition and the proceeds thereof and will permit the Banks and their representatives at any time and wherever located to examine and inspect such records and the Collateral; and

(b) That, except for the security interest granted hereby and except for prior first and best security interests

granted or assigned to the Banks, Mortgagor is, and as to the Collateral acquired after the date hereof shall be, the owner of the Collateral, free and clear of any prior lien, security interest or encumbrance; that Mortgagor will defend the Collateral against the claims and demands of all persons at any time claiming the same or any interest therein; and that no mortgage, financing statement or agreement is on file in any public office pertaining to the Collateral, except in favor of the Agent or the Banks; and

(c) That without the prior written consent of the Agent and each of the Banks, Mortgagor shall not part with the possession or control of the Collateral or sell, pledge, mortgage, encumber or otherwise transfer or dispose of, or attempt to sell, pledge, mortgage, encumber or otherwise transfer or dispose of any interest in all or any part of the Collateral and that the Banks' security interest in the proceeds of the Collateral, and/or notification of their interest in such proceeds in financing statements or otherwise, shall not be construed as modifying this Mortgage or as the Agent's or the Banks' consent to disposition of the Collateral other than as set forth herein; and

(d) That Mortgagor will keep the Collateral free from all claims, liens and legal process of creditors of Mortgagor, will pay all costs, expenses, fees, taxes and charges of any kind whatsoever arising by virtue of its ownership, possession or use of the Collateral, however,

Mortgagor may in good faith contest the validity of any such charge and Mortgagor shall forthwith notify the Banks of any such contest; and

(e) That at the request of the Agent or the Banks, Mortgagor will join with the Agent or the Banks in executing such documents, including financing statements or amendments thereto, as the Agent or the Banks in its or their discretion may from time to time deem necessary or desirable in order to comply with applicable law or to preserve and protect the security interests provided for hereby; that Mortgagor will pay all costs and expenses, including recording fees and taxes, of filing all documents and instruments required and requested by the Agent or the Banks hereunder; that in the event that any of the Collateral is subject to the claim of another security interest, if requested by the Agent or the Banks at any time prior to the termination hereof, Mortgagor will obtain at its expense and deliver to Mortgagee a statement of account or a list of the Collateral approved or corrected by the person claiming such other security interest; and that, in order to perfect and protect purchase money security interests in the Collateral, the Agent or the Banks may, and hereby is authorized by Mortgagor to, give such notice to other creditors of Mortgagor as may be necessary under applicable law or deemed desirable by the Agent or the Banks; and

(f) That Mortgagor will indemnify and save harmless the Agent and each of the Banks from any charge, claim, proceeding, judgment, loss, expense (including attorneys' fees) or liability which in any manner or from any cause arises in respect or on account of the repair, possession, operation or other use of any of the Collateral and Mortgagor will give the Agent and each of the Banks prompt notice of any event contemplated by this Section and known to it to have occurred.

11. Insurance

Mortgagor further warrants and covenants that it will keep and maintain the following insurance on and in respect of the Collateral and of its business generally:

(a) Comprehensive general liability (comprehensive coal mine liability) with coverage limits of \$4 million per occurrence;

(b) Comprehensive general automotive liability with coverage limits of \$4 million per occurrence;

(c) Loss, damage, or destruction coverage on those of the Units which are locomotives, in amounts equal to the replacement value thereof;

that such insurance shall name Mortgagor, the Agent and each of the Banks as insureds thereunder as their respective interests may appear, shall be placed with a company or companies satisfactory to the Agent and each of the Banks,

shall provide that all losses shall be adjusted with and paid to both Mortgagor and the Banks and shall be subject to alteration or cancellation only after 30 days' prior written notice to Mortgagor, the Agent and each of the Banks; that Mortgagor will deliver to the Agent and each of the Banks certificates or memoranda of such insurance within 20 days of the date hereof and renewals of such policy or policies at least 15 days prior to the expiration date(s) thereof, said renewals to be marked "paid" by the issuing company or agent; that receipt by the Agent and/or any Bank of any information under this Section shall not be construed as an acceptance of the adequacy of the insurance required hereby; and, that any insurance payable by reason of loss or damage to the Collateral is proceeds hereunder.

12. Loss or Damage

In the event of damage to or loss of any of the Collateral, with respect to that Collateral, Mortgagor will place the Collateral in the repair, condition and working order required hereby or replace the same with like equipment in the repair, condition and working order which the replaced Collateral was prior to the damage or loss. If the loss or damaged Collateral was one or more of the Units, the substituted Unit(s) will be described in a Supplemental Schedule to be delivered under the provisions of Section 9 hereof.

All proceeds of insurance payable for any such damage or loss, and any and all payments for such damage or loss payable to Mortgagor by any third party (for example, a railroad) or its insurer, shall be proceeds of the Collateral and shall be used only for replacement or repair of the Collateral, except that, if Mortgagor is in default hereunder, the Agent or the Banks may, and hereby is authorized by Mortgagor to, direct any party owing such payment to make the same to the Agent directly, to be applied against the Obligations in compliance herewith.

13. Substituted or Additional Collateral

If, by reason of events described in Section 12 hereof, because of default under Section 16, because the Agent or the Banks believe that the prospect of payment or performance hereunder or under the Attendant Agreements is impaired, because of appraisals furnished by Mortgagor in compliance with the Loan Agreement or for any other reason, the Agent or the Banks in good faith desire additional or substitute security hereunder, Mortgagor shall, upon receipt of notice of such desire from the Agent, furnish such additional Collateral of the same or similar type acceptable to the Agent and the Banks. Such delivery will be accompanied by all documents required by the Loan Agreement and hereby for any Advancement and for any addition of Collateral.

14. No Assignment

Mortgagor will not sell, assign, sublet, pledge, hypothecate or otherwise encumber or suffer a lien upon or against any interest in this Mortgage without the prior written consent of the Agent and the Banks. Mortgagee may assign this Mortgage or any right and title it has hereunder upon written notice thereof to Mortgagor and such assignment shall be on terms and conditions not inconsistent herewith.

15. Opinion of Counsel

Prior to the First Advancement under the Loan Agreement, Mortgagor shall deliver to the Agent and each of the Banks such opinions of Counsel as are required by the Agreement. Also prior to the First Advancement, Mortgagor shall deliver to the Agent and to each of the Banks the favorable opinion of Counsel (which may make such qualifications and statements as are permitted by the Loan Agreement), to the effect that:

(a) This Mortgage has been duly executed by Mortgagor and constitutes the legal, valid and binding obligation of Mortgagor, enforceable in accordance herewith; and

(b) The Guaranty hereof by Sales Co. has been duly executed and constitutes the legal, valid and binding obligation of Sales Co., enforceable in accordance with its terms; and

(c) Neither Mortgagor nor its opining counsel know of any reason suggesting that any person other than the Banks or the Agent may claim a lien, charge or encumbrance upon or title to any of the Units in Mortgagor's possession, when occurring and the Banks' lien and security interest therein is first and best; and

(d) Neither Mortgagor nor its opining counsel know of any requirement for recording, filing, or depositing this Mortgage, or any information hereon, other than with the Interstate Commerce Commission in compliance with 49 United States Code §11303 and regulations thereunder, which is necessary to preserve or protect Mortgagee's or its assignees' title to and interest in the Units; and

(e) Neither Mortgagor nor its opining counsel know of any requirement for recording, filing or depositing financing statements, or other documents in the form or forms to be approved in said opinion, to perfect the Banks' interests in the Collateral other than the Units except in such places and with such officers as are specified in said opinion.

In addition, each delivery to Mortgagee of a Supplemental Schedule hereunder shall be accompanied by an additional favorable opinion of Counsel with respect to the matters covered in subparagraphs (a), (b), (c) and (d) of this paragraph as those matters relate to the Collateral covered by such Supplemental Schedule and stating that filing under 49 U.S.C.

§11303 of the accompanying Supplemental Schedule will perfect in the Banks a first and best lien in the Units identified therein.

If at any time or times when this Mortgage is in effect any opinion under this Section, or any item contained therein, or any fact upon which the same is based, is subject to change, Mortgagor and Counsel will give the Agent and the Banks notice thereof immediately upon gaining knowledge or notice of the same.

16. Default

Mortgagor shall be deemed to be in default hereunder in the event that an Event of Default should occur under the Loan Agreement, or that

(a) Mortgagor should fail to make any payment on the Indebtedness when due; or

(b) Mortgagor should default in the payment or performance of any of the Obligations or in the payment or performance of any of the terms, conditions, covenants or warranties of this Agreement, the Equipment Security Agreement or any of the Attendant Agreements and such failure should continue uncured within ten days after notice thereof is given Mortgagor by the Agent; or

(c) any warranty, representation, statement, or opinion made or furnished to the Agent or any Bank by or on behalf of Mortgagor or Guarantor in connection with this

Agreement or to induce the Banks to make an advancement or extend credit of any kind to Mortgagor should prove to have been false in any material respect when made or furnished or should become false and remain uncorrected; or

(d) any substantial loss, theft or destruction of or damage to (not replaced or repaired by insurance proceeds paid within 90 days thereof) the Collateral should occur; or

(e) Mortgagor or Guarantor should make an assignment for the benefit of creditors, should suspend business or commit any act amounting to business failure, or should make a voluntary assignment or transfer of any interest in any of the Collateral (except as expressly authorized by the Agent and the Banks in writing) or in all or substantially all of its property; or

(f) if a petition under any chapter of the Bankruptcy Act, as amended, or for the appointment of a receiver of all or any part of the property of Mortgagor or Guarantor, or under any other proceeding for the relief of debtors, should be filed by or against Coal Co. or Sales Co.

17. Enforcement of Security and Remedies

In the event of default hereunder or at any time the Agent or the Banks in good faith believe that the prospect of payment or performance of the Indebtedness is impaired (the facts and circumstances giving rise to such belief continuing uncorrected for ten days subsequent to the Banks'

transmission of written or telegraphic or telephonic notice thereof to Mortgagor), then, or at any time thereafter (such default not having previously been cured), the Agent or the Banks may declare all of the Obligations and Indebtedness to be immediately due and payable, without notice or demand therefor, and shall then have all remedies hereunder, under the Loan Agreement and under the Attendant Agreements and all the remedies of a secured party under the laws of the State of Ohio, or any other applicable laws, including, without limitation, the right to take possession of the tangible items of the Collateral, and for that purpose the Agent or the Banks may require Mortgagor to make the Collateral and the records thereof available to the Agent or the Banks at a place to be designated by the Agent reasonably convenient to both parties and may, so far as Mortgagor can give authority therefor, enter upon any premises on which the Collateral or any part or records thereof may be situated and remove the same therefrom, and Mortgagor hereby waives and releases the Agent and each of the Banks of and from any and all claims in connection with such removal.

The parties hereto recognize that the Collateral may and probably will be widely scattered geographically, difficult of preservation and disposition, important to the continued operation of public utilities and industries and subject to complex maintenance and management. Accordingly, those parties agree that, after default, the Agent and the

Banks are to have the widest possible latitude to preserve and protect the Collateral and the Banks' security therein and agree further that, at the option of the Agent or the Banks, the Banks shall have the unqualified right to appointments of receivers for the preservation, possession, protection and disposition of all or part of the Collateral and the collection and protection for the Banks of any proceeds of use or disposition thereof and/or to do any other thing and exercise any rights or remedies which the Banks may or might, with or without judicial process, do or exercise.

After the Agent or the Banks take or receive possession of the Collateral following default hereunder, whether the same be on premises of Mortgagor or otherwise, the Agent or the Banks may sell, lease or otherwise dispose of the Collateral in any manner permitted by law, and if such notice is required by law, the Agent will give Mortgagor written notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition thereof is to be made, and at any such public or private sale the Agent or the Banks may purchase all or any part of the Collateral. The parties hereto agree that notice under this paragraph shall not be unreasonable as to time if given in compliance herewith 10 days prior to sale or other disposition.

To the extent permitted by applicable law, Mortgagor hereby waives any rights for or hereafter conferred by

statute or otherwise which may require the Banks to sell, lease or otherwise use any Collateral in mitigation of the Banks' damages as set forth in this Section or which may otherwise limit or modify any of the Banks' rights or remedies under this Section. However, in making the waivers of this paragraph, Mortgagor does not waive its right to any notice of sale of Collateral and does not waive any claim or defense based upon the allegation that Mortgagee has failed to dispose of any collateral in a commercially reasonable manner, within the guidelines set forth in this Section.

Mortgagor shall pay to Mortgagee, on demand and as part of the Obligations hereunder, all costs and expenses, including court costs, legal expenses and reasonable attorneys' fees, incurred by the Agent or any Bank in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

18. Concurrent Remedies

No right or remedy of the Agent or the Banks hereunder shall be exclusive of any other remedy herein or by law provided; each right or remedy shall be cumulative and in addition to every other right or remedy and, in addition, the exercise of any remedy by the Agent or any Bank hereunder shall not of itself constitute a recognition of a default of all provisions hereof or of an intent by the Agent or that Bank to terminate all the provisions hereof. More-

over, a failure of the Agent or any Bank to insist upon strict compliance with the terms hereof or to assert any right or remedy hereunder shall not be a waiver of any default and shall not be determined to constitute a modification of the agreements of the parties hereto or the terms hereof or to establish any claim or defense.

19. Mortgagee's Payment -- Late Payment

In the event that Mortgagor should fail duly and promptly to perform any of the things required to be performed hereunder, the Agent or the Banks may, at its or their option, immediately or at any time thereafter, perform the same for the account of Mortgagor without thereby waiving any default, and any amount paid or expenses or liability incurred by the Agent or the Banks in such performance, together with interest thereon until paid at the rate specified in paragraph 10.6 of the Loan Agreement, shall be payable to the Banks by Mortgagor on demand and shall be and become part of the Obligations secured hereunder.

In the event that any amount due and payable from Mortgagor remains overdue for more than 15 days, Mortgagor shall pay the Banks on demand and as part of the Obligations interest on such amount from the date payable to the date of actual payment at the rate specified in paragraph 10.7 of the Loan Agreement.

20. The Banks and the Agent

The Agent may and shall act on behalf of the Banks in all respects as set forth in the Loan Agreement and herein.

21. Notice

Except as otherwise specifically provided herein, notice shall be deemed to have been properly given to Mortgagor when in writing deposited in the United States registered or certified mail, postage prepaid and addressed to South-East Coal Company, P.O. Box 332, Irvine, Kentucky 40336, whether or not the same is actually received by Mortgagor; and notice shall be deemed to have been properly given to Guarantor when in writing and deposited in the United States registered or certified mail, postage prepaid and addressed to South-East Coal Sales Company, 88 East Broad Street, Columbus, Ohio 43215, whether or not the same is actually received by Guarantor. Any communication to any Bank and to the Agent shall be deemed properly given if similarly mailed to its Commercial Loan Department at its particular address as stated herein to the attention of its officer or agent who executed the Loan Agreement. Any party hereto may at any time change its address for notification purposes by mailing, as aforesaid, a notice stating the change and setting forth the new address.

22. Miscellaneous

Unless otherwise specifically provided herein, the Obligations of Mortgagor hereunder shall not be contingent or executory and shall continue notwithstanding termination hereof or the exercise by Mortgagee of any right or remedy hereunder.

All covenants and agreements in this Mortgage contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not, except that neither Sales Co. nor Coal Co. shall have the right to assign its rights hereunder or any interest herein without the prior written consent of each of the Banks.

To the extent possible this Agreement succeeds those of the Agreements between CNB and Borrowers in existence at the date hereof which may be assigned to the Agent hereunder by CNB; in the event of direct conflict between those agreements and this Agreement, the provisions of this Agreement will prevail.

The titles to the various sections of this Agreement are solely for convenience and are not a part of the Agreement for purposes of interpreting the provisions hereof.

Unless otherwise specified, the terms "herein," "hereunder," "hereto," "herewith" and words of similar import refer to this entire Agreement; the singular includes the plural and conversely.

This Mortgage, the Schedules, and the Perfection Documents, or any other instruments, documents, or agreements to be delivered hereunder, are being executed and delivered and are intended to be performed in the State of Ohio. The parties hereto agree that the law of the State of Ohio shall govern their rights and duties hereunder, excepting applicable federal law and except only to the extent precluded by other states' laws of mandatory application.

As a specifically bargained inducement for the Banks to extend credit giving rise to the Indebtedness, all parties hereto agree that ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING FROM OR OUT OF THIS AGREEMENT, ITS MAKING, VALIDITY OR PERFORMANCE, SHALL, AT THE SOLE OPTION OF THE AGENT, BE PROSECUTED AS TO ALL PARTIES AND THEIR SUCCESSORS AND ASSIGNS AT COLUMBUS, OHIO. EACH PARTY HERETO CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER ITS PERSON BY ANY COURT SITUATED AT COLUMBUS, OHIO, AND HAVING JURISDICTION OVER THE SUBJECT MATTER. Coal Co. and Sales Co. each hereby irrevocably appoint and designate Louis A. Nobile, whose address is 100 East Broad Street, Columbus, Ohio 43215, or any other person whom the Agent, after giving Coal Co. and Sales Co. five (5) days' written notice thereof may appoint, as its true and lawful attorney-in-fact and duly authorized agent for service of legal process and agrees that service of such process upon such party shall constitute personal service of such process upon each

of them. Such attorney-in-fact, within five (5) days after receipt of such process, shall forward the same, by certified or registered mail, together with all papers affixed thereto, to Coal Co. or Sales Co., as the case may be, at its address as set forth herein.

This written Agreement is exclusive as to its subject matter and no inconsistent oral agreement shall be binding.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective duly authorized officers as of the 20th day of February, 1979.

THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS, Columbus, Ohio

By Philip C. Parker  
Philip C. Parker  
Assistant Vice President

A G E N T

THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS

By Philip C. Parker  
Philip C. Parker  
Assistant Vice President

PITTSBURGH NATIONAL BANK

By THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS, Agent

By Philip C. Parker  
Philip C. Parker  
Assistant Vice President

CITIZENS FIDELITY BANK AND TRUST  
COMPANY

By THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS, Agent

By Philip C. Parker  
Philip C. Parker  
Assistant Vice President

THE FIRST NATIONAL BANK OF  
LOUISVILLE

By THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS, Agent

By Philip C. Parker  
Philip C. Parker  
Assistant Vice President

M O R T G A G E E

SOUTH-EAST COAL COMPANY

By Ray L. Vian Jr.  
Its President

(SEAL)

M O R T G A G O R

All parties' executions  
signed and acknowledged  
in the presence of:

Julius B. ...  
...

SCHEDULE 1

To Mortgage of Railroad Rolling Stock  
 Dated February 20, 1979

Description of Equipment (Units):

<u>Type</u>	<u>ARR Mechanical Designation</u>	<u>Number of Units*</u>		
41'8" - 70 ton hopper cars ; 50 ton hopper cars	HT	692		
	<u>Identifying Marks**</u>	<u>Road or Serial Numbers</u>		
<u>SECX055707</u>	<u>SECX768998</u>	<u>SECX751172</u>	<u>SECX769519</u>	<u>SECX768211</u>
<u>SECX055722</u>	<u>SECX769024</u>	<u>SECX751175</u>	<u>SECX769565</u>	<u>SECX768285</u>
<u>SECX055736</u>	<u>SECX769099</u>	<u>SECX751178</u>	<u>SECX769637</u>	<u>SECX768356</u>
<u>SECX055745</u>	<u>SECX769161</u>	<u>SECX751181</u>	<u>SECX769722</u>	<u>SECX768416</u>
<u>SECX055756</u>	<u>SECX769234</u>	<u>SECX751184</u>	<u>SECX769805</u>	<u>SECX768453</u>
<u>SECX751156</u>	<u>SECX769305</u>	<u>SECX751187</u>	<u>SECX769888</u>	<u>SECX768535</u>
<u>SECX751159</u>	<u>SECX769366</u>	<u>SECX751191</u>	<u>SECX769929</u>	<u>SECX768703</u>
<u>SECX751162</u>	<u>SECX769418</u>	<u>SECX768064</u>	<u>SECX769957</u>	<u>SECX768723</u>
<u>SECX751165</u>	<u>SECX769449</u>	<u>SECX768120</u>	<u>SECX770022</u>	<u>SECX768780</u>
<u>SECX751168</u>	<u>SECX769513</u>	<u>SECX768186</u>	<u>SECX770104</u>	<u>SECX768821</u>
<u>SECX751171</u>	<u>SECX769560</u>	<u>SECX768268</u>	<u>SECX770131</u>	<u>SECX768913</u>
<u>SECX751174</u>	<u>SECX769617</u>	<u>SECX768337</u>	<u>SECX770214</u>	<u>SECX768956</u>
<u>SECX751177</u>	<u>SECX769719</u>	<u>SECX768411</u>	<u>SECX055714</u>	<u>SECX769018</u>
<u>SECX751180</u>	<u>SECX769744</u>	<u>SECX768436</u>	<u>SECX055731</u>	<u>SECX769084</u>
<u>SECX751183</u>	<u>SECX769856</u>	<u>SECX768513</u>	<u>SECX055742</u>	<u>SECX769119</u>
<u>SECX751186</u>	<u>SECX769906</u>	<u>SECX768687</u>	<u>SECX055750</u>	<u>SECX769222</u>
<u>SECX751190</u>	<u>SECX769944</u>	<u>SECX768719</u>	<u>SECX055764</u>	<u>SECX769262</u>
<u>SECX768024</u>	<u>SECX769980</u>	<u>SECX768752</u>	<u>SECX751158</u>	<u>SECX769353</u>
<u>SECX768107</u>	<u>SECX770036</u>	<u>SECX768808</u>	<u>SECX751161</u>	<u>SECX769398</u>
<u>SECX768173</u>	<u>SECX770123</u>	<u>SECX768899</u>	<u>SECX751164</u>	<u>SECX769441</u>
<u>SECX768241</u>	<u>SECX770175</u>	<u>SECX768953</u>	<u>SECX751167</u>	<u>SECX769499</u>
<u>SECX768297</u>	<u>SECX055712</u>	<u>SECX769015</u>	<u>SECX751170</u>	<u>SECX769524</u>
<u>SECX768401</u>	<u>SECX055728</u>	<u>SECX769079</u>	<u>SECX751173</u>	<u>SECX769579</u>
<u>SECX768421</u>	<u>SECX055741</u>	<u>SECX769100</u>	<u>SECX751176</u>	<u>SECX769695</u>
<u>SECX768505</u>	<u>SECX055748</u>	<u>SECX769173</u>	<u>SECX751179</u>	<u>SECX769741</u>
<u>SECX768640</u>	<u>SECX055763</u>	<u>SECX769243</u>	<u>SECX751182</u>	<u>SECX769818</u>
<u>SECX768706</u>	<u>SECX751157</u>	<u>SECX769336</u>	<u>SECX751185</u>	<u>SECX769901</u>
<u>SECX768726</u>	<u>SECX751160</u>	<u>SECX769377</u>	<u>SECX751188</u>	<u>SECX769940</u>
<u>SECX768803</u>	<u>SECX751163</u>	<u>SECX769439</u>	<u>SECX768012</u>	<u>SECX769975</u>
<u>SECX768892</u>	<u>SECX751166</u>	<u>SECX769468</u>	<u>SECX768090</u>	<u>SECX770029</u>
<u>SECX768921</u>	<u>SECX751169</u>		<u>SECX768162</u>	<u>SECX770114</u>
				<u>SECX770170</u>
				<u>SECX770215</u>

<u>SECX770245</u>	<u>SECX770252</u>	<u>SECX770254</u>	<u>SECX772971</u>	<u>SECX772976</u>
<u>SECX770264</u>	<u>SECX770279</u>	<u>SECX770285</u>	<u>SECX772990</u>	<u>SECX772997</u>
<u>SECX770297</u>	<u>SECX770327</u>	<u>SECX770371</u>	<u>SECX773002</u>	<u>SECX773005</u>
<u>SECX770331</u>	<u>SECX770404</u>	<u>SECX770409</u>	<u>SECX773021</u>	<u>SECX773031</u>
<u>SECX770446</u>	<u>SECX770447</u>	<u>SECX770461</u>	<u>SECX773038</u>	<u>SECX773046</u>
<u>SECX770483</u>	<u>SECX770515</u>	<u>SECX770526</u>	<u>SECX773067</u>	<u>SECX773069</u>
<u>SECX770566</u>	<u>SECX770567</u>	<u>SECX770596</u>	<u>SECX773072</u>	<u>SECX773087</u>
<u>SECX770619</u>	<u>SECX770629</u>	<u>SECX770630</u>	<u>SECX773092</u>	<u>SECX773093</u>
<u>SECX770634</u>	<u>SECX770668</u>	<u>SECX770682</u>	<u>SECX773107</u>	<u>SECX773112</u>
<u>SECX770695</u>	<u>SECX770725</u>	<u>SECX770729</u>	<u>SECX773126</u>	<u>SECX773132</u>
<u>SECX770746</u>	<u>SECX770761</u>	<u>SECX770780</u>	<u>SECX773140</u>	<u>SECX773166</u>
<u>SECX770817</u>	<u>SECX770827</u>	<u>SECX770876</u>	<u>SECX773139</u>	<u>SECX773195</u>
<u>SECX770877</u>	<u>SECX770881</u>	<u>SECX770882</u>	<u>SECX773199</u>	<u>SECX773201</u>
<u>SECX770894</u>	<u>SECX770914</u>	<u>SECX770915</u>	<u>SECX773214</u>	<u>SECX773218</u>
<u>SECX770925</u>	<u>SECX770930</u>	<u>SECX770941</u>	<u>SECX773231</u>	<u>SECX773241</u>
<u>SECX770976</u>	<u>SECX770979</u>	<u>SECX770986</u>	<u>SECX773255</u>	<u>SECX773262</u>
<u>SECX770989</u>	<u>SECX771025</u>	<u>SECX771034</u>	<u>SECX773270</u>	<u>SECX773271</u>
<u>SECX771044</u>	<u>SECX771049</u>	<u>SECX771062</u>	<u>SECX773306</u>	<u>SECX773309</u>
<u>SECX771081</u>	<u>SECX771093</u>	<u>SECX771108</u>	<u>SECX773339</u>	<u>SECX773340</u>
<u>SECX771114</u>	<u>SECX771126</u>	<u>SECX771127</u>	<u>SECX773355</u>	<u>SECX773362</u>
<u>SECX771132</u>	<u>SECX771146</u>	<u>SECX771165</u>	<u>SECX773372</u>	<u>SECX773376</u>
<u>SECX771176</u>	<u>SECX771178</u>	<u>SECX771181</u>	<u>SECX773380</u>	<u>SECX773383</u>
<u>SECX771188</u>	<u>SECX771205</u>	<u>SECX771214</u>	<u>SECX773391</u>	<u>SECX773397</u>
<u>SECX771216</u>	<u>SECX771228</u>	<u>SECX771240</u>	<u>SECX773407</u>	<u>SECX773420</u>
<u>SECX771247</u>	<u>SECX771252</u>	<u>SECX771263</u>	<u>SECX773437</u>	<u>SECX773443</u>
<u>SECX771287</u>	<u>SECX771290</u>	<u>SECX771295</u>	<u>SECX773454</u>	<u>SECX773456</u>
<u>SECX771297</u>	<u>SECX771300</u>	<u>SECX771302</u>	<u>SECX773462</u>	<u>SECX773469</u>
<u>SECX771312</u>	<u>SECX771316</u>	<u>SECX771335</u>	<u>SECX773472</u>	<u>SECX773477</u>
<u>SECX771339</u>	<u>SECX771343</u>	<u>SECX771366</u>	<u>SECX773487</u>	<u>SECX773489</u>
<u>SECX771368</u>	<u>SECX771370</u>	<u>SECX771376</u>	<u>SECX773491</u>	<u>SECX773493</u>
<u>SECX771379</u>	<u>SECX771384</u>	<u>SECX771399</u>	<u>SECX773503</u>	<u>SECX773513</u>
<u>SECX771409</u>	<u>SECX771443</u>	<u>SECX771455</u>	<u>SECX773524</u>	<u>SECX773530</u>
<u>SECX771471</u>	<u>SECX771481</u>	<u>SECX771513</u>	<u>SECX773534</u>	<u>SECX773539</u>
<u>SECX771522</u>	<u>SECX771539</u>	<u>SECX771560</u>	<u>SECX773544</u>	<u>SECX773546</u>
<u>SECX771602</u>	<u>SECX771608</u>	<u>SECX771609</u>	<u>SECX773557</u>	<u>SECX773558</u>
<u>SECX771617</u>	<u>SECX771666</u>	<u>SECX771669</u>	<u>SECX773569</u>	<u>SECX773570</u>
<u>SECX771673</u>	<u>SECX771688</u>	<u>SECX771707</u>	<u>SECX773573</u>	<u>SECX773579</u>
<u>SECX771710</u>	<u>SECX771714</u>	<u>SECX771719</u>	<u>SECX773586</u>	<u>SECX773590</u>
<u>SECX771721</u>	<u>SECX771725</u>	<u>SECX771726</u>	<u>SECX773594</u>	<u>SECX773597</u>
<u>SECX771732</u>	<u>SECX771776</u>	<u>SECX771781</u>	<u>SECX773600</u>	<u>SECX773605</u>
<u>SECX771806</u>	<u>SECX771807</u>	<u>SECX771815</u>	<u>SECX773620</u>	<u>SECX773623</u>
<u>SECX771822</u>	<u>SECX771830</u>	<u>SECX771847</u>	<u>SECX773636</u>	<u>SECX773640</u>
<u>SECX771848</u>	<u>SECX771851</u>	<u>SECX771857</u>	<u>SECX773653</u>	<u>SECX773656</u>
<u>SECX771859</u>	<u>SECX771860</u>	<u>SECX771862</u>	<u>SECX773666</u>	<u>SECX773669</u>
<u>SECX771869</u>	<u>SECX771876</u>	<u>SECX771878</u>	<u>SECX773672</u>	<u>SECX773679</u>
<u>SECX771880</u>	<u>SECX771882</u>	<u>SECX771894</u>	<u>SECX773695</u>	<u>SECX773699</u>
<u>SECX771904</u>	<u>SECX771924</u>	<u>SECX771948</u>	<u>SECX773704</u>	<u>SECX773708</u>
<u>SECX771953</u>	<u>SECX771963</u>	<u>SECX771980</u>	<u>SECX773720</u>	<u>SECX773726</u>
<u>SECX771990</u>	<u>SECX771992</u>	<u>SECX771996</u>	<u>SECX773730</u>	<u>SECX773733</u>
<u>SECX772004</u>	<u>SECX772005</u>	<u>SECX772029</u>	<u>SECX773739</u>	<u>SECX773744</u>
<u>SECX772031</u>	<u>SECX772036</u>	<u>SECX772046</u>	<u>SECX773759</u>	<u>SECX773763</u>
<u>SECX772060</u>	<u>SECX772065</u>	<u>SECX772081</u>	<u>SECX773770</u>	<u>SECX773773</u>

SECX772986  
SECX773000  
SECX773009  
SECX773032  
SECX773059  
SECX773070  
SECX773090  
SECX773099  
SECX773113  
SECX773139  
SECX773187  
SECX773198  
SECX773207  
SECX773221  
SECX773252  
SECX773269  
SECX773283  
SECX773312  
SECX773351  
SECX773365  
SECX773377  
SECX773385  
SECX773406  
SECX773430  
SECX773445  
SECX773461  
SECX773471  
SECX773479  
SECX773490  
SECX773497  
SECX773521  
SECX773531  
SECX773543  
SECX773552  
SECX773562  
SECX773571  
SECX773582  
SECX773592  
SECX773599  
SECX773610  
SECX773630  
SECX773649  
SECX773662  
SECX773671  
SECX773685  
SECX773701  
SECX773710  
SECX773728  
SECX773738  
SECX773757  
SECX773769  
SECX773777

SECX772082  
SECX772093  
SECX772127  
SECX772143  
SECX772160  
SECX772170  
SECX772183  
SECX772196  
SECX772214  
SECX772240  
SECX772269  
SECX772298  
SECX772309  
SECX772329  
SECX772344  
SECX772364  
SECX772381  
SECX772388  
SECX772416  
SECX772443  
SECX772488  
SECX772505  
SECX772521  
SECX772540  
SECX772568  
SECX772589  
SECX772608  
SECX772638  
SECX772649  
SECX772657  
SECX772670  
SECX772679  
SECX772709  
SECX772733  
SECX772756  
SECX772764  
SECX772777  
SECX772785  
SECX772797  
SECX772819  
SECX772836  
SECX772843  
SECX772852  
SECX772875  
SECX772896  
SECX772902  
SECX772913  
SECX772923  
SECX772934  
SECX772941  
SECX772948  
SECX772960

SECX772098  
SECX772116  
SECX772133  
SECX772151  
SECX772161  
SECX772176  
SECX772190  
SECX772205  
SECX772220  
SECX772252  
SECX772269  
SECX772299  
SECX772319  
SECX772331  
SECX772354  
SECX772368  
SECX772383  
SECX772398  
SECX772422  
SECX772465  
SECX772499  
SECX772506  
SECX772523  
SECX772547  
SECX772580  
SECX772594  
SECX772616  
SECX772640  
SECX772654  
SECX772658  
SECX772673  
SECX772687  
SECX772724  
SECX772751  
SECX772759  
SECX772768  
SECX772774  
SECX772789  
SECX772809  
SECX772829  
SECX772839  
SECX772847  
SECX772857  
SECX772880  
SECX772898  
SECX772908  
SECX772918  
SECX772931  
SECX772935  
SECX772945  
SECX772953  
SECX772961

SECX772092  
SECX772122  
SECX772135  
SECX772159  
SECX772163  
SECX772178  
SECX772194  
SECX772207  
SECX772237  
SECX772257  
SECX772291  
SECX772301  
SECX772323  
SECX772333  
SECX772362  
SECX772370  
SECX772385  
SECX772412  
SECX772428  
SECX772487  
SECX772501  
SECX772515  
SECX772532  
SECX772563  
SECX772584  
SECX772600  
SECX772624  
SECX772646  
SECX772655  
SECX772664  
SECX772676  
SECX772700  
SECX772730  
SECX772752  
SECX772761  
SECX772771  
SECX772781  
SECX772795  
SECX772811  
SECX772835  
SECX772841  
SECX772851  
SECX772868  
SECX772882  
SECX772899  
SECX772910  
SECX772921  
SECX772933  
SECX772937  
SECX772947  
SECX772957  
SECX772967

SECX773780  
SECX773792  
SECX773805  
SECX773812  
SECX773847  
SECX773851  
SECX773865  
SECX773883  
SECX773887  
SECX773900  
SECX773910  
SECX773920  
SECX773926  
SECX773935  
SECX773944  
SECX773955  
SECX773974  
SECX773982  
SECX773997  
SECX774004  
SECX774025  
SECX774041

SECX773787  
SECX773795  
SECX773807  
SECX773816  
SECX773848  
SECX773852  
SECX773867  
SECX773884  
SECX773888  
SECX773905  
SECX773912  
SECX773921  
SECX773928  
SECX773936  
SECX773950  
SECX773964  
SECX773979  
SECX773993  
SECX773998  
SECX774010  
SECX774029  
SECX774043

SECX773796  
SECX773800  
SECX773810  
SECX773827  
SECX773850  
SECX773862  
SECX773868  
SECX773885  
SECX773889  
SECX773909  
SECX773918  
SECX773925  
SECX773930  
SECX773940  
SECX773953  
SECX773972  
SECX773980  
SECX773994  
SECX774003  
SECX774012  
SECX774037  
SECX774044

\*Included in the property covered by the aforesaid mortgage is rolling stock used or intended for use in connection with interstate commerce, or interests therein, owned by South-East Coal Company at the date of said mortgage or thereafter acquired by it or its successors and to be remarked with its reporting marks, "SECX."

\*\*Each Unit will have marked or stenciled on each side in letters not less than one inch in height the following:

THE CITY NATIONAL BANK & TRUST COMPANY  
OF COLUMBUS, AGENT, MORTGAGEE. MORTGAGE  
RECORDED UNDER SECTION 11303 OF THE INTERSTATE  
COMMERCE ACT.

SUPPLEMENTAL SCHEDULE NO. \_\_\_\_\_

Referenced Document: Mortgage of Railroad Rolling Stock  
dated \_\_\_\_\_, 1979,  
recorded with the Interstate Commerce  
Commission pursuant to 49 U.S.C. 11303  
on \_\_\_\_\_, 1979, Re-  
cordation No. \_\_\_\_\_.

Mortgagor: South-East Coal Company  
Irvine, Kentucky 40336

Guarantor: South-East Coal Sales Company  
88 East Broad Street  
Columbus, Ohio 43215

Mortgagee(s): The City National Bank & Trust Company  
of Columbus, Agent  
100 East Broad Street  
Columbus, Ohio 43215

The City National Bank & Trust Company  
of Columbus

Pittsburgh National Bank

Citizens Fidelity Bank and Trust Company

The First National Bank of Louisville

c/o The Agent above identified.

A D D

Description of Equipment (Units):

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Number of Units</u>	<u>Identifying Marks*</u>	<u>Road or Serial Numbers</u>
-------------	---	--------------------------------	-------------------------------	---------------------------------------

\*Each Unit will have marked or stenciled on each side in letters not less than one inch in height the following:

THE CITY NATIONAL BANK & TRUST COMPANY  
OF COLUMBUS, AGENT MORTGAGEE. MORTGAGE  
RECORDED UNDER SECTION 11303 OF THE  
INTERSTATE COMMERCE ACT.

Approved and agreed to this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, as a Supplemental Schedule to the Mortgage by and among THE  
CITY NATIONAL BANK & TRUST COMPANY OF COLUMBUS, AGENT, and others,  
SOUTH-EAST COAL COMPANY and SOUTH-EAST COAL SALES COMPANY (as  
Guarantor) dated the \_\_\_\_\_ day of \_\_\_\_\_, 1979, and hereby  
made a part of that Mortgage.

Signed and acknowledged  
in the presence of:

(SEAL)

SOUTH-EAST COAL COMPANY

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

MORTGAGOR

(SEAL)

SOUTH-EAST COAL SALES COMPANY

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

GUARANTOR

THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS, Columbus, Ohio

All executions signed and  
acknowledged in the  
presence of:

By \_\_\_\_\_

A G E N T

\_\_\_\_\_

\_\_\_\_\_

THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS

By \_\_\_\_\_

PITTSBURGH NATIONAL BANK

By THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS, Agent

By \_\_\_\_\_

CITIZENS FIDELITY BANK AND TRUST  
COMPANY

By THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS, Agent

By \_\_\_\_\_

THE FIRST NATIONAL BANK OF  
LOUISVILLE

By THE CITY NATIONAL BANK & TRUST  
COMPANY OF COLUMBUS, Agent

By \_\_\_\_\_

STATE OF OHIO,  
COUNTY OF FRANKLIN, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of The City National Bank & Trust Company of Columbus, that said instrument was signed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association for the purposes therein stated.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, before me, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of South-East Coal Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Diectors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_, before me, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of South-East Coal Sales Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Diectors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

GUARANTY  
(Of Obligations Under Mortgage of Railroad Rolling Stock)

THIS GUARANTY is made <sup>as of the</sup> ~~this~~ 20th day of February, 1979, by the undersigned ("Guarantor"), to and for the benefit of The City National Bank & Trust Company of Columbus, Agent, and for each of the Banks, as defined in the Mortgage and Loan Agreement identified herein (individually and collectively, "Mortgagee").

IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth, including without limitation loans made and to be made by the Banks and indebtedness to the Banks of South-East Coal Company, a Kentucky corporation having its principal office and place of business in Irvine, Kentucky 40336, hereinafter called "Mortgagor," evidenced and to be evidenced in part by promissory notes pursuant to a Loan Agreement of even date herewith by and among the Agent, the Banks, Mortgagor and the undersigned and secured by a Mortgage of even date herewith by and between Mortgagor and those parties (the "Mortgage"), Guarantor, incorporating hereinto the terms and conditions of the Loan Agreement and Mortgage and using the terms herein as defined therein, and for the purpose of inducing Mortgagee to make the loans aforesaid, hereby warrants, covenants and agrees as follows:

1. Guarantor hereby agrees to enter into the Mortgage together with Mortgagor and, to the extent of its possession or control of any of the Collateral, as a mortgagor or debtor thereunder.

2. Guarantor unconditionally and absolutely guarantees the due and punctual payment of the Notes, any interest thereon and any other monies due or which may become due thereon, and the due and punctual performance and observance by Mortgagor of the Obligations and all the other terms, covenants and conditions of the Notes, the Mortgage, the said Loan Agreement and all other documents executed in connection with said loans, whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants and conditions thereof now, or at any time hereafter, made or granted.

3. Guarantor hereby waives diligence, presentment, protest, notice of dishonor, demand for payment, extension of time for payment, notice of acceptance of this Guaranty, notice of nonpayment at maturity or otherwise, notice of indulgences and notices of every kind, and consents to any and all forbearances and extensions of the time of payment of the Notes, and to any and all changes in the terms, covenants and conditions thereof hereafter made or granted and to any and all substitutions, exchanges or releases of all or any part of the collateral therefor; it being the intention hereof that Guarantor shall remain liable until such amount of principal of the Notes, with interest, and any other sums due or to become due thereon or under the Mortgage or any other agreement, shall have been fully paid and the terms, covenants and conditions shall have been fully performed and observed by Mortgagor, notwithstanding any act, commission or

thing which might otherwise operate as a legal or equitable discharge of Guarantor.

4. Guarantor agrees that it shall have no right of subrogation whatsoever with respect to the aforesaid indebtedness, or to any monies due or paid thereon or any collateral securing the same unless and until Mortgagee shall have received full payment of all sums at any time evidenced by the Notes and/or secured by the Mortgage.

5. Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Mortgagee takes such action for that purpose as shall be requested in writing by Guarantor, but failure of Mortgagee to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Mortgagee to preserve or protect any rights in the Collateral as against prior or subsequent parties, or to do any act not so required by Guarantor shall be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral.

6. Guarantor agrees that this Guaranty may be enforced by Mortgagee without first resorting to or exhausting any other security or collateral or without first having recourse to the Notes or any of the property covered by the Mortgage through foreclosure proceedings or otherwise; however, nothing contained herein shall prevent Mortgagee from instituting and maintaining suit on the Notes, or any one of them, foreclosing or causing to be foreclosed the lien(s) of the Mortgage or from exercising any

other rights hereunder, and if such foreclosure or other remedy is availed of only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied for reduction of the amount due on the Notes or under the Mortgage, and Mortgagee shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or of enforcement hereof. At any sale of the security or collateral for the indebtedness of Mortgagor or any part thereof, whether by trustee's sale, sale by a court of competent jurisdiction, foreclosure or otherwise, Mortgagee may at its discretion purchase all or any part of such collateral so sold or offered for sale for its own account and may apply the amount bid therefor against the balance due it pursuant to the terms of the Notes and the Mortgage.

7. Guarantor agrees that this Guaranty shall inure to the benefit of and may be enforced by Mortgagee and any subsequent holder or holders of the Notes, and any assignee of the Mortgage, and shall be binding upon and enforceable against Guarantor and Guarantor's legal representatives, successors and assigns.

8. Any one or more successive and/or concurrent actions may be brought hereon against Guarantor, or any one of them if more than one, either in the same action, if any, brought against Mortgagor, the then owner of the collateral securing the Notes, and/or any other party, or in separate actions, as often as the legal holder or holders of the Notes, in its or their sole discretion may deem advisable.

IN WITNESS WHEREOF, SOUTH-EAST COAL SALES COMPANY,  
Guarantor; has caused this Guaranty to be executed by its duly  
authorized representative on the day and year first aforesaid.

(SEAL)

SOUTH-EAST COAL SALES COMPANY

Signed and acknowledged  
in the presence of:

John R. [Signature]  
[Signature]

By Thomas James  
Its Treasurer

STATE OF OHIO,  
COUNTY OF FRANKLIN, ss:

On this 19<sup>th</sup> day of February, 1979, before me personally appeared Philip C. Parker, to me personally known, who being by me duly sworn, says that he is the Asst. Vice President of The City National Bank & Trust Company of Columbus, that said instrument was signed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association for the purposes therein stated.

(SEAL)

  
\_\_\_\_\_  
Notary Public

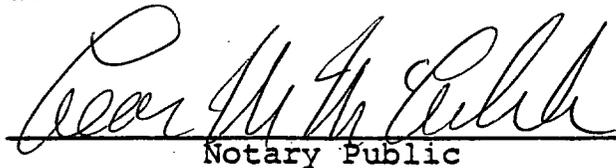
My commission expires \_\_\_\_\_

LEON M. McCORKLE, Jr., Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
MY COMMISSION HAS NO EXPIRATION DATE  
SECTION 147.03 R. C.

STATE OF OHIO  
COUNTY OF FRANKLIN, ss:

On this 19<sup>th</sup> day of February, 1979, before me, personally appeared Nary LaVie, Jr., to me personally known, who being by me duly sworn, says that he is the President of South-East Coal Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Diectors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

  
\_\_\_\_\_  
Notary Public

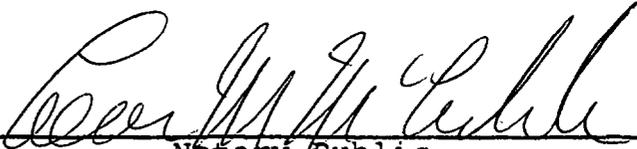
My commission expires \_\_\_\_\_

LEON M. McCORKLE, Jr., Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
MY COMMISSION HAS NO EXPIRATION DATE  
SECTION 147.03 R. C.

STATE OF OHIO  
COUNTY OF FRANKLIN, ss:

On this 19<sup>th</sup> day of February, 1979, before me, personally appeared Thomas J. James, to me personally known, who being by me duly sworn, says that he is the Treasurer of South-East Coal Sales Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation for the purposes therein stated.

(SEAL)

  
\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

LEON M. McCORKLE, Jr., Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
MY COMMISSION HAS NO EXPIRATION DATE  
SECTION 147.03 R. C.

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

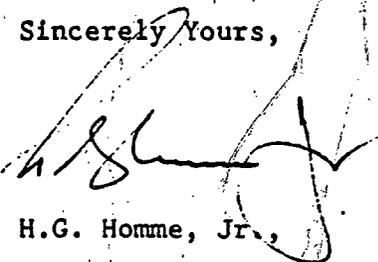
3/16/79

William L. Bailes, Jr.  
Suite 230, Coal Building  
1130 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 3/16/79 at , and assigned recordation number(s) 10208 2:15pm

Sincerely Yours,

  
H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)