

CASTANO/1

COAL LEASE-1

FORK CK

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") dated this 14 day of January, 2000, by and between Eleanor Jane Henkle, trustee, for and on behalf of THE A.F. CASTANOLI SR. TRUST, created under the laws of the State of West Virginia, party of the first part, (herein referred to as the "Trust" or "Lessor") and FORK CREEK MINING COMPANY, a Tennessee corporation, party of the second part, (herein referred to as "Lessee").

WHEREAS, A.F. Castanoli Sr. ("Castanoli") acquired all surface and coal rights on that certain tract or parcel of land located on Big Hewitt Branch in Boone County, West Virginia as more particularly shown on Exhibit 1 attached hereto and made a part hereof as if fully set forth herein and also described in that certain deed dated November 10, 1970 from Jaben Smith et al, to Castanoli, recorded in Deed Book 150, page 258, Boone County Clerk's Office (the "Leased Premises"); and

WHEREAS, Castanoli died on or about October 19, 1977, and left his interest in the Leased Premises to the Trust by virtue of that certain Will recorded in Will Book 69, page 211 Cabell County Clerk's Office; [and the A.F. Castanoli Sr. Trust Agreement recorded in Will Book 69, page 211 Cabell County Clerk's Office;] and

WHEREAS, the Lessor now desires to lease to Lessee and Lessee desires to lease from Lessor all the rights to mine and remove all coal located on the Leased Premises all under the terms and conditions more particularly set out herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Lessee Rights. Lessor does hereby LET and LEASE unto Lessee, with covenants of special warranty, all of its interest in the surface and coal on the Leased Premises as more particularly described on Exhibit 1 attached hereto for the purpose of mining and removing all mineable and merchantable coal that can be practically, economically, and profitably mined and removed by the strip, surface, area, mountaintop removal, contour, auger, highwall mining, deep mining, and any other mining methods now or hereinafter developed in, on, and underlying the Leased Premises. Together with the right of ingress and egress to the Leased Premises, to prospect, to survey, to drill, to bore, to test, to explore for, to excavate and to mine by the strip, surface, area, mountaintop removal, contour, auger, highwall mining, deep mining, and any other mining methods now or hereinafter developed in, on or underlying the Leased Premises, without leaving support for the surface or anything therein or thereon and to perform all other things necessary or convenient and to mine, remove, convey and carry away said coal mined with the equipment used; the right to use free of charge, sand, gravel, stone and water in and from the Leased Premises, but in all events, subject to the rights of adjacent and adjoining land owners. Without limiting the generality of the foregoing, the right to excavate, remove and damage the surface overlying the coal, to drain and impound waters and water courses and construct silt fences; the right to construct,



erect and maintain spoil banks, hollow fills and cuts; the right to construct, maintain and use the buildings, structures, improvements, roads, ways, railroads, sidetracks, and utility ways and lines; the right to place on, erect, maintain and operate the Leased Premises and to remove therefrom at any time, any or all machinery, equipment, supplies and other things; the right to store equipment, machinery, topsoil, refuse, overburden, and coal on said Leased Premises regardless of source; the exclusive right to transport coal from other lands over, through, under or across the Leased Premises and to continue to do so for the term of this Lease or any extension thereof, or so long as the Lessee is mining coal on the Leased Premises; the right to deposit or otherwise place earth and rock from other lands on the Leased Premises; the right to complete such grading, seeding, and other reclamation work on the Leased Premises as may be required by federal and state laws, rules, or regulations in order to obtain a full release of any performance bond posted by Lessee whether during the term of the Lease or thereafter; and to utilize the surface of the Leased Premises for the purpose of removing the earth overlying said coal and to deposit the same on said Leased Premises and on adjoining premises; together with the right to appropriate and/or to protect water or water supplies and the Lessee shall have and exercise all necessary and convenient mining, production, and transportation rights, including surface mining rights, rights-of-way, easements and privileges, lawful, usual and convenient, for the full and complete enjoyment of the rights and privileges herein demised.

Lessor, its agents and contractors, reserves the right to enter the Leased Premises for the purposes of inspection, testing or other analysis of the coal located upon the Leased Premises, as well as for the removal of the merchantable and marketable timber. Provided, however, that such activities shall not unreasonably interfere with the coal mining activities of the Lessee.

2. Term. The term of this Lease shall be for a period of five (5) years (the "Primary Term") from the date hereof with the privilege vested in the Lessee to extend this Lease under the same terms and conditions as herein contained for three (3) additional five (5) year periods (the "Renewal Term(s)"); such renewal periods to be automatic unless Lessor is notified to the contrary at least thirty (30) days prior to the expiration of the then current term. Notwithstanding the above, the Lessee shall have the right to terminate this Lease upon thirty (30) days prior written notice to Lessor.

3. Taxes. The Lessor shall pay all taxes assessed on the surface and coal estate hereby leased and upon submission to Lessee of paid tax receipts, Lessee shall within thirty (30) days of receipt reimburse Lessor the amount paid as to any portion of any year that this Lease is in effect, less any discounts available to Lessor for prompt payment thereof, but Lessee shall not be held in default for failure to reimburse tax receipts not submitted to Lessee.

4. Maps. The Lessee shall retain at its expense an engineer or engineers, who shall properly and accurately and as required by law, survey and map all of its mining operations hereunder and all measurements required hereby. The Lessee shall provide to Lessor, when requested by Lessor, every 6 months until the onset of production and every 3 months thereafter, such mine maps or true copies thereof.



5. Inspection By Lessor. The Lessor, his engineers and other lawful representatives, shall have the right, at their own risk and at reasonable and lawful times and in a reasonable and lawful manner to enter upon the Leased Premises and into the mine workings of the Lessee to check, inspect and verify all pertinent and proper matters and to insure that the terms and provisions of this Lease are being complied with by Lessee. The Lessor, its engineers and other lawful representatives, shall indemnify, hold harmless and release the Lessee from any and all liabilities, including but not limited to attorneys fees, associated with such inspection(s).

6. Relocations. In the event that it becomes necessary or convenient for the Lessee to relocate any pipelines, power lines, roads, streams or other obstacles located on the Leased Premises, the Lessor shall give and grant free of charge, all necessary new rights of way and easements and will execute all of the necessary instruments to effectuate the same, to the extent of the titles and rights owned by Lessor and as limited thereby.

7. Compliance With Law and Insurance. The Lessee shall conduct all of its mining operations and activities hereunder in accordance with the laws, rules and regulations of the United States and of the State of West Virginia, applicable thereto, and shall comply with all federal and state laws including the necessary coverage of unemployment compensation, workers compensation, and Black Lung.

The Lessee shall at all times during this Lease carry and pay for public liability and property damage insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) property damage and One Million Dollars (\$1,000,000.00) per person and One Million Dollars (\$1,000,000.00) per accident personal injury, which insurance policy or policies shall not be cancelable without 30 days notice to Lessor, and shall name the Lessor as additional insured with a policy or appropriate endorsement provided Lessor.

Lessor shall not be responsible or liable, either directly or indirectly, for any wrongful acts or omissions of Lessee in connection with the operations under this Lease, and Lessee covenants and agrees to defend, indemnify and save harmless Lessor from and against any and all claims, liabilities, damages, costs and expenses (including reasonable attorney fees) arising out of claims or demands of third persons or governmental authorities by reason of an act or omission to act or relating to the Leased Premises by Lessee, or any agent, attorney, servant or contractor thereof or therefor except as set forth in Section 5 above. The parties agree that the only relationship between the parties hereto is that of landlord and tenant and that they are not co-partners or joint adventurers, nor co-tenants, nor principal and agent, and bear no relationship other than landlord and tenant.

8. Royalties. The Lessee agrees to pay to the Lessor, or the duly authorized agent named by the Lessor, in writing, as royalty for coal mined from the Leased Premises and all the rights and privileges conferred by this Lease, the following:

- (a) The tonnage royalty for coal mined in development or advance mining by any deep mining method shall be five percent (5%) of the average gross selling



price for each net clean ton of two thousand (2,000) pounds of merchantable and mineable coal which shall be mined, removed, prepared, shipped, and sold from the Leased Premises.

“Advance mining” is defined for the purposes of this lease as any mining or rooms, i.e., cutting of initial openings into a coalface.

- (b) The tonnage royalty for coal mined in pillar or retreat mining by any deep mining method shall be four percent (4%) of the average gross selling price for each net clean ton of two thousand (2,000) pounds of merchantable and mineable coal which shall be mined, removed, prepared, shipped, and sold from the Leased Premises.

“Retreat mining” is defined for the purposes of this lease as any mining of pillars which are left in place for initial support after advance mining.

- (c) The tonnage royalty for coal mined by any mining method (except the deep mining method) shall be seven percent (7%) of the average gross selling price for each net clean ton of two thousand (2,000) pounds of merchantable and mineable coal which shall be mined, removed, prepared, shipped, and sold from the Leased Premises. The mining methods for which the royalty under this paragraph 8(c) shall apply include, without limitation, surface, strip, area, mountaintop, contour, auger, highwall mining, and any other mining method now or hereinafter developed except any deep mining method.

- (d) The term “average gross sales price” as used herein shall mean the average gross sum of money received by Lessee for each ton of clean coal loaded in railroad cars at Lessee’s tipples during any applicable month before deduction of sales commissions paid by Lessee in arms length transactions in the normal course of business. “Sales price” also refers to a sales price representing an arms length sale and purchase and in any case where coal is sold by Lessee, for either personal or business reasons, at a price which does not adequately reflect the “arms length” sales price, the prevailing sales price at Lessee’s shipping point in Boone County for the same grade, character and quality of coal shall be considered and treated as the actual sales price so far as the computation of percentage royalty is concerned.

- (e) Lessee shall, on or before the twenty-fifth (25<sup>th</sup>) day of each calendar month, furnish to Lessor a written report showing the quantity of coal mined hereunder during the immediately preceding calendar month, using as a basis for such report railroad, truck, and/or barge weights of all coal shipped hereunder and from other properties. Lessee shall provide to Lessor the methodology used by Lessee and report the quantity of coal mined hereunder and the selling price thereof. Lessee shall commingle coal produced hereunder with other coal prior to shipment and shall provide to Lessor the methodology used for the purpose of ascertaining with reasonable accuracy the quantity of coal produced



hereunder. Lessor shall have the right, at reasonable times, to review Lessee's records regarding the calculation of royalties hereunder.

9. Annual Rental. For each lease year, as hereinafter defined, during the Primary Term and any Renewal Term hereof, the Lessee shall pay to the Lessor, as and for Annual Rental the sum of Two Thousand Five Hundred Dollars (\$2,500.00) per lease year in advance, due and payable on or before the anniversary date of this Lease during the Primary Term or any Renewal Term hereof. Provided, however, the Annual Rental shall be subject to adjustment as follows: (i) for any lease year in which the Lessee hauls any coal mined from other properties over, through, under, or across the Leased Premises, the Annual Rental for each such lease year shall be Ten Thousand Dollars (\$10,000.00) and (ii) if Lessee has not mined any coal from the Leased Premises during the Primary Term of this Lease, then the Annual Rental for each lease year during the Renewal Terms shall be increased to Five Thousand Dollars (\$5,000.00). For purposes of this Agreement, a "lease year" shall mean the twelve month period beginning on the date the Lease is effective and each successive twelve month period beginning with the anniversary date of the effective date of the Lease through the remaining term of this Lease. Any tonnage royalty due for coal mined under paragraph 8 of this Lease shall be recouped or first credited against the current Annual Rental for that lease year and then for prior years, and no tonnage royalty payment accruing for coal mined shall be made or become due and payable until all of the Annual Rental accrued and paid shall have been recouped. The Annual Rental may be recouped at any time during the term of this Lease.

10. No Wheelage Fees. Lessee shall have the right to transport coal from other lands over, through, under or across the Leased Premises and to continue to do so for the term of this Lease or any extension thereof without any additional consideration being due or payable to Lessor except for the increase in the Annual Rental as set out in paragraph 9 of this Lease.

11. Force Majeure. If the Lessee shall be wholly and unavoidably prevented from mining coal during any lease year by strikes, fires, floods, acts of God, lack of satisfactory markets, railroad car shortages or other causes wholly beyond its control, which shall extend for a period of more than one (1) month, it shall then be entitled to a proportionate abatement of the Annual Rental for that year, for the period when it is actually and necessarily prevented from engaging in the mining and production of coal from the Leased Premises hereunder, but in no event shall the total period of suspension or abatement in any one (1) lease year period exceed six (6) months except as a result of war or police action.

12. Payments. Unless otherwise set out herein, payment and a written report of all monies due hereunder shall be made by the Lessee to and with the Lessor, monthly on or before the 25th day of each month for all coal mined and shipped during the preceding calendar month. Each monthly settlement shall be accompanied by a true and accurate statement which sets out the amount of coal paid for at the agreed royalty rates.

The Lessee shall keep accurate and detailed record and account books showing quantity of coal mined and removed from the Leased Premises, railroad weights, truck weights, where



applicable, and analyses of coal from said Leased Premises, which shall be open to the reasonable inspection and verification of the Lessor or their duly authorized representative during business hours.

13. Waiver of Property Line. The Lessor grants to the Lessee the right to mine to his property line if a like right is acquired from adjoining property owners.

14. Lessor's Covenants. Lessor covenants that the Lessee, upon performing its obligations hereunder, shall and may peaceably and quietly enjoy, possess and use the Leased Premises and use the surface leasehold estate during the term hereof or any extension. Lessor further covenants, with covenants of special warranty, that he is the owner of the Leased Premises and has good and marketable title thereto, free and clear of all liens or encumbrances which would unreasonably interfere with lessee's use of the Leased Premises, except for possible encumbrances fully disclosed in writing by Lessor to Lessee, that Lessor has the sole right to enter into this Lease, and that Lessor will defend Lessee against any and all claims against Lessor's title to the Leased Premises. If it is ultimately determined that Lessor has less than one hundred percent (100%) ownership in the Leased Premises, then Lessor's liability to Lessee shall be limited to repayment to Lessee of the pro rata portion of royalties paid hereunder equal to the portion of the Leased Premises not owned by Lessor.

15. Default and Termination. All of the promises and agreements of the Lessee contained herein shall be covenants and conditions and the breach or violation of same shall constitute a default under this Lease. In the event of a default, Lessor shall have the right to forfeit this Lease, provided, however, that before any forfeiture declared shall become effective, the Lessor shall give to the Lessee thirty (30) days written notice of the amount or grounds thereof, and provided, further, that if said amounts shall not be paid or said breach or violations shall not be corrected or reasonable efforts taken to cure such deficiencies within an additional ten (10) day period for payment of monies or an additional thirty (30) day period for all other conditions, then a forfeiture may be declared by the Lessor. If the right of forfeiture shall occur within the provisions of this paragraph, then the Lessor shall have the right without further demand or notice, and without the service of any writs or papers, to re-enter upon the Leased Premises and to repossess the same as of their former estate or estates therein, free and discharged of this Lease, and to evict and remove therefrom the Lessee and its property. Acts of God and those acts outside the control of Lessee shall not be a basis for forfeiture hereunder, but the payments of rentals and royalties shall be made as required herein.

16. Assignment. The Lessee may not sell, assign, sublease, or transfer this Lease in whole or in part, without the prior written consent of the Lessor, which shall not be unreasonably withheld.

17. Notices. It is hereby agreed by and between the parties hereto that any notice provided hereby to be given by the Lessor to the Lessee shall be given in writing by (i) United States Certified mail, (ii) hand delivery, (iii) overnight carrier, or (iv) facsimile to the following address:

Fork Creek Mining Company  
Attn: Howard Epperly  
P. O. Box 24  
Alum Creek, WV 25003  
Fax No: 304 756 1325

and that any notice required hereby to be given by the Lessee to the Lessor, may be given in writing on his behalf, either by (i) hand delivery, (ii) by United States Certified mail, (iii) overnight carrier, or (iv) facsimile properly addressed to:

Payments & Legal Notices

Eleanor Jane Castanoli-Henkle, Trustee  
Castanoli ~~Estate~~ Trust  
1424 15<sup>th</sup> St.  
Huntington, WV 25701  
Phone No: (304 ) 525-7388

Technical Data & Legal Notices

William R. Henkle, Jr.  
Agent - Castanoli ~~Estate~~ Trust  
Henkle & Assoc.  
230 Finch Way  
Carson City, NV 89704  
Fax: (775) 849-9578

unless or until either party should notify the other in writing of any changes in their respective addresses for notices.

18. Removal of Property After Termination. At the expiration or termination of this Lease for any reason and cessation of all mining operations, Lessee shall have the right, without charge, if the Lease be not then in default under the terms and provisions hereof, to leave its stockpiled coal, property and improvements upon the Leased Premises for a period not exceeding nine (9) months thereafter without further payment, and to remove the same therefrom during that period, but not thereafter except when prevented from doing so by an act of God, and other causes beyond the control of Lessee and then only to the extent and duration of said cause. Any such coal, property, or improvements not removed within that period shall become and remain the property of the Lessor. Nothing in this paragraph contained shall impair or restrict the right of the Lessee during said nine (9) month period, and in addition thereto, Lessee shall have the right at any time after the expiration or termination of the Lease to enter upon the Leased Premises in order to complete or modify reclamation of the Leased Premises or to perform any or all work required by state and federal agencies.

19. Reclamation After Termination. At the expiration or termination of this Lease, for any reason whatsoever, Lessee shall perform all remaining required reclamation and, in furtherance thereof, shall have the right without charge to bring equipment on the Leased Premises to reclaim the surface of Leased Premises as required by law, and to perform such other works and actions thereafter as may be required to comply with existing or future federal, state, or local reclamation rules and regulations including the terms of any surface mining permits that pertain to any part of the Leased Premises.



20. Entire Agreement. This Lease is the complete and only agreement between the parties hereto, and expressly supersedes and stands in lieu of any prior discussions and understandings which may have taken place prior to the execution of this Lease. Lessor hereby expressly acknowledges that Lessee has made no representations other than what has been specifically set forth in this Lease.

21. Amendments. No amendments to this Lease shall be binding upon the parties hereto unless made by agreement in writing signed by the parties to this Lease.

22. Applicable Law. This Lease shall be construed in accordance with the laws of the State of West Virginia and shall be binding upon the parties hereto, their respective successors and assigns.

23. Succession. All of the terms and provisions of this Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns, of the respective parties hereto and none of the terms, provisions, conditions, obligations and liabilities of this Lease shall be changed, modified, amended, waived, or released without the consent in writing of the Lessor and Lessee and signed by them.

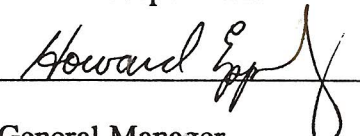
24. Memorandum of Lease. Upon Lessee's request, Lessor shall execute and deliver to Lessee a Memorandum of Lease for recording purposes.

25. Removal of Timber. Lessee shall give Lessor written notice at least ninety (90) days prior to mining which will require the destruction of timber and during this period Lessor may at his option remove any and all timber from the Leased Premises. After said notification period has elapsed, Lessee may proceed with its mining operations and destroy any remaining timber and not be liable for damage to any timber. Lessor reserves the right to begin timbering operations on his own initiative, provided such operations do not unreasonably interfere with lessee's coal mining operations.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first above written.

LESSOR:  
  
A.F. Castanoli Sr. Trust

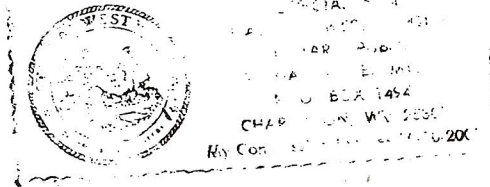
LESSEE:  
Fork Creek Mining Company  
a Tennessee Corporation

By:   
Its: General Manager

STATE OF WEST VIRGINIA,  
COUNTY OF CABELL, TO-WIT:

The foregoing instrument was acknowledged before me on this the 14 day of January, 2000 , by Eleanor jane Henkle , known to me to be the trustee, for and on behalf of The A.F.Castanoli Sr., Trust, on behalf of said Trust.

My commission expires the 10 day of October, 2001.

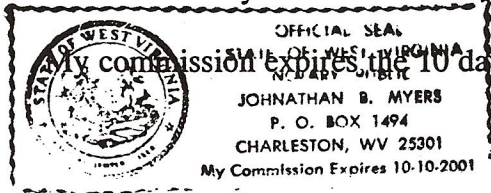


John B. Myers  
Notary Public

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO-WIT:

I, Johnathan B. Myers, a Notary Public of said County do hereby certify that Howard Epperly, its General Manager, who signed the writing above, for Fork Creek Mining Company, a Tennessee corporation, has this day in my said County, before me acknowledged the said writing to be the act and deed of said limited partnership.

Given under my hand and notarial seal this 17 day of JANUARY, 2000.



My commission expires the 10 day of October, 2001.

John B. Myers  
Notary Public



**EXHIBIT 1**

To  
Lease Agreement dated JAN 14, 2003, between  
The Alder F. Castanoli Estate Trust  
And  
Fork Creek Mining Company

All of that certain tract of land situate on the waters of Big Hewett Creek, in Scott District, Boone County, West Virginia, more particularly described as follows:

Beginning on a chestnut oak tree, the corner between Daniel Holl and James F. Hill; thence running with the A. M. Smith line to the head of the Rich Fork of said Hewitt Creek: thence with the ridge between the Rich Fork and Fork Creek around said Fork to Daniel Hill line and thence with said Hill's line down the mountain to a marked white oak: thence continuing on said line to the chestnut oak at the beginning, containing 100 acres, being the same 100 acre tract owned at the time of his death by L. D. Holstein, who died intestate, leaving eleven sons and daughters as his only heirs at law. A four-elevenths interest in the property was conveyed to Alder F. Castanoli by that certain Deed dated November 10, 1970, from Iaben Smith, et al., as recorded in the Office of the Clerk of the County Commission of Boone County, West Virginia, in Deed Book 130, at page 285. The other interests in the property were conveyed to Alder F. Castanoli, the Estate of Alder F. Castanoli, or The Alder F. Castanoli, Sr. Trust by various deeds which are of record in the Office of said Boone County Clerk.

PLEASE RETURN TO  
OGP MASS DEPT OF REVENUE  
PO BOX 600  
CHAR, WV 25303

RECEIVED  
OGP MASS DEPT OF REVENUE  
PO BOX 600  
CHAR, WV 25303