

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

REGISTRATION NO **17459** FILED 1425

JUL 29 1991 -9 50 AM

INTERSTATE COMMERCE COMMISSION

1-210A001

July 29, 1991

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

Dear Ms. Lee:

Enclosed is a Security Agreement dated July 16, 1991, between the following parties:

Secured Party: Joy Finance Company
301 Grant Street
Pittsburgh, PA 15219

Debtor: Wynchester Mining Company
P. O. Box 568
Madison, W. VA

The equipment involved in this transaction is listed on Schedule A.

Please file this agreement as a primary document. The filing fee of \$15 is enclosed. Thank you.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

Accountant's file - May Ann Oster

JUL 29 9 14 AM '91

Interstate Commerce Commission

Washington, D.C. 20423

7/29/91

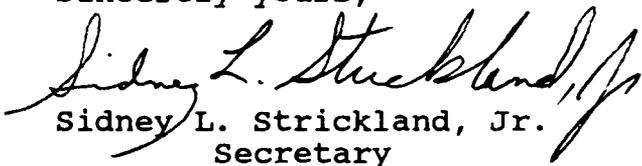
OFFICE OF THE SECRETARY

Mary Ann Oster,
Research Consultant
Oster Researching Services
12897 Colonial Dr.
Mt. Airy, Md. 21771

Dear Sirs:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/29/91 at 9:50AM, and assigned recordation number(s). 17459 and 17460.

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

SECURITY AGREEMENT - EQUIPMENT

JUL 29 1991 -9 50 AM

INTERSTATE COMMERCE COMMISSION

This Agreement, made and entered into this 29 day of July, 1991 between JOY FINANCE COMPANY, a Delaware corporation, having its principal place of business at 301 Grant Street, Pittsburgh, Pennsylvania 15219 ("Secured Party") and Wynchester Mining Company, a West Virginia Corporation having its principal place of business at P.O. Box 568, Madison, West Virginia ("Debtor").

NOW THEREFORE, it is agreed as follows:

1. Consideration. In consideration of Secured Party's provision of financing to Falcon Equipment Company, a West Virginia corporation ("Falcon"), Debtor hereby grants to Secured Party the security interest described herein, upon the terms and conditions hereinafter set forth.
2. Security Interest. Debtor hereby grants to Secured Party, for the consideration set forth in Paragraph 1 and other good and valuable consideration, a continuing security interest in and to the Collateral as hereinafter defined. With regard to the Rolling Stock Collateral (as that term is hereinafter defined), the Debtor hereby agrees that the Secured Party shall have, and hereby grants to and creates in favor of the Secured Party, a continuing security interest under 49 U.S.C. Section 11303 in and to the Rolling Stock Collateral as security for payment and performance of the Obligations hereinafter defined.
3. Collateral. The Collateral shall include all the property and assets set forth in Schedule A attached hereto and made a part hereof. Included among the collateral is certain railroad rolling stock, described more fully in Schedule A and herein referred to as the "Rolling Stock Collateral".
4. Obligations Secured. The security interest granted in this Agreement shall secure payment and performance of that certain Guaranty and Suretyship Agreement of even date herewith executed and delivered by Debtor in favor of Secured Party guarantying the payment and performance of all of Falcon's obligations to Secured Party, and all other now-existing and future obligations and indebtedness of Debtor and Falcon to Secured Party (hereinafter "Obligations"), of every kind and description, direct or indirect, primary or secondary, absolute or contingent, liquidated or unliquidated, presently existing or hereafter arising whether hereunder or under any other present or future Agreement, note, document, or instrument, or by operation of law or otherwise, together with all expenses incurred by Secured Party in collecting monies owed to it by the Debtor or Falcon, including but not limited to court costs and reasonable

attorneys' fees incurred in any court proceeding, including proceedings pursuant to the Bankruptcy Code.

5. Representations, Warranties and Covenants. Debtor represents, warrants, and covenants, all of which shall survive the execution of this Agreement, that:

A. All of the existing Collateral is owned by Debtor free and clear of all tax or other liens, claims and security interests except the security interest granted hereunder, and except as shown on Schedule A.

B. The Collateral shall be kept, along with Debtor's books and records, at Debtor's principal place of business or a branch location known to Secured Party, or _____, and none of the collateral (except Rolling Stock Collateral) or such books and records will be removed from such location without the prior written consent of Secured Party. With regard to the Rolling Stock Collateral, the Debtor covenants and agrees that, until satisfaction in full of the obligations, it will not remove or permit the removal of the Rolling Stock Collateral from the United States of America without the prior written consent of Secured Party. Secured Party, its officers, agents and employees, shall have the right at all reasonable times to inspect and check the Rolling Stock Collateral and to examine and make extracts from any books and records of the debtor pertaining to the Rolling Stock Collateral.

C. The Debtor shall cause the Rolling Stock Collateral to be kept numbered with its identifying number as set forth in Schedule A and shall keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of the Rolling Stock Collateral, in letters not less than one inch in height, the words "ownership subject to a security agreement filed under the Interstate Commerce Act, Section 20C", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Secured Party's interest in the Rolling Stock Collateral and its rights under this Agreement. The Debtor shall not place the Rolling Stock Collateral in operation or exercise any control or dominion over the same until such markings have been made thereon and shall replace promptly any such markings which may be removed, defaced or destroyed. The Debtor shall not change the number of the Rolling Stock Collateral except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Secured Party by the Debtor and filed, recorded and deposited by the Debtor in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Debtor shall not allow the name of any person, association or corporation to be placed on the Rolling

Stock Collateral as a designation that might be interpreted as a claim of ownership; provided, however, that the Debtor may cause the Rolling Stock Collateral to be lettered with the names or initials or other insignia of the Debtor.

D. Debtor shall bear all risks of loss or destruction of or damage to the Collateral. Debtor will at its own expense insure the Collateral at all times against all hazards including but not limited to, fire, theft and risks covered by extended all risk coverage insurance and comprehensive general liability insurance covering Secured Party for any liability for personal injury, death and property damage, and such policies shall be payable to Secured Party as its interest may appear. Said policies of insurance shall be satisfactory to Secured Party as to form, amount and insurer. Debtor shall furnish certificates, policies or endorsements to Secured Party as proof of such insurance, and if it fails to do so Secured Party is authorized but not required to obtain such insurance and any amount so advanced shall be payable together with interest at the highest contract rate allowed by law on demand of Secured Party and shall be an additional Obligation of Debtor secured hereunder.

E. Debtor will keep the Collateral in good condition and repair, reasonable wear and tear from use of the Collateral in the ordinary course of Debtor's business is excepted, and will notify Secured Party within 24 hours in the event of any destruction of or any substantial damage to any of the Collateral. The Debtor shall maintain the Rolling Stock Collateral in compliance with all requirements of the Interstate Commerce Commission and the U.S. Department of Transportation and all standards required or recommended by the Association of American Railroads applicable to equipment eligible for interchange service.

F. Debtor will not sell, lease, transfer, assign or otherwise dispose of any of the Collateral or any interest therein without the prior written consent of Secured Party in each instance, nor permit any liens, claims, encumbrances or security interests to attach to any of the Collateral.

G. The sale, leasing, transfer, assignment or other disposition of any Collateral by Debtor, shall be documented on a form or in a manner satisfactory to Secured Party.

H. Debtor will immediately advise Secured Party in writing of any change in any of the Debtor's places of business or of the opening of any new place of business or of a change of Debtor's name or trade name.

I. Debtor will pay when due all taxes, license fees and assessments relating to the Collateral and will warrant and defend title of same against all claims.

J. Debtor will pay Secured Party upon demand for any expenditures made by Secured Party (including reasonable attorneys' and accountant's fees and legal expenses with interest at the maximum rate allowed by law) for: (i) defending title to or Secured Party's lien or in priority regarding the Collateral; (ii) the maintenance and preservation of the Collateral, including taxes, levies, insurance and repairs; (iii) the discharge of any liens, claims or encumbrances which may have attached thereto; (iv) the repossession, holding, preparation and sale or other disposition of the Collateral; (v) all damages for breach of warranty, misrepresentation, or breach of covenant by Debtor; and all expenses incurred under subparagraph I hereof. All such expenditures referred to herein and interest thereon shall become part of the Obligations secured hereunder.

K. Debtor will execute financing statements pursuant to the Uniform Commercial Code in form satisfactory to Secured Party, and any other documents required by Secured Party to perfect or continue any of Secured Party's security interest or to effectuate the purposes of this or other Security Agreement. If certificates of title are issue or outstanding with respect to any of the Collateral, Debtor will cause the interest of Secured Party to be noted thereon. Debtor hereby grants to Secured Party a power of attorney coupled with an interest to act as Debtor's attorney-in-fact and thereby to execute, file and deliver on Debtor's behalf any notes, financing statements, and continuations or modifications thereof or any other documents, which Secured Party may deem necessary or appropriate to effectuate the intent of this or other Security Agreement or relating to any financing which Secured Party has made or may make to Debtor in order to evidence Debtor's obligations to Secured Party and to confer upon Secured Party a valid and continuing lien upon and security interest in the Collateral or other property. This power shall not be revoked by Debtor without first giving thirty (30) days' written notice to Secured Party.

L. Debtor will promptly supply, in form satisfactory to Secured Party, such information as Secured Party may from time to time reasonably request regarding the Collateral and/or Debtor's financial condition. Should Secured Party deem it necessary, Debtor will allow Secured Party or its agent, during normal business hours to inspect the Collateral and all books and records pertaining thereto or to Debtor's financial condition and shall permit Secured Party to make such copies of Debtor's books and records as Secured Party deems necessary.

M. The execution, delivery and performance of this Agreement and the transactions contemplated herein by Debtor have been duly authorized by all requisite corporate action, and will not violate any Agreement, judgment or order to which Debtor is a party or by which it is bound, and Debtor has full power and authority to enter into this Agreement.

N. During the term of this Agreement, Debtor will furnish Secured Party:

1. Within 60 days after the end of each of the first three quarterly periods of Debtor's fiscal year, a financial statement of Debtor as at the close of such quarterly period from the beginning of the fiscal year to the date of such statement, prepared in accordance with generally accepted accounting principles and in such reasonable detail as Secured Party may request, certified as true, complete and correct by an authorized officer of the Debtor.
2. As soon as practicable, but in any event within 120 days after the end of Debtor's fiscal year, a copy of its financial statements certified without qualification by certified public accountants selected by Debtor and satisfactory to Secured Party.
3. In a timely manner such financial statements, reports and other information as the Debtor shall send from time to time to its stockholders or file with the Securities and Exchange Commission and other materials which Secured Party shall reasonably request.

6. Events of Default. All Obligations shall accelerate and become immediately due and payable with interest at the highest rate permitted by law, without notice or demand upon the occurrence of any of the following events of default:

A. Failure of Debtor or Falcon to pay or perform any Obligations when due.

B. Breach by Debtor or Falcon of any term, provision, warranty, representation or covenant contained herein or in any other Agreement between Debtor or Falcon and Secured Party.

C. Default by Debtor or Falcon under any Agreement with any other party involving the borrowing of money by or extension of credit to Falcon or the Debtor, if such default gives the holder or other beneficiary of the obligation owed the right to accelerate the indebtedness and that right is so exercised by the holder thereof.

following:

D. The occurrence of any one of the

1. Dissolution or termination of existence of Debtor or Falcon unless agreed to by Secured Party;
2. Insolvency of Debtor or Falcon;
3. Sale of a controlling interest in Debtor's or Falcon's business unless agreed to by Secured Party;
4. Sale, mortgage, assignment, pledge, or other disposition of the Collateral other than as expressly permitted elsewhere in this Agreement;
5. Appointment of a receiver for any property of Debtor or Falcon;
6. Assignment for the benefit of Debtor's or Falcon's creditors;
7. Commencement of a voluntary or involuntary bankruptcy or insolvency proceeding by or against Debtor or Falcon;
8. Entry of any Court order enjoining Debtor's or Falcon's business;
9. Issuance of any attachment, levy, or judgment against Debtor, Falcon or the property of either of them, which has or may have a material adverse effect on Debtor's or Falcon's financial condition;
10. Failure on the part of Debtor or Falcon to pay any rent, royalty or other leasehold payment or any federal, state, or local taxes, unless the same is being contested in good faith, and is funded by an adequate reserve.

E. Secured Party Shall deem itself insecure.

7. Rights and Remedies. Upon the occurrence of any such event of default and at any time thereafter:

A. Secured Party shall have all rights and remedies provided by law or in equity, including those of a Secured Party under the Uniform Commercial Code, and with respect to the Rolling Stock Collateral, those provided by 49 U.S. Code Section 11301, et. seq., in addition to the rights and remedies provided herein or in any other agreement between the Secured Party and the Debtor. Debtor hereby authorizes Secured Party to enter any premises where the Collateral may be located and to take possession thereof, remove, or dispose of same, or without removal render same unusable, and may use or dispose of the Collateral on such premises without any liability for rent, storage, utilities or other sums. With regard to the Rolling Stock Collateral, if requested by the Secured Party, the Debtor shall, at its own expense and risk:

(a) Forthwith place the Rolling Stock Collateral upon such railroad storage tracks as the Secured Party reasonably may designate;

(b) Permit the Secured Party to store the Rolling Stock Collateral on such tracks at the risk of the Debtor until the earlier of the date the Rolling Stock Collateral has been sold or otherwise disposed of by the Secured Party or the 120th day from the date the Debtor shall have placed the Rolling Stock Collateral on such storage tracks; and

(c) Transport the same to any place on the lines of any railroad for shipment, all as directed by the Secured Party.

Subject to the consent of any third-party lessor, Secured Party shall have the right to assume the Debtor's rental and other obligations under any lease and to exercise any option or right to purchase or acquire title to the property covered by the lease. In the event of a default as hereinabove described Debtor will at Secured Party's request (or Secured Party may do so directly in Debtor's name or in the name of Secured Party) advise any customer or Debtor of Debtor to make all payments due Debtor directly to Secured Party. In any such instance, Secured Party is hereby authorized to endorse Debtor's name on any instrument or payment tendered and to collect the proceeds thereof.

B. The Collateral shall be disposed of in accordance with the provisions of Article Nine of the Uniform Commercial Code.

C. The Secured Party shall have the right to take possession of the Rolling Stock Collateral with or without judicial process, and the right to sell all or any part of the Rolling Stock Collateral at public or private sale, without prior notice to the Debtor except as otherwise provided by law (and if such notice is required by law, after ten (10) days with written notice), at such places and at such time or times and in such manner as the Secured Party in its sole discretion may determine.

D. Secured Party may at any time and with or without notice to Debtor apply to or offset against the amount owed by Debtor to Secured Party on any one or more of the Obligations, any and all monies or credits now or hereafter owed to the Debtor by Secured Party.

E. Debtor hereby empowers the prothonotary or any attorney of any court of record to appear for Debtor and to confess judgment as often as necessary against Debtor in favor of Secured Party, as of any term, for the amount owed by Debtor to Secured Party on any one or more of the Obligations, together with costs of suit and an attorney's commission equal to the lesser of (a) 20% of the above amount, or (b) the maximum amount permitted by law, with release of all errors. Debtor waives all laws exempting real or personal property from execution.

8. Effective Date and Termination. This Agreement shall become effective on the date hereof and shall continue in full force and effect until Debtor receives written notice from Secured Party that Debtor has satisfied all of its obligations to Secured Party. Secured Party shall not be liable for failing to record any termination or cancellation statement.

9. Miscellaneous.

A. Any failure to delay by Secured Party to require strict performance by Debtor or Falcon of any of the provisions, warranties, terms and conditions contained herein or in any other agreement, note, document or instrument, shall not affect Secured Party's right to demand strict compliance and performance therewith, and any waiver of any default shall not waive or affect any other default, whether prior or subsequent thereto, and whether of the same or of a different type. All rights and remedies of Secured Party granted hereunder, or pursuant to any other agreement or document or by operation of law are cumulative, and any or all of said rights or remedies may be exercised concurrently or consecutively, and in lieu of or in addition to any other right or remedy. Nothing herein shall obligate Secured Party to assert or enforce any rights or security interest granted herein and Secured Party may in its discretion at any time relinquish its rights as to particular Collateral without thereby affecting or invalidating its rights hereunder as to all or any other Collateral. None of the warranties, conditions, provisions and terms contained herein or any other agreement, document or instrument shall be deemed to have been waived by any act or knowledge of Secured Party, its agents, officers or employees, but only by an instrument in writing, signed by Secured Party and directed to Debtor specifying such waiver.

B. No failure by Secured Party to comply with any requirement of the Uniform Commercial Code, 49 U.S.C. Section 11303, or other applicable law, rule or regulation in

connection with the enforcement or preservation of any right of Secured Party granted hereunder or by applicable law shall result in the forfeiture of any right of Secured Party against Debtor or any third party whether granted hereunder or in any other document or agreement including, without limitation, the right to recover a deficiency judgment for the difference between the amount of the obligations and the net proceeds of any foreclosure sales (public or private) regarding the Collateral and Debtor hereby waives its right to assert any such failure as an offset, defense or counterclaim in any action brought to enforce this Security Agreement or any other document or agreement.

C. All notices and communications provided for herein shall be delivered or mailed by registered or certified mail, postage prepaid, or telegraphed, addressed in each case as follows:

Secured Party: JOY FINANCE COMPANY
301 Grant Street
Pittsburgh, Pennsylvania 15219
Attention: Joy Finance Company
Director, Credit Services

Debtor: WYNCHESTER MINING COMPANY
P.O. Box 568
Madison, West Virginia 25130
Attention:

D. In the event that any provision hereof shall be deemed to be invalid by any court, such invalidity shall not affect the remainder of this Agreement.

E. This Security Agreement shall be binding upon and for the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

F. The validity, interpretation and effect of this Security Agreement shall be governed by the internal laws of the Commonwealth of Pennsylvania. Debtor hereby consents to the jurisdiction of and venue in all courts in said Commonwealth.

G. Without notice to Debtor, Secured Party may sell, negotiate, pledge, assign or otherwise transfer this Agreement, or any of the Obligations. Such transfer shall carry with it Secured Party's rights and remedies under this Security agreement with respect to such Obligations transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. Debtor may not, by operation of law or otherwise, pledge, assign or otherwise transfer its rights or obligations under this Agreement without the written consent of Secured Party.

H. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. Any modification of this Agreement shall not be binding upon Secured Party unless in writing and signed by Secured Party but this provision in no way precludes the execution and delivery by Debtor of other agreements or voids any other agreements between the parties, all of which shall remain in full force and effect.

I. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

J. Debtor has read and fully understands each and every term, condition and provision of this Agreement and acknowledges receiving a fully executed copy of same.

IN WITNESS WHEREOF, this Agreement is hereby executed and delivered this 16th day of July, 1991.

ATTEST:


(Corporate Secretary)

[Corporate Seal]

WITNESS



WYNCHESTER MINING COMPANY

By: 

Title: PRESIDENT

JOY FINANCE COMPANY

By: 

Title: CREDIT MANAGER

SCHEDULE A

<u>Quantity</u>	<u>Description</u>	<u>Serial No.</u>
One (1)	1948 Budd Sleeper Mini-Dome Private Railcar, AMTRAK Number 800203	1860

together with any and all additions, attachments, accessories, and substitutions thereto or therefore, and all accounts receivable and proceeds arising from the sale, lease, or rent by Debtor thereof to the extent permitted by law.

STATE OF WEST VIRGINIA

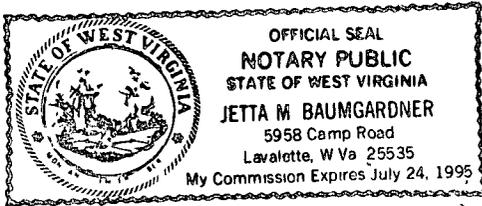
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SS:

COUNTY OF LINCOLN

On this 16th day of July, 1991 before me personally appeared Richard H. Abraham, to me personally known, who being by me duly sworn, says that he is the President of Wynchester Mining 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.

Jetta M Baumgardner
Notary Public



STATE OF PENNSYLVANIA

)

) SS:

COUNTY OF ALLEGHENY

)

On this 25th day of July, 1991 before me personally appeared JOHN P. GERSTEL, to me personally known, who being by me duly sworn, says that he is the Credit Manager of JOY FINANCE 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.

Marlene E. Witko

Notary Public

NOTARIAL SEAL
MARLENE E. WITKO, NOTARY PUBLIC
PITTSBURGH ALLEGHENY COUNTY
MY COMMISSION EXPIRES APRIL 27, 1992

Member, Pennsylvania Association of Notaries

