RECORDATION NO. 9833 Filed 1425

DEC 22 1978 - 2 00 PM

INTERSTATE COMMERCE COMMISSION

No. 8-356A045

Date DEC 22 1978

Fee $ 50

ICC Washington, D. C.

Citizens Fidelity Bank & Trust Company

CITIZENS PLAZA · POST OFFICE BOX 1140 · LOUISVILLE, KENTUCKY 40201

GEORGE M. BIGG
SENIOR VICE PRESIDENT

December 19, 1978

Secretary of the Interstate
Commerce Commission
Washington, DC 20423

Dear Sir:

This letter of transmittal and the enclosed Mortgage and Security Agreement are submitted to you under §1116.2 of 49 C.F.R. for purposes of having the Mortgage and Security Agreement recorded under §20c of the Interstate Commerce Act.

In accordance with 49 C.F.R. §1116.4, please be advised that the names and adresses of the parties to the enclosed Mortgage are as follows:

Mortgagor:	Blue Diamond Mining, Inc. P. O. Box 10008 6305 Kingston Pike Knoxville, Tennessee 37919
Mortgagee:	Citizens Fidelity Bank and Trust Company (d/b/a Citizens Fidelity Energy Company) P. O. Box 33000 500 West Jefferson Street Louisville, KY 40232
Guarantor:	Blue Diamond Coal Company P. O. Box 10008 6305 Kingston Pike Knoxville, Tennessee 37919

The equipment covered by the enclosed Mortgage consists of ninety-five (95) seventy-ton open top hopper cars rebuilt and sold to Mortgagor by Ortner Freight Car Company and bearing the following American Association of Railways reporting mark and numbers: BDMX Nos. 600 to 694, inclusive.

Counterpart - dear uncontrolled

I.C.C. DEC 22 1 54 PM '78 RECEIVED

Once the enclosed Mortgage has been recorded,please return it to the Mortgagee, Citizens Fidelity Bank and Trust Company, at its address above.

The undersigned certifies that he is an executive officer of one of the parties to the transaction evidenced by this letter and the enclosed Mortgage and has knowledge of the matters set forth therein.

Sincerely,

George M. Bigg

GMB:psd

Enclosures

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INTERSTATE COMMERCE COMMISSION

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement made and entered into this 18 day of December, 1978, by and between (i) BLUE DIAMOND MINING, INC., a Delaware corporation ("Blue Diamond"), (ii) BLUE DIAMOND COAL COMPANY, a Delaware corporation ("Guarantor"), and (iii) CITIZENS FIDELITY BANK AND TRUST COMPANY (d/b/a Citizens Fidelity Energy Company), a Kentucky banking corporation with its principal office and place of business at 500 West Jefferson Street, Louisville, Kentucky 40202 ("Bank").

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. For good and sufficient value received, Blue Diamond hereby pledges, mortgages, assigns, transfers and grants a security interest in the following collateral (the "Collateral") to the Bank, to-wit:

> Ninety-Five (95) seventy-ton open top hopper cars for the rail transportation of coal, such cars having been rebuilt, and being sold to Blue Diamond, by Ortner Freight Car Company and bearing American Association of Railroads reporting marks as follows: BDMX Nos. 600 to 694, inclusive.

2. This Mortgage and Security Agreement is made and given by Blue Diamond in order to afford security to the Bank for the payment in full by Blue Diamond of: (i) that promissory note (the "Note") of even date herewith from Blue Diamond to the Bank in the original face principal amount of One Million Six Hundred Twelve Thousand Six Hundred Twenty-Five Dollars ($1,612,625.00), which Note bears interest at the rate of nine percent (9%) per annum and matures February 1, 1988 and (ii) all other indebtedness, obligations and liabilities of whatever kind of Blue Diamond to the Bank, whether created directly or acquired by the Bank by assignment or otherwise, whether now existing or hereafter created or arising, absolute or contingent, joint or several, due or to become due, including but not limited to, all future loans and advances made by the Bank to Blue Diamond.

3. Blue Diamond and the Guarantor hereby jointly and severally warrant and represent to the Bank that:

(a) Blue Diamond and the Guarantor are both duly incorporated and validly existing corporations, in good standing, under the laws of Delaware and are duly qualified

to transact business in all other jurisdictions where their business and applicable law so require.

(b) Blue Diamond is the sole and full owner of the Collateral and the Collateral is not subject to any other mortgages, security interests, liens or other encumbrances, other than ad valorem taxes not yet due and payable.

(c) Blue Diamond has the right and power to obtain and obligate itself on the loan represented by the Note and to enter into this Mortgage and Security Agreement, and the execution and delivery of the Note and this instrument do not violate any provision of the articles of incorporation or the by-laws of Blue Diamond or any term or condition of any contract or agreement to which Blue Diamond is a party.

(d) The acquisition of the Collateral, the loan evidenced by the Note and the execution and delivery of this instrument have all been duly and fully authorized by the Board of Directors of Blue Diamond and any other necessary parties, and the Note and this instrument when duly executed and delivered will both constitute valid, binding and enforceable obligations of Blue Diamond, and the officer executing the Note and this instrument on behalf of Blue Diamond has been fully and properly authorized to do so.

(e) The Guarantor, of which Blue Diamond is a subsidiary, has the right and power to enter into and obligate itself under the Guaranty of the Note, which Guaranty is appended to the Note and has been executed and delivered by the Guarantor simultaneously herewith. Said Guaranty and the execution and delivery thereof have been duly approved by the Board of Directors of the Guarantor and do not violate any provision of the articles of incorporation or by-laws of the Guarantor or any term or condition of any contract or agreement to which it is a party. The officer executing this instrument and the Guaranty for the Guarantor has been fully and properly authorized to do so, and upon its due execution and delivery the Guaranty will constitute a valid, binding and enforceable obligation of the Guarantor.

Simultaneously with the execution and delivery hereof, Blue Diamond and the Guarantor have furnished to the Bank an opinion(s) of counsel satisfactory to the Bank, certifying that the representations and warranties set forth in this §3 (excluding those in §3(b) above) are true and correct.

4. Blue Diamond hereby covenants and agrees with the Bank that Blue Diamond will:

(a) Use the Collateral within the State of Kentucky, where the Collateral will be based and located for a preponderance of the time that the Note remains outstanding and this Mortgage and Security Agreement in effect.

(b) Defend and protect the Collateral against all adverse claims and demands, and promptly notify the Bank in writing of any such claim or demand asserted against any of the Collateral.

(c) Mark each rail car forming part of the Collateral appropriately to show Blue Diamond's ownership and with its assigned reporting mark and number in accordance with the rules and regulations of the American Association of Railroads (A.A.R.), and Blue Diamond will maintain and cause the collateral to be always so marked while this instrument remains in effect and will not, during such period, cause or allow the Collateral to be marked so as to indicate ownership in any other party or to be renumbered without the prior written consent of the Bank, nor will Blue Diamond allow any of the Collateral to be marked so as to indicate a lien thereon allegedly held by any party other than Bank.

(d) Maintain the Collateral or cause the same to be maintained in good and proper working order throughout the period this instrument remains in effect, and the Collateral shall not be used for any purpose other than normal rail transportation of coal without the prior written consent of the Bank.

(e) Permit the Bank and its agents to inspect the Collateral and the books and records of Blue Diamond regarding same at any reasonable time, and from time to time, and will at all times keep track of the location of each piece of the Collateral and will promptly on request by the Bank furnish same a statement setting forth the location and condition of each rail car forming part of the Collateral.

(f) Pay all taxes and other governmental assessments, charges and impositions levied upon the Collateral on or before the respective due dates therefor and prior to the attachment to the Collateral of any penalties or interest for late payment. The Bank shall have the right to demand proof of the timely payment of all such taxes and governmental charges and shall have the right, on the failure of Blue Diamond to so pay same, to pay all such taxes and governmental charges itself on behalf of Blue Diamond and Blue Diamond shall reimburse the Bank therefor, together with interest on the amounts so paid by the Bank at the rate of fifteen percent (15%) per annum, promptly upon demand by the Bank.

(g) Pay the Note, and all installments of principal and interest thereunder, and all other amounts owed by Blue Diamond to the Bank hereunder and otherwise, in full when, as and how due, and the Guarantor does hereby unconditionally guarantee to the Bank the full and punctual payment of all such amounts.

(h) Pay and reimburse the Bank for the expenses, including attorneys' fees, incurred in the preparation of this Mortgage and Security Agreement and other documents pertaining to this transaction, and for the cost of all recording and filing deemed necessary by Bank to perfect its lien on the Collateral.

(i) Promptly notify the Bank in writing in the event any of the rail cars forming the Collateral are substantially damaged or destroyed as a result of any accident, calamity or other occurrence, and will assign and pay to the Bank any compensation as a result of such damage or destruction of the Collateral received under the American Association of Railroads Mechanical Interchange Rules, under any insurance policy or otherwise.

5. Blue Diamond hereby covenants and agrees with the Bank that Blue Diamond will not:

(a) Permit any other chattel mortgages, security interests, liens or other encumbrances to attach to any of the Collateral;

(b) Permit any of the Collateral to be seized, attached or levied upon under any legal process;

(c) Sell, exchange, transfer or otherwise dispose of any of the Collateral, nor lease any of same to third parties, without the prior written consent of the Bank.

(d) Permit or suffer anything to be done, excluding normal use of the Collateral, that may in any way impair the value of any of the Collateral or the security intended to be afforded by this Mortgage and Security Agreement.

6. The Guarantor shall furnish to the Bank within forty-five (45) days of the end of each of the quarters of its fiscal year a balance sheet as of the end of each such quarter certified by its treasurer or other appropriate officer to fairly represent as of its date the financial condition of the Guarantor. Within one hundred twenty (120) days of the end of each fiscal year, the Guarantor shall submit to the Bank financial statements certified by independent certified accountants satisfactory to the Bank. The

as the Bank determines in its sole discretion. The Bank may apply the net proceeds of any such disposition of Collateral or part thereof, after deducting all costs incurred in connection therewith, including the Bank's attorneys' fees and expenses incidental to preparing for sale and sale of the Collateral, and with interest thereon at the rate specified above, in such order as the Bank may elect, to the indebtedness of Blue Diamond secured hereunder, including but not limited to the Note, and any remaining proceeds, after all such indebtedness and other amounts due hereunder are satisfied in full, shall be paid to Blue Diamond or other party legally entitled thereto.

9. This Mortgage and Security Agreement shall extend to and include, and Blue Diamond hereby grants the Bank a security interest in, any proceeds and products of the Collateral and specifically in all per diem, mileage and other fees payable by third parties with regard to the Collateral and any rental or income derived from leasing any of the Collateral. At the request of the Bank, Blue Diamond will furnish the Bank complete information as to the foregoing items and the Bank shall have the right to require that all payments of such items be made directly to the Bank to be credited against the indebtedness hereby secured, and the Bank may advise the parties owing such payments of its rights under this instrument and direct such parties to make their payments to the Bank.

10. Blue Diamond and the Guarantor consent to the filing of this Mortgage and Security Agreement with the Interstate Commerce Commission in order to perfect the Bank's lien on the Collateral under §20c of the Interstate Commerce Act and Blue Diamond also agrees to execute and deliver for filing to the Bank, at the latter's request, all financing statements deemed necessary by the Bank for perfecting a lien on the Collateral under the Uniform Commercial Code in Kentucky and other jurisdictions. Blue Diamond shall pursuant to §4(h) hereof pay and reimburse the Bank for all fees and charges incurred or necessary for such filing and recording.

11. (a) Time shall be of the essence in the performance by Blue Diamond of all its covenants, obligations and agreements hereunder.

(b) This instrument and the agreement evidenced hereby shall, to the extent Federal law is not applicable, be governed by and construed in accordance with the law of the Commonwealth of Kentucky.

(c) This Mortgage and Security Agreement shall be binding upon Blue Diamond and the Guarantor and their respective successors and assigns and shall inure to the benefit of the Bank and its successors and assigns. The Bank, without the consent of Blue Diamond or Guarantor, may assign the Note and its rights under this Mortgage and Security Agreement, in which event the Bank's assignee shall succeed to all of the rights of the Bank under the Note and appended Guaranty and hereunder.

IN TESTIMONY WHEREOF, the parties hereto have each caused this Mortgage and Security Agreement to be duly executed on their behalf by their undersigned, properly authorized officers, this day and year first above set forth.

BLUE DIAMOND MINING, INC.

By: Ralph Dye
Ralph Dye
Vice President and
Secretary

("Blue Diamond")

ATTEST:

By: Harmon McCarter
Harmon McCarter
Treasurer

BLUE DIAMOND COAL COMPANY

By: Ralph Dye

Title: Vice Pres.

("Guarantor")

ATTEST
BY: Harmon McCarter
TITLE: Trem.

CITIZENS FIDELITY BANK AND TRUST COMPANY

By: George M. Boggs Jr.

Title: Sr. Vice President

("Bank")

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

On this 18th day of December, 1978, before me personally appeared Ralph Dye, to me personally known, who being by me duly sworn, stated that he is the Vice President & Secretary of Blue Diamond Mining, Inc., and that he had executed the said instrument on behalf of such corporation by authority and with the full approval of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

John H. Stites, III
Notary Public

My commission expires: SEP 27 1979

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

On this 18th day of December, 1978, before me personally appeared Ralph Dye, to me personally known, who being by me duly sworn, stated that he is the Vice President & Secretary of Blue Diamond Coal Company, and that he had executed the said instrument on behalf of such corporation by authority and with the full approval of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

John H. Stites, III
Notary Public

My Commission expires: SEP 27 1979

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

On this 18th day of December, 1978, before me personally appeared George M. Bigg, to me personally known, who being by me duly sworn, stated that he is the Sen. Vice President of Citizens Fidelity Bank & Trust Co. and that he had executed the said instrument on behalf of such corporation by authority and with the full approval of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

John H. Stites, III
Notary Public

My commission expires: SEP 27 1979

I certify that I prepared the foregoing instrument.

John H. Stites, III
John H. Stites, III

GREENEBAUM DOLL & McDONALD
3300 First National Tower
Louisville, Kentucky 40202