

RECORDED NOVEMBER 9, 1977 BK 225 PG 299 NO. 722168 MARGARET LEWIS, COUNTY CLERK

A G R E E M E N T

THIS AGREEMENT, made by and between the BIG HORN COAL COMPANY, a Wyoming Corporation, hereinafter known as COAL COMPANY, and the FLYING "V" CATTLE COMPANY, a Wyoming Corporation, hereinafter known as CATTLE COMPANY,

WITNESSETH: that

WHEREAS, COAL COMPANY is the owner of certain lands hereinafter described and proposes to sell the surface of said lands, under the terms and conditions herein contained, to CATTLE COMPANY which wishes to purchase the same; and

WHEREAS, the Parties have come to an agreement and wish to reduce the same to writing,

NOW, THEREFORE, in consideration of the premises, the mutual covenants of the Parties and the monetary amounts as hereinafter set forth,

IT IS AGREED AS FOLLOWS:

I.

COAL COMPANY does hereby agree to sell, and CATTLE COMPANY does hereby agree to buy, the surface lands listed on Exhibit "A", together with all improvements located thereon, water rights, ditches, hereditaments and rights-of-way appertaining or belonging thereto, but subject to contracts for the exchange of use of lands, leases, whether of record or not, highway rights-of-way and highway deeds and other rights of way of record and subject to the former reservation of all minerals and the right of COAL COMPANY to come on said lands, prospect, mine, drill and remove all coal and any other mineral of every type and description, regardless of value, provided that the owner of the surface is reasonably compensated for damages thereto.

## II.

CATTLE COMPANY specifically covenants that it is not buying said property for mining purposes and that neither it nor its successors or assigns will drill or mine or engage in the mining business so long as COAL COMPANY remains in the mining business in Sheridan County, Wyoming.

It is further covenanted and agreed by CATTLE COMPANY that neither it nor any of its successors or assigns will sell any of said lands to a person, persons or corporation if said person, persons or corporation intends to use said lands for mining or drilling purposes so long as COAL COMPANY is in the mining business in Sheridan County, Wyoming.

It is agreed by the Parties hereto that the deed from COAL COMPANY to CATTLE COMPANY herein contemplated shall contain the foregoing covenants or the equivalent thereof. It is herein declared the intention of the Parties not to create a determinable fee or a fee subject to a condition subsequent but to create a right or rights enforceable by injunction in a court of proper jurisdiction by COAL COMPANY, its successors or assigns, if said covenant, covenants or either of them are breached by CATTLE COMPANY, its successors or assigns.

## III.

COAL COMPANY is hereby granted the option to purchase all or part of said lands if the same, or any part thereof, are offered for sale to a third party. In the event of a bona fide offer by a third party, COAL COMPANY shall be given written notice by certified mail, return receipt requested, at its Acme, Wyoming, office, of said bona fide offer and COAL COMPANY shall have the right, for a period of fifteen (15) days after receipt of said notice, to meet said bona fide offer and purchase all or a portion of said lands at said offering price. In the event of the affirmative exercise of said option, COAL COMPANY shall send notice of

its acceptance to CATTLE COMPANY at its office at 40 North Gould Street, Sheridan, Wyoming, by certified mail, return receipt requested, relative to its affirmative exercise of said option, thereafter said lands shall be sold at said offering price with the terms of this agreement, insofar as they are applicable to said sale, to be a part thereof.

IV.

That the surface lands which are being retained by COAL COMPANY shall be subject to the first option of CATTLE COMPANY to purchase the same, should they be available for sale. In such event, CATTLE COMPANY shall have the right to meet any bona fide offer made by a third party in like manner, after receipt of notice from COAL COMPANY to it, at its office at 40 North Gould Street, Sheridan, Wyoming, by certified mail, return receipt requested, of said bona fide offer, by making written acceptance of said offer within fifteen (15) days after the receipt of said notice by mailing said written acceptance to COAL COMPANY at its office at Acme, Wyoming, by certified mail.

V.

COAL COMPANY warrants that it has good, merchantable title, free and clear of defects and encumbrances, to the surface of said lands being sold and that it will cause abstracts of title to be brought up to approximate date and deliver them to CATTLE COMPANY's attorneys. CATTLE COMPANY's attorneys shall have a period of fifteen (15) days after delivery in which to examine said abstracts and, if defects in or encumbrances on title are found, they shall forthwith be corrected at COAL COMPANY's expense. CATTLE COMPANY shall have the right to retain, from the purchase price, the sum of \$1,000.00 to secure correction of said defects of title and, should the cost of the correction of said defects not use up said funds, the balance shall be paid over to COAL COMPANY after the correction of said defects. It is contemplated by the Parties that final payment and delivery of the deed herein shall be on or before the 15 day of August, 1965.

## VI.

COAL COMPANY warrants that it has paid all real taxes on said property and improvements for 1964 and prior years. CATTLE COMPANY shall pay all real taxes on said property for the year of 1965, which shall be calculated from the tax notice by the Parties at the time of its delivery to COAL COMPANY in the Fall of 1965.

## VII.

As a part of the purchase price, two (2) State Grazing Leases, Nos. 2-5449 and 2-5279, shall be assigned to CATTLE COMPANY. CATTLE COMPANY shall accede to any prepaid rentals without further cost to it.

## VIII.

The purchase price for said lands, improvements and leases shall be ONE HUNDRED ELEVEN THOUSAND, SIX HUNDRED SEVENTY-NINE and 02/100 DOLLARS (\$111,679.02), payable as follows: \$35,000.00 herewith, and the balance after approval of title and upon delivery of the deed. The deed shall bear federal stamp taxes at the cost of COAL COMPANY.

## IX.

In the event COAL COMPANY wishes to use some of the lands herein being sold to CATTLE COMPANY for its mining operations, then CATTLE COMPANY, its successors or assigns, shall be obligated to resell said lands to COAL COMPANY. COAL COMPANY is hereby given first option to the purchase of said lands, or in the event of damage to the surface by virtue of its mining rights thereon caused by COAL COMPANY, its successors or assigns, then the following formula shall be used for either the purchase of said lands or the payment of damages:

(a) The Parties shall meet and attempt to reach an agreeable price.

(b) If the Parties cannot reach an agreeable price then COAL COMPANY shall appoint an appraiser of its own choosing and CATTLE COMPANY shall appoint an appraiser of its own choosing. The appraisers so chosen shall in turn pick a third appraiser and the three shall make an appraisal of the current market value of the surface of said lands to be repurchased at the time of said appraisal. Thereafter, the amount of said appraisal shall be paid by COAL COMPANY to CATTLE COMPANY and said lands shall be reconveyed to COAL COMPANY by CATTLE COMPANY.

(c) In the event of surface damage, said appraisers shall appraise said land at its market value immediately prior to said surface damage and COAL COMPANY shall forthwith after receipt of said appraisal, pay to CATTLE COMPANY the amount of said appraisal for the surface damages done.

To the full and faithful performance of the covenants and agreements herein contained, the Parties hereto intend and bind themselves, their successors and assigns:

BIG HORN COAL COMPANY

By: *Geo A. Mergent*  
Vice President



ATTEST:

*Ray L. Daniels*  
Secretary

FLYING "V" CATTLE COMPANY

By: *Homer A. Scott*  
President

ATTEST:

*Quinn Cox*  
Secretary



STATE OF WYOMING     )  
                              : ss.  
County of Sheridan    )

On this the 12 day of July, 1965, before me personally appeared Geo. A. Nugent to me personally known, who being by me duly sworn, did say that he is the Vice President of the BIG HORN COAL COMPANY and that the seal affixed to said instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and said Geo. A. Nugent acknowledged said instrument to be the free act of deed of said corporation.

Given under my hand and notarial seal this 12 day of July, A.D., 1965.



James M. Edwards  
Notary Public

My Commission expires: 2-20-67

STATE OF WYOMING     )  
                              : ss.  
County of Sheridan    )

On this the 12 day of July, 1965, before me personally appeared Homer A. Scott to me personally known, who being by me duly sworn, did say that he is the President of the FLYING "V" CATTLE COMPANY and that the seal affixed to said instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and said Homer A. Scott acknowledged said instrument to be the free act of deed of said corporation.

Given under my hand and notarial seal this 12 day of July, A.D., 1965.



James M. Edwards  
Notary Public

My Commission expires: 2-20-67

# EXHIBIT "A"

Surface and water rights in the following:

## Township 57 North, Range 84 West, 6th Principal Meridian

- Sec. 3 SW $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$
- Sec. 7 N $\frac{1}{2}$ SE $\frac{1}{4}$
- Sec. 8 S $\frac{1}{2}$
- Sec. 9 NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$
- Sec. 10 NE $\frac{1}{4}$ , SW $\frac{1}{4}$ , Undivided one-half interest in NW $\frac{1}{4}$
- Sec. 15 NE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$  south of Tongue River, the SW $\frac{1}{4}$  excepting therefrom (i) the Acme townsite sold to Gothard Bylund in certain Agreement for Warranty Deed and Bill of Sale dated July 15, 1953, and (ii) certain tracts of land deeded to Montana-Dakota Utilities Company, described as follows: Beginning at a point 50 feet north 26° 54' 30" west of a point which is 1984.5 feet north 31° 23' east from the south-west corner; thence south 69° 6' west 100.51 feet; thence north 26° 54' 30" west 420.82 feet; thence north 24° 54' east 127.24 feet; thence south 86° 14' west 509.5 feet; thence south 26° 35' east 363.2 feet; thence south 69° 6' west 477.6 feet to the point of beginning.
- Sec. 14 That part of SW $\frac{1}{4}$ SW $\frac{1}{4}$  south of Tongue River
- Sec. 17 All
- Sec. 18 E $\frac{1}{2}$
- Sec. 19 NE $\frac{1}{4}$ NE $\frac{1}{4}$ , All of SE $\frac{1}{4}$ NE $\frac{1}{4}$  except the SW $\frac{1}{4}$  thereof sold to William Long, also all that portion of NW $\frac{1}{4}$ NE $\frac{1}{4}$  lying east of Tongue River
- Sec. 20 NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , All NE $\frac{1}{4}$  north of C. B. & Q. Railroad Company right-of-way
- Sec. 21 All except tracts and lots of Model Townsite owned by parties of record, and except that portion of SW $\frac{1}{4}$ NW $\frac{1}{4}$  lying between the North line of the C. B. & Q. Railroad right-of-way and the North line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ , consisting of 4 acres, more or less, as conveyed to Bruno Romeo.
- Sec. 22 All
- Sec. 27 N $\frac{1}{2}$ S $\frac{1}{2}$ , and the N $\frac{1}{2}$ , except a tract of land described as follows: Beginning 535.5 Feet North 59° 30' east from the West quarter corner of said Sec. 27; thence north 16° 12' east 200 feet; thence south 73° 48' east 200 feet; thence south 16° 12' west 200 feet; thence north 73° 48' west 200 feet to the point of beginning
- Sec. 28 NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$

## Township 57 North, Range 85 West, 6th Principal Meridian

A certain tract of land in Sections 14 and 23 as described in Warranty Deed dated January 26, 1916, from George Masters to Peter Kooi, recorded in Book 2 of Deeds, Page 214, County Clerk's Office.

SW $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 28, Township 57 North, Range 84 West of Sixth Principal Meridian, together with all improvements situate thereon and appurtenances thereunto belonging.

## EXHIBIT "A"

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The East Half of the East Half (E $\frac{1}{2}$ E $\frac{1}{2}$ ); the West Half of the Northeast Quarter (W $\frac{1}{2}$ NE $\frac{1}{4}$ ), and the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$ ) of Section Thirty-five (35), Township Fifty-eight (58) North, Range Eighty-five (85) West of the Sixth Principal Meridian; Lots One (1) and Two (2), and the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ ) of Section Two (2), Township Fifty-seven (57) North, Range Eighty-five (85) West of the Sixth Principal Meridian, Sheridan County, Wyoming, together with all improvements situate thereon.

But subject to the exclusions listed on Exhibits A-3, A-4, A-5, A-6, A-7, A-8.