RECORDATION NO. 8498 & 8498-A Filed & Recorded

SEP 29 1976 4 10 PM

INTERSTATE COMMERCE COMMISSION

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I.C.C.
FEE OPERATION BR.

PETER WHITE COAL MINING CORP.
c/o Hawley Fuel Corporation
1 Dag Hammarskjold Plaza
New York, New York 10017

No. 6-273A000
Date 9-29-76
Fee $ 50
ICC Washington, D. C.

September 29, 1976

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Sir:

I transmit for recording with the Commission, pursuant to Section 20c of the Interstate Commerce Act (Act), three executed copies of each of the following documents:

(a) Project Development Agreement, dated as of August 1, 1976, between Eastover Land Company and Peter White Coal Mining Corp.

(b) Assignment of Project Development Agreement, dated as of August 1, 1976, among Eastover Land Company, as Assignor, Peter White Coal Mining Corp., and Girard Trust Bank, as Trustee.

It is the intention of Peter White Coal Mining Corp. (the "Company") to effect such filings with the Commission only to the extent required, if at all, to perfect the security interest created by the above documents in the equipment described below; such recording should not be deemed to be an admission by the Company that it or any of its operations are under the jurisdiction of the Commission nor does the Company by this recording in any way submit to the jurisdiction of the Commission.

Contract Jnl. Div.

The equipment covered by the above documents includes the following:

Quantity	Description	Manufacturer	Serial No.
1	Battery Locomotive	New River Mfg.	300-0003
24	Rail Cars	ACDF Ind.	None
1	Underground Railroad		
1	Rail Runners	New River	M100353
1	Rail Runners	New River	M100362
1	Rail Runners	New River	65
1	Rail Runners	New River	66
1	Rail Runners	New River	200-0033

The names and addresses of the parties to the transaction are as follows:

Peter White Coal Mining Corp.
c/o Hawley Fuel Corporation
1 Dag Hammarskjold Plaza
New York, New York 10017

Eastover Land Company
Brookside, Kentucky 40811

Girard Trust Bank, as Trustee
4 Girard Plaza
Philadelphia, Pennsylvania 19101

There is also enclosed a check for the recordation fee in the amount of $50.00.

Kindly return to the bearer one counterpart of each document filed herewith.

Very truly yours,

PETER WHITE COAL MINING CORP.

By _____
Jean Paul Ruff
President

Interstate Commerce Commission

Washington, D.C. 20423

September 29, 1976

OFFICE OF THE SECRETARY

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 9/29/76 at 4:10 pm, and assigned recordation number(s) 8498 & 8498-A

Sincerely yours,

Robert L. Oswald

Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

COUNTERPART NO. 23

8463

RECORDATION NO. ... FILED & RECORDED

SEP 29 1976 ... PM

INTERSTATE COMMERCE COMMISSION

PROJECT DEVELOPMENT AGREEMENT

Dated as of

August 1, 1976

Between

EASTOVER LAND COMPANY

and

PETER WHITE COAL MINING CORP.

CERTAIN OF THE RIGHTS OF EASTOVER LAND COMPANY IN AND TO THIS AGREEMENT HAVE BEEN ASSIGNED, MORTGAGED AND PLEDGED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, THE TRUSTEE UNDER THE TRUST INDENTURE AND SECURITY AGREEMENT DATED AS OF AUGUST 1, 1976, BETWEEN EASTOVER LAND COMPANY AND GIRARD TRUST BANK, AS TRUSTEE, AS SAID TRUST INDENTURE AND SECURITY AGREEMENT MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME AS PERMITTED THEREBY. THIS AGREEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS OF WHICH THIS IS COUNTERPART NUMBER 23. SEE SECTION 22 FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF AND SEE THE DISCLAIMER OF WARRANTIES IN SECTION 11.

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PROJECT DEVELOPMENT AGREEMENT (this "Agreement"), dated as of August 1, 1976 between EASTOVER LAND COMPANY, a Kentucky corporation, with its principal place of business at Brookside, Kentucky 40811 (herein, together with any corporation succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, called "Eastover"), and PETER WHITE COAL MINING CORP., a West Virginia corporation, having an address at c/o Hawley Fuel Corporation, 1 Dag Hammarskjold Plaza, New York, New York 10017 (herein, together with any corporation succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, called "Peter White").

WHEREAS, Peter White, pursuant to the terms of a Coal Sales Agreement, dated as of January 1, 1974 (the "Coal Sales Agreement") with Mill-Power Supply Company, a North Carolina corporation (herein, together with any corporation succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, called "Mill-Power"), as agent for its principal, Duke Power Company, a North Carolina corporation ("Duke"; Mill-Power and Duke are herein collectively called "Buyer"), has agreed to install and develop mines as described in the Coal Sales Agreement; and

WHEREAS, Peter White has agreed to sell and deliver and Buyer has agreed to purchase certain quantities of coal on the terms and conditions contained in the Coal Sales Agreement; and

WHEREAS, Duke, pursuant to a letter agreement dated January 17, 1974 ("Letter Agreement"), has agreed to provide, through a subsidiary corporation or otherwise, necessary financial assistance to facilitate the acquisition, installation, construction and general development of facilities which would permit Peter White to meet its obligations under the Coal Sales Agreement; and

WHEREAS, Duke has requested its wholly-owned subsidiary, Eastover, to provide such financial assistance;

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements of the parties and other good and valuable consideration herein contained, the parties hereto agree as follows:

1. *Project Assistance.* Eastover hereby grants to Peter White the right to use, operate and maintain the equipment located at mines in McDowell, Mingo and Wyoming Counties, West Virginia, developed by moneys made available pursuant to the Letter Agreement and as more fully described in Exhibit B to the Coal Sales Agreement ("Mines"), such equipment being (i) the Items of Equipment as defined in the Indenture referred to below, which are or will be subject to a security interest under the terms of the Trust Indenture and Security Agreement ("Indenture"), dated as of August 1, 1976 between Eastover and Girard Trust Bank, a Pennsylvania banking corporation, as trustee ("Trustee"), and (ii) such other equipment as may be described in an amendment to this agreement permitted by the terms hereof and which will be delivered to and accepted by Peter White from time to time hereafter, hereinafter collectively the "Equipment". It is understood that nothing contained herein shall be construed as conveying to Peter White any right, title or interest in any Equipment except as specifically provided herein.

2. *Term.* (a) The term of this Agreement shall commence as of the date first written above and shall continue for a period ending on December 31, 1985 ("Original Term"), unless earlier terminated pursuant to the terms of this Agreement or unless extended for a renewal term or terms in accordance with subsection (b) hereof.

(b) In the event that Mill-Power elects to extend the term of the Coal Sales Agreement pursuant to the terms of Article IV of such Coal Sales Agreement, Peter White shall have the option of extending this Agreement for a period or periods ("Renewal Term") coincident with, but not to exceed, any such extension of the Coal Sales Agreement by giving written notice to Eastover prior to September 1, 1984.

3. *Payments.* (a) Peter White shall pay or cause to be paid to Eastover a monthly charge sufficient to reimburse Eastover over the term of this Agreement for Eastover's costs ("Costs") in performing

its obligations under the Letter Agreement and this Agreement, including, but not limited to Costs under the nine separate Note Agreements, each dated August 1, 1976 (the "Note Agreements"), between Eastover and Aetna Life Insurance Company, The Aetna Casualty and Surety Company, Morgan Guaranty Trust Company of New York, as agent for an institutional investor, Bankers Life Company, Dollar Savings Bank, Gulf Life Insurance Company, The Ohio National Life Insurance Company, American-Amicable Life Insurance Company and Southern Life and Health Insurance Company, respectively, including all payment obligations of the Company under the Note Agreements, the Notes (as defined in the Note Agreements), and the Indenture, and the Costs incurred in the design, construction, development and preparation of the Mines and all other Costs necessary to make the Mines operational. Upon the execution of this Agreement, Eastover shall furnish Peter White with a statement ("Statement") reflecting Eastover's Costs which Statement shall be used as the basis for the above-mentioned monthly charge. Eastover shall furnish Peter White with an amended Statement in each quarter reflecting any additional Costs of Eastover during the preceding quarter and such monthly charge shall be adjusted accordingly.

(b) Notwithstanding anything in this Agreement to the contrary, and except as otherwise provided in Section 4.01 of the Indenture, Peter White shall pay or cause to be paid directly to or in accordance with the directions of Eastover the following Costs on the following dates, in federal funds or other immediately available funds before 10:00 A.M. Philadelphia time on such dates:

(i) $325,500 on December 1, 1976;

(ii) if the Company shall issue and sell any of its 9½% Notes, an amount equal to 9½% per annum (computed as if each year consisted of 360 days and each month consisted of 30 days) of the original principal amount of such 9½% Notes from the date of issuance of such 9½% Notes to September 1, 1977, said amount to be payable on September 1, 1977;

(iii) $778,991.69 on March 1, 1977 and each June 1, September 1, December 1 and March 1 thereafter to and including December 1, 1985, and, if the Company shall issue and sell any of its 9½% Notes, additional payments in an amount equal to 4.4054395% of the original principal amount of such 9½% Notes on December 1, 1977 and each March 1, June 1, September 1 and December 1 thereafter to and including December 1, 1985, *provided, however,* that the payment to be made on December 1, 1985 shall be an amount at least equal to the unpaid principal amount of the Notes and the accrued and unpaid interest thereon; and

(iv) amounts equal to amounts of any nature whatsoever which from time to time become due and payable by the Company under or pursuant to the Notes, the Note Agreements or the Indenture, *provided, however,* that if any such amount is payable directly to a Person other than the Trustee pursuant to the Notes, the Note Agreements or the Indenture, Peter White shall pay such amount on or prior to the time, in the manner, at the place and to such Person entitled thereto pursuant to the Notes, the Note Agreements or the Indenture.

4. *Equipment Use.* Peter White will cause the Equipment to be operated in accordance with sound coal mining practice for purposes for which the Equipment was designed, by competent and duly qualified personnel only and in accordance with applicable governmental regulations. Peter White will use the Equipment for lawful business purposes only and will not change the location of the Equipment from the Mines, as more fully described in Exhibit B to the Coal Sales Agreement, without the prior written consent of Eastover and, so long as the Indenture is in effect, the Trustee. In the event that any Equipment is relocated pursuant to this Section, Peter White shall cause to be made within 120 days (or such shorter time as may be required by the law of the jurisdiction to which any of the Equipment is relocated to continue the perfection of a security interest in such Equipment) of such relocation all necessary and appropriate filings, including all UCC financing and continuation statements, in accordance with Section 18 hereof.

5. *Information.* Peter White will permit Eastover or its authorized representatives and the Trustee and the holders of the Notes (as defined in the Indenture) or their authorized representatives (so long as the Indenture is in effect), at their sole cost and expense, to visit and inspect the Equipment and the Mines, subject to all safety and operating regulations of Peter White, and to examine all its books of account, records, reports and other papers relating to the Equipment, and to make copies and extracts therefrom, all at such reasonable times and as often as may be reasonably requested.

6. *Maintenance and Repair.* Peter White will keep and maintain, or cause to be kept and maintained, the Equipment in good working order and repair and fit to be used for its intended use, ordinary wear and tear excepted, and in conformity with any applicable requirements of any governmental authority having jurisdiction over Peter White or any item of the Equipment, including all federal, state and local environmental protection laws, rules and regulations, and will provide all maintenance and service and make all repairs necessary for such purpose. In addition, Peter White shall assume, be responsible for and be obliged to perform all of the obligations of Eastover set forth in subsection (b) and (c) of Section 2.10 of the Indenture as though the words "Peter White" appeared in such subsections instead of the word "Company".

7. *Insurance.* Peter White will obtain and at all times maintain and keep in effect the insurance which Eastover is obligated to obtain and maintain under Section 2.11 of the Indenture unless such insurance is otherwise obtained and maintained by Eastover.

8. *Return of Equipment.* Subject to the provisions of Section 15, upon the expiration or earlier termination of this Agreement or upon the exercise of the remedy specified in paragraph (b) (i) of Section 13 hereof, Peter White will, if Eastover so requests, take such action as may be necessary or desirable to prepare the Equipment for removal and shipment and return the Equipment forthwith to Eastover by whichever of the following means Eastover may specify: (i) the delivery of the Equipment at Peter White's premises, (ii) the delivery of the Equipment at such other location as Eastover shall reasonably designate or (iii) the loading of the Equipment on board such common carrier as Eastover shall specify and the shipping of the Equipment to such destination as Eastover may reasonably designate. Upon any such return such Equipment will be in the same condition as when delivered to Peter White hereunder (except for such dismantling as may be necessary for removal and shipment and for ordinary wear and tear) and free and clear of all liens, encumbrances or rights of others whatsoever except Permitted Liens (as defined in Section 10 hereof).

9. *Taxes.* Peter White agrees to pay, and to indemnify and hold Eastover, the Trustee and the holders of the Notes, as defined in the Indenture (hereinafter collectively the "Indemnified Parties"), harmless from all license and registration fees and all taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever (together with any penalties, fines or interest thereon) incurred during the term of this Agreement and imposed against any Indemnified Parties by any federal, state or local government or taxing authority upon, or with respect to, the Equipment or any portion thereof or any interest therein, or upon the purchase, ownership, delivery, bailment, possession, use, operation, return or other disposition thereof, or upon the fees, receipts or earnings arising therefrom, or upon or with respect to this Agreement, or will cause the same to be done; *provided, however,* that the foregoing indemnity shall not apply to any tax measured by net or gross income of any Indemnified Parties from the right to use the Equipment granted by this Agreement.

If a claim is made against any Indemnified Party for any such tax or other imposition with respect to which Peter White is liable for a payment or indemnity hereunder, such Indemnified Party shall, within thirty (30) days, give Peter White notice in writing of such claim. In the event that such Indemnified Party elects not to have Peter White contest the claim, such Indemnified Party may, at Peter White's expense, including reasonable attorneys' fees, in good faith contest in the name of Peter White or such Indemnified Party, the validity, applicability or amount of such tax or other imposition by (i) resisting payment thereof if practicable, (ii) not paying the same except under protest, if protest

is necessary and proper, or (iii) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. If any Indemnified Party shall obtain a refund of any tax or other imposition fairly attributable to any amount paid by Peter White pursuant to this Section, such Indemnified Party shall pay to Peter White the amount of such refund. Peter White shall not be deemed to be in default under any of the indemnification provisions of this Section so long as it (or any Indemnified Party, as provided above) is diligently prosecuting any Permitted Contest referred to below.

In case any report or return is required to be made with respect to any obligation of Peter White under this Section or arising out of this Section, Peter White will either make such report or return in such manner as will show the ownership of the Equipment in Eastover and send a copy of such report or return to Eastover, or will notify Eastover of such requirement and make such report or return in such manner as shall be satisfactory to Eastover.

All amounts payable by Peter White pursuant to this Section shall be payable, to the extent not theretofore paid, on written demand by the Indemnified Party unless, and only to the extent that, any such tax, levy, impost, duty, charge or withholding is the subject of a Permitted Contest (as defined in the Indenture). All the indemnities contained in this Section shall continue in full force and effect with respect to charges accrued during the term of this Agreement notwithstanding the expiration or other termination of this Agreement and are expressly made for the benefit of, and shall be enforceable by, the Indemnified Parties and their successors, assigns and agents.

10. *Liens, Encumbrances and Rights of Others.* Peter White will not directly or indirectly create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, attachment, charge, encumbrance or right of others whatsoever on or with respect to any amount payable by Peter White pursuant to Section 3 hereof or with respect to the Equipment, title thereto or any interest therein, except (i) the respective rights of Eastover and Peter White as herein provided, (ii) the rights of and the security interests in the Equipment and this Agreement created pursuant to the Indenture and any assignment of this Agreement to the Trustee executed in connection with the financing of the Equipment by Eastover, and (iii) Permitted Encumbrances (as defined in the Indenture) (the rights, liens and Permitted Encumbrances described in clauses (i) through (iii) of this Section being herein called "Permitted Liens"). Peter White will promptly notify Eastover in writing and will promptly, at Peter White's expense, cause any security interest, mortgage, pledge, lien, attachment, charge, encumbrance or right of others not excepted above which may arise at any time to be duly discharged, dismissed, removed or bonded in a manner satisfactory to Eastover as soon as possible.

11. *Warranties and Covenants of Eastover.* PETER WHITE TAKES THE EQUIPMENT AS-IS AND ACKNOWLEDGES THAT EASTOVER IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND EASTOVER DOES NOT MAKE NOR HAS MADE NOR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, DESIGN, QUALITY, *MERCHANTABILITY*, OPERATION OR *FITNESS FOR USE OR PURPOSE* OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. Eastover shall not be liable to Peter White for any liability, loss or damage caused or alleged to be caused directly or indirectly by the Equipment, by any inadequacy thereof, or defect therein, or by any incident in connection therewith. None of the provisions of this Section or any other provision of this Agreement shall be deemed to amend, modify or otherwise affect the representations, warranties or other obligations of the seller or any manufacturer of, or the installer of, any part of the Equipment. Eastover hereby assigns or otherwise makes available to Peter White such rights as Eastover may have under any warranty made by the seller or any manufacturer of, or the installer of, any item of Equipment; *provided, however,* that such rights shall automatically revert to Eastover upon the removal of Peter White under Article VIII of the Coal Sales Agreement or upon the return of the Equipment to Eastover under Section 8 hereof.

12. *Indemnity.* Peter White does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Indemnified Parties and their respective successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or asserted at any time (whether before, after or during the term of this Agreement) against any Indemnified Party (whether or not also indemnified against by any other person) relating in any way to or arising out of this Agreement or the construction, purchase, acceptance or rejection, ownership, mortgaging, financing, delivery, non-delivery, possession, use, operation, licensing, bailment, leasing, subleasing, condition, maintenance, repair, sale, return or other disposition of all or any part of the Equipment in accordance with the terms of this Agreement (including, without limitation, any claim as the result of latent or other defects, whether or not discoverable by Peter White or Eastover, and any claim for patent, trademark or copyright infringement), except only that Peter White shall not be required to indemnify any Indemnified Party for any loss resulting from the gross negligence or willful misconduct of such Indemnified Party, *provided* that nothing herein contained shall diminish any rights or obligations of Duke under the Coal Sales Agreement or the Letter Agreement. The obligations of Peter White under this Section shall survive the expiration or earlier termination of this Agreement.

13. *Default.* (a) The following events shall constitute events of default ("Events of Default") hereunder: (i) Peter White shall fail to make any payment required by Section 3 hereof, and such failure shall have continued for a period of 10 days; or (ii) Peter White shall directly or indirectly create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, attachment, charge, encumbrance or right of others whatsoever on or with respect to any amount payable by Peter White pursuant to Section 3 hereof or with respect to the Equipment, title thereto or any interest therein, except Permitted Liens; or (iii) Peter White shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of 30 days after any officer of Peter White shall first become aware of such failure; or (iv) any representation or warranty made by Peter White related hereto shall prove to be misleading or incorrect in any material respect as and when the same shall have been made; or (v) Peter White shall file a petition in bankruptcy or for reorganization or for an arrangement or any composition, readjustment, liquidation, dissolution or similar relief pursuant to the Bankruptcy Act or under any similar present or future federal law or the law of any other jurisdiction, or shall be adjudicated a bankrupt or become insolvent, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall take any corporate action in furtherance of any of the foregoing, or if any of the property of Peter White shall be sequestered by a court order as a result of any of the foregoing and such order remains in effect for more than 30 days; or (vi) a petition or answer shall be filed proposing the adjudication of Peter White as a bankrupt or its reorganization or arrangement, or any composition, readjustment, liquidation, dissolution or similar relief with respect to it pursuant to the Bankruptcy Act or under any similar present or future federal law or the law of any other jurisdiction, and Peter White shall consent to the filing thereof, or such petition or answer shall not be discharged or denied within 60 days after the filing thereof; or (vii) a receiver, a trustee or liquidator (or other similar official) of Peter White or of any of the property of Peter White or of the Equipment or any portion thereof shall be appointed and shall not be discharged within 60 days thereafter, or if Peter White shall consent to or acquiesce in such appointment; or (viii) a final judgment or judgments for the payment of money aggregating more than $25,000 is or are outstanding against Peter White and any one of such judgments has been outstanding for more than 30 days from the date of its entry and has not been discharged in full or stayed; or (ix) Peter White shall suspend the transaction of its usual business or shall make a bulk transfer; or (x) Mill-Power, pursuant to the terms of Article VIII of the Coal Sales Agreement, shall have demanded the removal of Peter White as operator of the Mines.

(b) Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Eastover may, at its option, declare this Agreement to be in default, and

at any time thereafter, so long as Peter White shall not have remedied all outstanding Events of Default, Eastover may do one or more of the following with respect to any or all of the Equipment as Eastover in its sole discretion shall elect:

(i) cause Peter White, upon the written demand of Eastover and at Peter White's expense, to promptly return any or all of the Equipment to Eastover at the location, in the condition and otherwise in accordance with all of the terms of Section 8 hereof, or, at Eastover's option, Eastover may enter upon the premises where the Equipment is located and take immediate possession of and remove the Equipment by summary proceedings or otherwise, all without liability to Eastover for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(ii) sell any or all of the Equipment at public or private sale and with or without notice to Peter White or advertisement, as Eastover may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle any or all of the Equipment as Eastover in its sole discretion may determine, all free and clear of any rights of Peter White and without any duty to account to Peter White with respect to such action or inaction or for any proceeds with respect thereto; and

(iii) exercise any other right or remedy which may be available to Eastover under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement as to any or all of the Equipment.

Peter White shall be liable for all legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Eastover's remedies with respect thereto, including all costs and expenses, including reasonable legal fees, incurred in connection with the return of the Equipment in accordance with the terms of Section 8 hereof or in placing the Equipment in the condition required by said Section. Except as otherwise expressly provided above, no remedy referred to in this Section is intended to be exclusive, but each such remedy shall be cumulative and in addition to any other remedy referred to above or otherwise available to Eastover at law or in equity; and the exercise or beginning of exercise by Eastover of any one or more of such remedies shall not preclude the simultaneous or later exercise by Eastover of any or all such other remedies. No express or implied waiver by Eastover of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, Peter White hereby waives any rights now or hereafter conferred by statute or otherwise which may require Eastover to sell, lease or otherwise use the Equipment in mitigation of Eastover's damages as set forth in this Section or which may otherwise limit or modify any of Eastover's rights or remedies under this Section.

(c) Should Peter White fail to make any payment or do any act as herein provided, then Eastover shall have the right, but not the obligation, without notice to or demand on Peter White, and without releasing Peter White from any obligation hereunder, to make or do the same, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of Eastover appears to affect the Equipment, and in exercising any such rights, incur any liability and expend whatever amounts in its discretion it may deem necessary therefor. All expenses so incurred, including attorneys fees, by Eastover shall be without demand immediately due and payable by Peter White.

14. *Assignment by Eastover and Peter White.* Without the prior written consent of Eastover and the Trustee (so long as the Indenture is in effect), Peter White may not assign any of its rights hereunder or otherwise permit the Equipment to be operated or used by, or in the possession of, anyone but Peter White or any affiliate of Peter White; *provided, however,* that Peter White may assign such rights hereunder, without the prior written consent of Eastover and the Trustee, as shall be necessary to comply with Article VIII of the Coal Sales Agreement. Eastover may at any time assign all of its right, title and interest hereunder, or any part thereof, with or without notice to Peter White.

15. *Purchase Options and Appraisal.* (a) If fair market sales value has been determined pursuant to paragraph (b) of this Section as of the end of the Original Term or, if a right to renew has been exercised pursuant to paragraph (b) of Section 2, as of the end of any Renewal Term and if no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing and this Agreement shall not have been earlier terminated, Peter White shall be entitled, at its option, upon written notice to Eastover not more than 18 months nor less than 6 months prior to the expiration of such Original or Renewal Term:

(i) to purchase at the end of such Original or Renewal Term from Eastover the aggregate amount of the Equipment existing at such time at a price equal to the greater of (x) the lesser of book value or fair market sales value or (y) 60% of fair market sales value as of the end of such Original or Renewal Term; or

(ii) to submit a bid to Eastover to purchase the aggregate amount of the Equipment existing at such time at the expiration of such Original or Renewal Term for a purchase price in cash specified in such written notice. If Peter White elects to submit a bid, the bid shall remain in effect and shall not be withdrawn for 30 days; thereafter Peter White may withdraw the bid at any time by written notice to Eastover, and unless previously withdrawn the bid shall cease to be in effect six months prior to the expiration of such Original or Renewal Term. Eastover may solely at its option accept the bid so long as the same shall be in effect. If Peter White has submitted a bid as aforesaid, Eastover agrees that (provided no Event of Default, or other event which after lapse of time or notice or both would become an Event of Default, shall have occurred and be continuing) it will not, so long as such bid is in effect, sell the Equipment to anyone other than Peter White unless it shall have given Peter White at least ten business days prior written notice of such sale, specifying the purchase price and the terms of such sale and giving Peter White the opportunity within said ten business days to purchase the Equipment at the same price and on the same terms as are specified in such notice.

For the purposes of this Section, the book value of each Item of Equipment shall be an amount equal to the original cost of such Item of Equipment less accumulated straight line depreciation applicable to such Item computed on the basis of the useful life of such Item of Equipment. If the Equipment is purchased pursuant to clause (i) or (ii) above, Peter White shall pay the specified purchase price to Eastover on a mutually acceptable business day after the end of the Original Term or any Renewal Term and Eastover will transfer to Peter White "as-is", without recourse or warranty, all of Eastover's right, title and interest in and to the Equipment.

(b) Not more than two years nor less than one year prior to the expiration of the Original Term or, if Peter White has renewed the Agreement as provided in paragraph (b) of Section 2, any Renewal Term, Peter White may notify Eastover in writing that Peter White desires a determination of the fair market sales value of the Equipment as of the end of such Original or Renewal Term. Thereafter, Eastover and Peter White shall consult for the purpose of determining the fair market sales value of the Equipment as of the end of such term, and any value agreed upon in writing shall constitute such fair market sales value for the purpose of this Section. If Eastover and Peter White fail to agree upon such value prior to 11 months before the expiration of such Original or Renewal Term, Peter White may deliver to Eastover a notice requesting that such value be determind by a qualified independent appraiser appointed by mutual agreement. If a single appraiser shall have been appointed by mutual agreement, his determination of fair market sales value shall be final. If no such appraiser is so appointed within ten business days after such notice is given, Eastover and Peter White shall each appoint an independent appraiser within 15 business days after such notice is given, and the two appraisers so appointed shall within 30 business days after such appointment appoint a third independent appraiser. If no such third appraiser is appointed within 20 business days after such notice is given, either party may apply to any court having jurisdiction to make such appointment, and both parties shall be bound by any appointment made by such court. The appraisers so appointed shall be instructed to determine the fair market

sales value of the Equipment within 30 days after their appointment. The values determined by the three appraisers shall be averaged, the determination which differs most from such average shall be excluded, the remaining two determinations shall be averaged and such average shall be final. The compensation and other costs relating to any arbitrator or arbitrators utilized pursuant to this Section shall be borne equally by Eastover and Peter White. For purposes of this Section, such fair market sales value shall be determined individually for each Item, without reference to the possibility that a purchaser thereof might be a lessee in possession purchasing the aggregate amount of the Equipment, and on the basis of, and shall be equal in amount to, the value, f.o.b. the Mines, which would obtain in an arm's-length transaction between an informed and willing buyer-user and an informed and willing seller under no compulsion to sell. Peter White's request for a determination of fair market sales value shall not obligate Peter White to exercise any of the options provided in this Section.

16. *Identification.* Peter White agrees to place and maintain on the Equipment the insignia, plates or other identification required by Section 2.12 of the Indenture.

17. *Status of Equipment.* It is agreed that, and Peter White and Eastover hereby express their unqualified intention that, the Equipment, and every part thereof, shall be and at all times remain personal property, notwithstanding that it or any part of it may now be, or hereafter become, in any manner attached to, or embedded in, or permanently resting on, real property or improvements thereon. Without limitation of the generality of the provisions of Sections 10 and 18 hereof, (i) Peter White agrees to take such action (including the obtaining and recording of waivers), as may be necessary to prevent any third party from acquiring any right to or interest in all or any part of the Equipment by virtue of such being deemed to be real property or a part of any real property and (ii) if at any time any person shall claim any right or interest referred to in clause (i) above, Peter White shall cause such claim to be waived in writing or bonded or otherwise eliminated to the satisfaction of Eastover within 30 days after such claim shall have first become known to Peter White. Peter White represents and warrants that it will not enter into any arrangements which restrict (whether expressly or by implication) any right of Eastover provided for herein with respect to any part or all of the Equipment or the removal of such item of the Equipment at any time by Eastover or by Peter White.

18. *Further Assurances.* Peter White will promptly and duly execute and deliver to Eastover such further documents and assurances and take such further action as Eastover may from time to time request in order to more effectively carry out the intent and purpose hereof and to establish and protect the rights, interests and remedies created, or intended to be created, in favor of Eastover hereby, including, without limitation, (i) the taking of any action necessary or appropriate to permit Eastover to have access to the Equipment for the purpose of carrying out any of the provisions hereof or of the Indenture, (ii) the filing or recording of this Agreement (or any supplement or amendment hereto), or any UCC financing or continuation statement with respect hereto or thereto, in accordance with the laws of any applicable jurisdiction and (iii) the taking of such further action as Eastover may deem desirable to fully protect Eastover's interest hereunder in accordance with the Uniform Commercial Code or other applicable law. Peter White hereby authorizes Eastover, at Peter White's expense, to effect any such filing or recording as aforesaid (including the filing of any such UCC financing statements without the signature of Peter White).

19. *Notices.* (a) All communications under this Agreement shall be in writing and shall be mailed by first class mail, postage prepaid,

(1) if to Eastover, to its address shown at the beginning of this Agreement, together with a copy to its President, c/o Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, or to such other address as it may have furnished in writing to Peter White and, so long as the Indenture is in effect, the Trustee, or

(2) if to Peter White, to its address shown at the beginning of this Agreement, marked for the attention of General Counsel, or to such other address as it may have furnished in writing to Eastover and, so long as the Indenture is in effect, the Trustee, or

(3) if to the Trustee, to Girard Trust Bank, 4 Girard Plaza, Philadelphia, Pennsylvania 19101, marked for the attention of Corporate Trust Department.

(b) Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed.

20. *Financing.* It is understood and agreed by Peter White that in connection with the financing of the Equipment by Eastover, the Equipment, the right of Peter White to use the Equipment and this Agreement are subject and subordinate to the lien of the Indenture and Peter White hereby consents to such lien.

21. *Limitation of Liability.* It is understood and agreed by Eastover that no claims for the payment of any amount or cost or expense associated with this Agreement, the Assignment of Project Development Agreement or the Assignment and Agreement dated as of August 1, 1976 among Peter White, as assignor, Duke and the Trustee, as assignee, or for any claim based thereon or based on any of the representations, warranties or covenants of Peter White or otherwise in respect thereof hereunder or thereunder, or as this Agreement may be modified or amended, shall be made against Hawley Fuel Corporation, Belco Petroleum Corporation or against any incorporator, stockholder, director or officer, as such, past, present or future, of Peter White or of any predecessor or successor corporation, either directly or through any of said companies, whether by virtue of any constitution, statute, rule or law or regulation or by enforcement of any assessment of penalty or by any legal or equitable proceeding or otherwise howsoever, such claims, if any, being, by the execution of this Agreement, and as part of the consideration for such execution, expressly waived and released.

22. *Miscellaneous.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or 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 or invalidate the remaining provisions hereof. To the extent permitted by applicable law, Peter White hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No term or provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; and any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The captions in this Agreement are for convenience of reference only and shall not define or limit the terms or provisions hereof. This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of West Virginia, including all matters of construction, validity and performance, and the parties hereto consent to and accept the jurisdiction of the courts of the State of West Virginia with respect to determination of any claim, dispute, or disagreement which may arise from the interpretation, performance or breach of this Agreement, or with respect to any matter involved herein. To the extent, if any, that this Agreement or any supplement hereto constitutes "chattel paper" or other "collateral" (as such terms are defined in the Uniform Commercial Code of any jurisdiction), no security interest in this Agreement or such supplement may be created through the transfer or possession of any counterpart other than the original counterpart which shall be stamped or marked "Counterpart Number 1" thereon.

IN WITNESS WHEREOF, Eastover and Peter White have caused this Agreement to be duly executed and delivered and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, all as of the day and year first above written.

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

PETER WHITE COAL MINING CORP.

By .....
President

[CORPORATE SEAL]

Attest:

.....
Secretary

EASTOVER LAND COMPANY

By .....
President

CERTAIN OF THE RIGHTS OF EASTOVER LAND COMPANY IN AND TO THIS AGREEMENT HAVE BEEN ASSIGNED, MORTGAGED AND PLEDGED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, THE TRUSTEE UNDER THE TRUST INDENTURE AND SECURITY AGREEMENT DATED AS OF AUGUST 1, 1976, BETWEEN EASTOVER LAND COMPANY AND GIRARD TRUST BANK, AS TRUSTEE, AS SAID TRUST INDENTURE AND SECURITY AGREEMENT MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME AS PERMITTED THEREBY. THIS AGREEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS OF WHICH THIS IS COUNTERPART NUMBER 23. SEE SECTION 22 FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF AND SEE THE DISCLAIMER OF WARRANTIES IN SECTION 11.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 29TH day of September, 1976, before me personally came JEAN-PAUL RUFF, to me known, who, being by me duly sworn, did depose, say and acknowledge that he resides at 64 Ladder Hill Road North, Weston, Connecticut 06880; that he is the President of PETER WHITE COAL MINING CORP., one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

[NOTARIAL SEAL]

My commission expires

Sonja Brown Clarke
Notary Public
SONJA BROWN CLARKE
NOTARY PUBLIC, State of New York
No. 03-4619427 Qualified in Bronx Co.
Certificate filed in New York County
Commission Expires March 30, 1977

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 28th day of September, 1976, before me personally came RONALD BOST, to me known, who, being by me duly sworn, did depose, say and acknowledge that he resides at Route 2, Box S-407, Denver, North Carolina 28037; that he is the President of EASTOVER LAND COMPANY, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

[NOTARIAL SEAL]

My commission expires

William B. Rodman
Notary Public

WILLIAM B. RODMAN
Notary Public, State of New York
No. 03-3319355
Qualified in Bronx County
Cert. Filed in New York County
Commission Expires March 30, 1977