

CASTANOLI ROADWAY

EASEMENT

3/7/88

DEED OF EASEMENT

THIS DEED OF EASEMENT made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 1988, by and between ALLEGHENY LAND COMPANY, a Delaware corporation, authorized to do business in West Virginia, with a mailing address of P.O. Box 6100, Huntington, West Virginia 25770 (the "Grantor"), and A. F. CASTANOLI, SR., TRUST, with a mailing address of 1424 Fifteenth Street, Huntington, West Virginia 25701 (the "Grantee").

WITNESSETH:

WHEREAS, Grantor owns certain property located on Hewitt Creek Branch of the Little Coal River in Scott District, Boone County, West Virginia, transferred to Grantor by Appalachian Power Company and Southern Appalachian Coal Company by deed dated June 7, 1984 and of record in Deed Book No. 173 at Page No. 305 in the Office of the Clerk of the Boone County Commission and transferred to Appalachian Power Company by Robert C. and Juanita B. Long and Tracy W. and Betty Jo Hylton by deed dated August 11, 1970 and of record in Deed Book No. 126 at Page No. 628 in said office (the "Allegheny Property"); and

WHEREAS, the Grantee owns certain property located on Hewitt Creek Branch of the Little Coal River in Scott District, Boone County, West Virginia (the "Castanoli Property"), which Castanoli Property adjoins and abuts the Allegheny Property; and

WHEREAS, Grantor's predecessor in title constructed from County Route 3/1 a coal haul road on, over and across the Allegheny Property (the "Allegheny Roadway") the approximate location of which is shown on Exhibit A attached hereto and made a part hereof and which Allegheny Roadway connects to a similar haul road constructed by Grantor's predecessor and left in place on the Castanoli Property (the "Castanoli Roadway") the

approximate location of which is also shown on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Grantee desires that Grantor grant to it a perpetual non-exclusive right to use the Allegheny Roadway as herein provided; and

WHEREAS, Grantor is willing to grant to Grantee a perpetual non-exclusive right to use the Allegheny Roadway upon the terms and conditions herein set forth; and

WHEREAS, Grantor desires that Grantee grant to it a non-exclusive right to use the Castanoli Roadway as herein provided and Grantee is so willing to grant to Grantor such a non-exclusive right upon the terms and conditions herein set forth.

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and adequacy of all of which is hereby acknowledged by Grantor, and the mutual covenants and agreements herein contained, Grantor does hereby grant and convey unto Grantee the perpetual and non-exclusive right to use the Allegheny Roadway upon the following terms and conditions:

1. Grantee shall have the perpetual non-exclusive right to use the Allegheny Roadway for the benefit of Grantee and its assigns, for the purpose of ingress and egress to and from the Castanoli Property. Grantee shall not have the right to use the Allegheny Roadway in connection with any other land which it may presently own or which it may hereafter acquire, nor shall Grantee have the right to grant to others the right to use the Allegheny Roadway in connection with any lands other than the Castanoli Property. Grantee may grant to other parties the right to use the Allegheny Roadway for ingress and egress to and from the Castanoli Property in connection with Grantee's use

of the Castanoli Property, including without limitation, use of the Castanoli Property for the development of the minerals thereon, including but not limited to the use of the Allegheny Roadway to haul coal mined from the Castanoli Property.

2. Grantee shall have the rights herein granted without the payment of any other sums of money to the Grantor.

3. With respect to maintenance and repair of the Allegheny Roadway, the parties hereto agree as follows:

(a) Grantee accepts the Allegheny Roadway as is in its present condition and without any representation or warranty of any kind;

(b) Grantor, except as expressly set forth in paragraph 3(c) below, and Grantee, except as expressly set forth in paragraph 3(c) below, shall have no obligation to maintain or repair the Allegheny Roadway or to keep it in passable condition;

(c) At any such time as Grantee is using the Allegheny Roadway for purposes other than vehicular or pedestrian traffic involving the movement of people (the "Other Purposes"), Grantee shall maintain and repair the Allegheny Roadway and keep it in as good a condition as the condition thereof at the time Grantee commenced using the Allegheny Roadway for the Other Purposes; provided however, if at any such time as Grantee is using the Allegheny Roadway for the Other Purposes and Grantor is at the same time using the Allegheny Roadway for the Other Purposes, then the cost and expense of maintenance and repair of the Allegheny Roadway shall be apportioned among the parties using the Allegheny Roadway in a fair and equitable manner so that each party bears such cost and expense in proportion to the extent that they are using the Allegheny Roadway.

4. Grantor shall have the right to relocate the Allegheny Roadway, without any liability to Grantee, to any other location on the Allegheny Property, providing the Allegheny Roadway continues to connect with the Castanoli Roadway and with County Route 3/1.

5. Grantor shall have the right to erect gates at any point or points along the Allegheny Roadway and in such event, agrees to provide Grantee with keys to any locks placed on such gates.

6. Grantor makes no representation or warranty of any kind as to its title to the Allegheny Property and Grantee accepts this easement without the benefit of an examination of title of the Allegheny Property and takes it subject to all matters of record in the chain of title to the Allegheny Property.

7. Grantee agrees to indemnify and hold Grantor harmless from and against any and all claims and demands made by any party against Grantor which in any way arise out of, are connected with, or relate to Grantee's use or maintenance of the Allegheny Roadway.

8. During such time as the Grantee is not using the Allegheny Roadway for the Other Purposes, as referred to in Paragraph 3(c) set forth herein, Grantor agrees to indemnify and hold Grantee harmless from and against any and all claims and demands made by any party against Grantor which in any way arise out of, are connected with, or relate to Grantor's use of the Allegheny Roadway for the Other Purposes or maintenance obligations in connection with the use of the Allegheny Roadway for the Other Purposes, as referred to in Paragraph 3(c) set forth herein.

9. The Grantor and Grantee hereby mutually agree that neither party shall unreasonably interfere with the other party's use of the Allegheny Roadway.

10. Grantor shall have the non-exclusive right to use the Castanoli Roadway, as long as the Castanoli Roadway exists, for the benefit of Grantor, and its assigns, for the purpose of ingress and egress to and from other lands of Grantor adjoining the Castanoli property for vehicular or pedestrian traffic involving the movement of people. In no event shall Grantor have the right to use the Castanoli Roadway for the movement of heavy equipment, the transportation of coal, timber, or other mineral products; provided however, Grantor shall have the right to use the Castanoli Roadway in connection with its reclamation activities on the Castanoli Property under Department of Energy Reclamation Permit Nos. 5-98-80 and 0-29-84 until such time as the permits are released by the Department of Energy in their entirety.

With respect to maintenance and repair of the Castanoli Roadway, the parties hereto agree as follows:

(a) Grantor accepts the Castanoli Roadway as is in its present condition and without any representation or warranty of any kind; and

(b) Grantee shall have no obligation to maintain or repair the Castanoli Roadway or to keep it in passable condition.

11. Grantee makes no representation or warranty of any kind as to its title to the Castanoli Property and Grantor accepts this easement without the benefit of an examination of title of the Castanoli Property and takes it subject to all matters of record in the chain of title to the Castanoli Property.

12. Grantor agrees to indemnify and hold Grantee harmless from and against any and all claims and demands made by any party against Grantee which in any way arise out of, are connected with, or relate to Grantor's use of the Castanoli Roadway.

13. This Agreement and the rights, privileges, obligations, duties and indemnity contained herein shall inure to the benefit of and be binding on the successors, assigns, or distributees, as the case may be, of the parties hereto.

14. Eleanor J. Henkle is acting in her capacity as Trustee, and not in her individual capacity, and neither she, nor the beneficiaries of the A. F. Castanoli, Sr., Trust shall have any personal liability under or by reason of this Agreement or under or by reason of any obligation contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

GRANTOR:

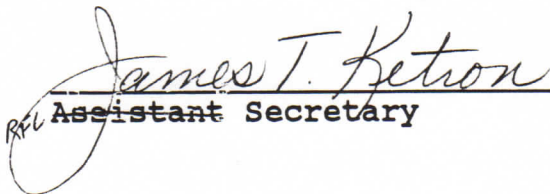
ALLEGHENY LAND COMPANY,  
a Delaware corporation

By: 

REF

Its: PRESIDENT

Attest:

  
Assistant Secretary

GRANTEE:

A.F. CASTANOLI, SR., TRUST

By: 

Eleanor J. Henkle, Trustee

STATE OF WEST VIRGINIA,

COUNTY OF Calwell, TO-WIT:

The foregoing instrument was acknowledged before me this 7th day of March, 1988, by David B. Rough, President and James T. Ketchum, Secretary of ALLEGHENY LAND COMPANY, a Delaware corporation, on behalf of the corporation.

My commission expires My commission expires March 4, 1994.  
DONNA J. PERRY

Donna J. Perry  
Notary Public

(NOTARIAL STAMP OR SEAL)

STATE OF Florida,

COUNTY OF Dinekas, TO-WIT:

The foregoing instrument was acknowledged before me this 11th day of March, 1988, by Eleanor J. Henkle, Trustee of the A.F. CASTANOLI, SR., TRUST.

My commission expires NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: FEB. 24, 1992.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

Wesley A. Kibler  
Notary Public

(NOTARIAL STAMP OR SEAL)

This Instrument Prepared By:

Roy F. Layman, Attorney  
Post Office Box 6300  
Huntington, West Virginia 25771

and

JENKINS, FENSTERMAKER, KRIEGER,  
KAYES & FARRELL  
Post Office Box 2688  
Huntington, West Virginia 25726



**EXHIBIT A**  
**ROADWAYS LOCATION MAP**

Scott District Boone County



SCALE: 1" = 1,000'

JANUARY, 1988

