



20090120000016620 1/10 \$42935.30  
Shelby Cnty Judge of Probate, AL  
01/20/2009 01:55:31PM FILED/CERT

NOTE TO PROBATE COURT: The Mortgage, modified hereby, originally secured a maximum principal amount at any time secured not to exceed \$9,500,000. Such Mortgage was recorded in the Probate Office of Shelby County, Alabama and mortgage tax in the amount of \$14,250 was paid to the Probate Office of Shelby County, Alabama. The maximum principal amount at any time secured by the Mortgage was increased to a maximum principal amount not to exceed \$22,000,000 pursuant to Modification No. 1 to the Mortgage recorded in the Probate Office of Shelby County, Alabama, and additional mortgage tax in the amount of \$18,750 was paid to the Probate Office of Shelby County, Alabama. This Modification No. 2 increases the maximum principal amount at any time secured by the Mortgage to a maximum principal amount not to exceed \$50,598,122. It is being filed in the Probate Office of Shelby County, Alabama and additional mortgage tax in the amount \$42,897.18 is being paid to the Probate Clerk of Shelby County, Alabama in connection with the recording of this Modification No. 2. Each of the aforesaid documents also is to be recorded in the Probate Office of Bibb County, Alabama. Upon such recordation, the total \$75,897.18 mortgage tax on the maximum principal amount secured by the Mortgage, as modified, shall be allocable between Bibb County and Shelby County as follows:

Sixty-five percent (65%) to Bibb County = \$49,333.17  
Thirty-five percent (35%) to Shelby County = \$26,564.01

**MODIFICATION NO. 2 TO FUTURE ADVANCE  
MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT  
AND FINANCING STATEMENT (ALABAMA)**

made by and between

**TACOA MINERALS, LLC**  
as the Mortgagor

and

**MADISON MANAGEMENT, LLC,**  
as Agent, as the Mortgagee

**PREPARED BY AND AFTER  
RECORDING RETURN TO:**

Balch & Bingham LLP  
1901 6th Avenue North, Suite 1500  
P.O. Box 306  
Birmingham, AL 35201  
(205) 251-8100  
Attention: William S. Wright, Esq.

**MODIFICATION NO. 2 TO FUTURE ADVANCE  
MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT  
AND FINANCING STATEMENT (ALABAMA)**

STATE OF ALABAMA )

COUNTIES OF BIBB AND SHELBY )

**THIS MODIFICATION NO. 2** ("Modification Agreement") TO FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (ALABAMA) is made as of the 7th day of October, 2008, by and between **TACOA MINERALS, LLC**, an Alabama limited liability company ("Mortgagor"), having an office at 5308 Kenley Way, Birmingham, Alabama 35242 and **MADISON MANAGEMENT, LLC** in its capacity as agent for Del Mar Onshore Partners, LP and Del Mar Offshore Fund Ltd. (in such capacity, "Mortgagee"), having an office at 711 Fifth Avenue - Fifth Floor, New York, New York 10022 (Del Mar Onshore Partners, LP and Del Mar Offshore Fund Ltd. are referred to herein each as a "Lender" and together as the "Lenders").

W I T N E S S E T H:

WHEREAS, terms which are defined in the Mortgage (as defined below) shall have such meanings when used herein, unless otherwise stated herein;

WHEREAS, Mortgagee, Lenders, Mortgagor and New Century Mining, Inc. have entered into financing arrangements pursuant to which such Lenders have made and may make loans and advances and provide other financial accommodations to Mortgagor (as may be amended, the "Loan") as set forth in certain Financing Agreements relating to such arrangements (collectively, the "Financing Agreements");

WHEREAS, in order to secure all existing and future obligations, liabilities and indebtedness of Mortgagor including without limitation that evidenced by or arising under the Note up to the maximum principal amount secured at any time of NINE MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS (\$9,950,000), plus interest, costs and expenses and other amounts as provided therein, Mortgagor executed and delivered to Mortgagee the Future Advance Mortgage, Assignment of Rents and Leases, Security Agreement and Financing Statement (Alabama) (the "Mortgage"), dated February 20, 2007, and recorded in the office of the Shelby County Judge of Probate as Instrument No. 20070222000082470 on February 22, 2007, which Mortgage was modified pursuant to Modification No.1 to Future Advance Mortgage, Assignment of Rents and Leases, Security Agreement and Financing Statement (Alabama) ), dated February 12, 2008, and recorded in the office of the Shelby County Judge of Probate as Instrument No. 20080806000316380 on August 6, 2008 to increase the maximum principal amount secured at any time to TWENTY TWO MILLION DOLLARS (\$22,000,000);

WHEREAS, Mortgagor is the owner of the Land described in Exhibit A attached to the Mortgage and a lessee under the Coal Leases described in Exhibit B attached to the Mortgage;

WHEREAS, the parties hereto wish to modify the Mortgage and other Financing Agreements to provide (i) for a further increase in the maximum principal amount secured by the



Mortgage from \$22,000,000 to \$50,598,122 in order to evidence the increase in the principal amount of the Loan by \$28,598,122 pursuant to (a) an Amended and Restated Term Promissory Note, dated as of February 12, 2008, in the principal amount of \$12,134,927 (the "Amended and Restated Promissory Note"), (b) Term Promissory Note B, dated as of February 12, 2008, in the principal amount of \$9,865,073 (the "Term Note B"), (c) Term Promissory Note C, dated of even date hereof, in the principal amount of \$10,000,000 (the "Term Note C") and (d) Equipment Reimbursement Obligations (as defined in Amendment No. 2 to the Term Loan and Security Agreement ("Amendment No. 2"), dated of even date herewith, by and between Mortgagor, Lenders, Mortgagor and New Century Mining, Inc. in the amount of \$18,598,122 and (ii) spread the Mortgage and add additional property and interests thereto to be encumbered thereunder as security for the indebtedness, obligations and liabilities of Mortgagor and New Century Mining, Inc. to Lenders;

**NOW, THEREFORE,** in consideration of the above premises, Mortgagor and Mortgagee hereby agree that the Mortgage shall be amended as follows:

1. **Addition of Fee Land, Leases and Coal Lease Land.**

(a) Paragraph (b) on Page 2 of the Mortgage shall be and is hereby amended by adding thereto in the 7<sup>th</sup> line thereof after the word "therefor" the following:

"that certain Coal Mining Lease between The Westervelt Company and Mortgagor dated as of September 17, 2007, and any and all amendments thereto and replacements therefor, that certain Coal Mining Lease between RGGS Land and Minerals Ltd., L.P. and Mortgagor dated as of December 20, 2007, and any and all amendments thereto and replacements therefor and that certain Coal Mining Lease between RGGS Land and Minerals Ltd., L.P. dated as of July 15, 2008 relating to land situated in Sections 17, 18, 19, 20, 29 and 30 of Township 22 South, Range 4 West in Bibb County, Alabama and Sections 13, 23, 24 and 25 of Township 22 South, Range 5 West in Bibb County, Alabama, and any and all amendments thereto and replacements therefor."

(b) Exhibit B of the Mortgage shall be and is hereby amended by adding thereto the following to the items indicated:

"Add to item 1 the following." as amended by the February 20, 2007 Amendment to Coal Recovery Lease with RGGS Land & Mineral LTD., LP relating to additional land situated in Sections 21, 22, 28 and 29, of Township 21 South, Range 4 West in Shelby County, Alabama.

"Add to item 2 the following." as amended by the March 3, 2007 First Amendment Coal Fines and GOB Recovery Lease with United States Steel Corporation relating to additional land situated in Sections 21, 22, 28 and 29, of Township 21 South, Range 4 West in Shelby County, Alabama.

(c) Exhibit B of the Mortgage shall be and is hereby amended by adding thereto the following:

“4. The September 17, 2007 The Westervelt Company Coal Mining Lease relating to land situated in Sections 26, 27, 29, 32, 33 and 34 of Township 21 South, Range 5 West in Bibb County, Alabama.

5. The December 20, 2007 RGGS Land and Minerals Ltd., L.P. Coal Mining Lease relating to land situated in Section 22 of Township 21 South Range 4 West in Shelby County, Alabama.”

6. The July 15, 2008 RGGS Land and Minerals Ltd., L.P. Coal Mining Lease relating to land situated in Sections 17, 18, 19, 20, 29 and 30 of Township 22 South, Range 4 West in Bibb County, Alabama and Sections 13, 23, 24 and 25 of Township 22 South, Range 5 West in Bibb County, Alabama.”

2. **Revision of Certain Definitions.**

(a) The definition of Loan is hereby revised by adding after the initial parenthesis the following: “(as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced,)”

(b) The definition of Note is hereby revised by adding immediately prior to collectively “(as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.)”

3. **Increase in Maximum Aggregate Principal Amount Secured by the Mortgage.** Each reference in the Mortgage to the maximum aggregate principal amount secured by the Mortgage is hereby increased from a sum not to exceed NINE MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS (\$9,950,000) to a sum not to exceed FIFTY MILLION FIVE HUNDRED NINETY EIGHT THOUSAND ONE HUNDRED TWENTY TWO DOLLARS (\$50,598,122) at any time and from time to time outstanding.

4. **Replacement of Proviso Appearing After Paragraph (e) of the Granting Clauses on Page 3 of the Mortgage.** The proviso appearing after Paragraph (e) of the Granting Clauses on Page 3 of the Mortgage is hereby revised to read as follows:

*provided, however,* that the maximum principal amount of indebtedness secured hereby shall not exceed a principal amount of FIFTY MILLION FIVE HUNDRED NINETY EIGHT THOUSAND ONE HUNDRED TWENTY TWO DOLLARS (\$50,598,122) (the “**Secured Principal Amount**”). It is understood and agreed that the limitation to the Secured Principal Amount relates only to principal of the Loan, and the limitation shall not apply to interest, expenses, prepayment premiums, indemnities (including environmental indemnities), fees and other obligations secured by this Mortgage, and all of such sums shall be secured hereby in addition to the Secured Principal Amount. In addition, unless Mortgagee otherwise elects, any partial releases or application of proceeds of partial releases shall not reduce the Secured Principal Amount. In no event shall the limitation on the principal amount of the Loan secured hereby limit or impair the mortgage, security interests and liens of Mortgagee in property of Mortgagor



as provided under the Loan Documents.

5. **Replacement of Section 1.01 of the Mortgage.** Section 1.01 of the Mortgage is hereby deleted and replaced by the following:

**1.01 Obligations Secured by Mortgage.** The foregoing conveyance is made to secure and enforce the following (hereinafter sometimes referred to collectively as the "**Secured Obligations**"), whether or not evidenced by any document or instrument: (a) the payment and performance of the Obligations and any renewals, increase and modifications thereof, including without limitation, the Loan and all interest, fees, charges and expenses in respect of any of the Obligations, together with the obligation to pay the Secured Principal Amount and all other amounts which may be due and owing from time to time under the Note, the Loan Agreement or any other note, security agreement, guaranty agreement, mortgage and all other documents or instruments heretofore, now or hereafter executed or delivered in connection with the transactions contemplated hereby or thereby and any other document or instrument heretofore or hereafter executed by Mortgagor or New Century Mining, Inc. in favor of Lender or Mortgagee (hereafter the Note, the Loan Agreement, this Mortgage and all such other notes, security agreements, guaranty agreements, mortgages and other documents and instruments (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, are sometimes referred to collectively as the "Loan Documents"); (b) the observance and performance of all of the provisions of this Mortgage, the Loan Agreement, the Note and the other Loan Documents; (c) all other indebtedness, obligations and liabilities of the Mortgagor or New Century Mining, Inc. to the Lender or the Mortgagee (including obligations of payment and performance) of every kind whatsoever, arising directly between the Mortgagor or New Century Mining, Inc. and Lender or Mortgagee or acquired outright, as a participation or as collateral security from another person by Lender or Mortgagee, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how or when they arise (including those arising after the filing of a petition by or against the Mortgagor or New Century Mining, Inc. under the Bankruptcy Code, even if such obligations do not accrue because of the automatic stay under the Bankruptcy Code or otherwise) or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, general partner, drawer, tortfeasor, account party with respect to a letter-of-credit, indemnitor or otherwise, including without limitation, all interest, fees, expenses and charges heretofore or hereafter owed by Mortgagor or New Century Mining, Inc. to Lender or Mortgagee; (d) the payment of all sums advanced in the future, if any, and all sums paid by Lender or Mortgagee in exercising any of its rights, powers or remedies in respect of the Secured Obligations under this Mortgage or any other Loan Documents, and all interest (including post-bankruptcy petition interest) on such sums provided for herein or therein; and (e) all renewals,

extensions, modifications and amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

6. **Granting of Lien.** Mortgagor hereby grants, mortgages, pledges, bargains, sells, aliens, remises, conveys, assigns and confirms unto Mortgagee as agent for and on behalf of Lenders, its successors and assigns all of Mortgagor's estate, right, title and interest in, to and under the real and personal property interests described in Schedule 1 hereto ("Additional Property and Interests") which Additional Property and Interests shall be added to and included in the definition of Mortgaged Properties contained in the Mortgage.

7. **Spreading of Mortgage.** Mortgagor and Mortgagee hereby modify the Mortgage to add to the Mortgage the Additional Property Interests to spread the Mortgage to encumber all of the Mortgaged Properties (including such Additional Property and Interests) so as to constitute a single mortgage encumbering all of the Mortgaged Properties in a maximum principal amount not to exceed \$50,598,122. The Mortgage is hereby spread to encumber all of the Mortgaged Properties as a single mortgage and security interest upon the Mortgaged Properties in a maximum principal amount not to exceed \$50,598,122 and the mortgage, security interest and lien of which shall be a first lien on such Mortgaged Property (including the Additional Property and Interests.)

8. **Ratification.** Except as modified by this Modification Agreement, all other terms, conditions, covenants, representations and warranties contained in the Mortgage shall remain unmodified and in full force and effect and are hereby ratified by the parties hereto.

9. **Execution by Mortgagee.** The Mortgagee joins in the execution of this Modification Agreement to evidence its knowledge and consent hereto.

10. **Counterparts.** This Modification Agreement may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this Modification Agreement, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Modification Agreement as of the day and year first above written.

**"MORTGAGOR"**

**TACOA MINERALS, LLC**

By:

Name:

Title:

Jerry C Whitt  
Jerry C Whitt  
Mg member

By:

Name:

Title:

Darryn M Bookout  
Darryn M Bookout  
MEMBER



STATE OF ALABAMA

SHELBY COUNTY

I, KATHY A. PURVIS, a notary public in and for said county in said state, hereby certify that JERRY C. WHITT, whose name as MANAGING MEMBER of TACOA MINERALS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such MANAGING MEMBER and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 11 day of December, 2008.

Kathy A. Purvis  
Notary Public

[ Notarial Seal ]

My commission expires: 9/10/11

STATE OF ALABAMA

SHELBY COUNTY

I, KATHY A. PURVIS, a notary public in and for said county in said state, hereby certify that DARYN BOOKOUT, whose name as MEMBER of TACOA MINERALS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such MEMBER and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 11 day of December, 2008.

Kathy A. Purvis  
Notary Public

[ Notarial Seal ]

My commission expires: 9/10/11



IN WITNESS WHEREOF, the parties hereto have executed this Modification Agreement  
as of the day and year first above written.

**"MORTGAGEE"**

**MADISON MANAGEMENT, LLC, as Agent**

By: *M. W. Macleod*  
Name: Morris Macleod  
Title: Manager

STATE OF NEW YORK

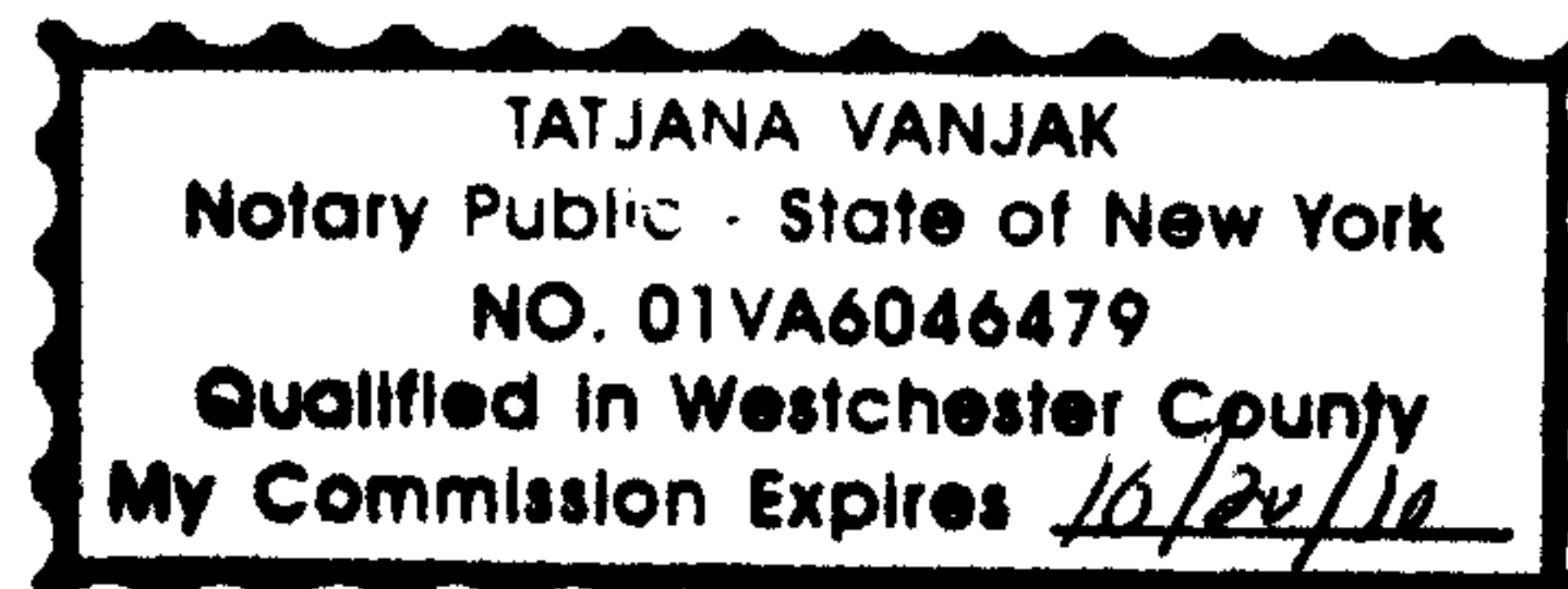
NEW YORK COUNTY

I, Tatjana Vanjak, a notary public in and for said county in said state,  
hereby certify that Morris Macleod, whose name as Manager of **MADISON  
MANAGEMENT, LLC**, an Alabama limited liability company, is signed to the foregoing  
instrument and who is known to me, acknowledged before me on this day that, being informed of  
the contents of such instrument, he, as such Manager and with full authority, executed the  
same voluntarily for and as the act of said company.

Given under my hand and official seal this 31st day of October, 2008.

*Tatjana Vanjak*  
Notary Public  
My commission expires: 10/20/10

[ Notarial Seal ]





20090120000016620 10/10 \$42935.30  
Shelby Cnty Judge of Probate, AL  
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## SCHEDULE 1

### Additional Property and Interests

1. The September 17, 2007 The Westervelt Company Coal Mining Lease relating to land situated in Sections 26, 27, 29, 32, 33 and 34 of Township 21 South, Range 5 West in Shelby and Bibb Counties, Alabama.

2. The December 20, 2007 RGGS Land and Minerals Ltd., L.P. Coal Mining Lease relating to land situated in Section 22 of Township 21 South Range 4 West in Shelby County, Alabama.”

3. The July 15, 2008 RGGS Land and Minerals Ltd., L.P. Coal Mining Lease relating to land situated in Sections 17, 18, 19, 20, 29 and 30 of Township 22 South, Range 4 West in Bibb County, Alabama and Sections 13, 23, 24 and 25 of Township 22 South, Range 5 West in Bibb County, Alabama.