

This instrument, was prepared by
and after recording should be returned to:



Michael A. Donadee, Esq.
Buchanan Ingersoll Professional Corporation
301 Grant Street; 20th Floor
Pittsburgh, Pennsylvania 15219
(412) 562-8981

Inst # 1998-15285

04/28/1998-15285
02:29 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
019 MCD 203.50

MORTGAGE AND SECURITY AGREEMENT

(Shelby County, Alabama)

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") IS MADE as of the 31st day of March, 1998 by OAK MOUNTAIN ENERGY, L.L.C., an Alabama limited liability company, having an address at 8320 Highway 270, Maylene, AL 35114 ("Mortgagor"), in favor of MELLON BANK, N.A., as administrative and collateral agent ("Agent") for the financial institution or institutions (collectively "Banks") from time to time party to the Credit Agreement (as defined below), with an address at Two Mellon Bank Center, Pittsburgh, Pennsylvania, 15259 (Agent and the Banks are collectively referred to herein as "Mortgagee");

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9-402 (6) OF THE CODE OF ALABAMA.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS MORTGAGE, THE INDEBTEDNESS SECURED BY THIS MORTGAGE SHALL NOT IN ANY EVENT EXCEED THE SUM OF ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

WITNESSETH:

WHEREAS, Mortgagor is the owner of a certain tract or parcel of land situate in Shelby County, Alabama described in Exhibit A attached hereto and made a part hereof, together with the improvements now or hereafter erected thereon; and

WHEREAS, Mortgagee has made a series of loans to Mortgagor pursuant to a standby/term credit facility in an aggregate principal amount not to exceed \$27,000,000, the proceeds of which will be advanced to Mortgagor from time to time pursuant to the terms and conditions of a certain Credit Agreement, dated as of April 17, 1997, as amended by Amendment

No. 1 to the Credit Agreement dated of even date herewith (the "Loan Agreement"), between Mortgagor and Mortgagee for the purposes set forth in the Loan Agreement (as used in this Mortgage, the term "Loans" shall have the meaning set forth in the Loan Agreement), as the same may be further amended, supplemented, renewed or replaced from time to time; and

WHEREAS, the Loans are further evidenced and secured by a certain Security Agreement delivered by Mortgagor to Mortgagee dated as of April 17, 1997 as amended by Amendment No. 1 to the Security Agreement (the "Security Agreement"), as the same may be amended, supplemented, renewed or replaced from time to time, pursuant to which the Mortgagor has granted a security interest to Mortgagee in certain property and interests, as set forth therein;

NOW, THEREFORE, for the purpose of securing the payment and performance of the following obligations (collectively called the "Secured Obligations"):

(A) all indebtedness, together with all interest thereon, evidenced by the Loan Agreement, and any Note (as defined in the Loan Agreement), as the same may be amended, supplemented, renewed, extended or replaced from time to time;

(B) any sums advanced by the Banks or which may otherwise become due pursuant to the provisions of the Loan Agreement or this Mortgage or pursuant to any other Loan Document (as defined in the Loan Agreement); and

(C) all other obligations of Mortgagor to Mortgagee now existing or hereafter arising in connection with the Secured Obligations set forth in (A) or (B) above.

NOTWITHSTANDING THE FOREGOING, THE INDEBTEDNESS SECURED BY THIS MORTGAGE WILL NOT IN ANY EVENT EXCEED THE SUM OF \$100,000.00.

Mortgagor, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, does hereby give, grant, bargain, sell, alien and convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm unto Mortgagee and does agree that Mortgagee shall have a security interest in the following described property, all accessions and additions thereto, all substitutions therefor and replacements and proceeds thereof, and all reversions and remainders of such property (collectively, the "Mortgaged Property") now owned or held or hereafter acquired, to wit:

(i) all of Mortgagor's estate in the premises described in Exhibit A, together with all of the easements, rights of way, privileges, liberties, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances thereunto belonging or appertaining, and all of the estate, right, title, interest, claim and demand whatsoever of Mortgagor therein and in the public streets and ways adjacent thereto, either in law or in equity, in possession or expectancy (collectively, the "Realty");

(ii) the structures and buildings and all additions and improvements thereto now or hereafter erected upon the Realty (including all Equipment, as hereinafter defined, constituting fixtures) (collectively, the "Improvements");

(iii) all machinery, apparatus, equipment, fittings, appliances and fixtures of every kind and nature whatsoever and regardless of whether the same may now or hereafter be attached or affixed to the Realty or Improvements, including, without limitation, all electrical, antipollution, heating, lighting, incinerating, power, air conditioning, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communication machinery, apparatus, equipment, fittings, appliances and fixtures, and all engines, pipes, pumps, tanks, motors, conduits, ducts, compressors, elevators and escalators, and all articles of personal property and goods of every kind and nature whatsoever, including all shades, awnings and carpets now or hereafter affixed to, attached to, placed upon, or used or usable in any way in connection with the use, enjoyment, occupancy or operation of the Realty or Improvements (collectively, the "Equipment");

(iv) all leases and other agreements now or hereafter in existence relating to the use, occupancy or possession of the Realty, Improvements or Equipment or any part thereof, or other such similar facilities within the Improvements, and all right, title and interest of Mortgagor thereunder, including cash and securities deposited thereunder to secure performance by the tenants of their obligations thereunder, and including further, the right to amend or terminate the same or waive the provisions thereof, and the right to receive and collect the rents thereunder and all guaranties thereof (collectively, the "Leases");

(v) all revenues, accounts, accounts receivable, income, rents, issues and profits of the Realty, Improvements, Equipment and Leases (collectively, the "Rents"), including revenues from the rental of sleeping rooms and all proceeds of the conversion, voluntary or involuntary, of the Realty, Improvements and Equipment or any part thereof into cash or liquidated claims, including proceeds of insurance and condemnation awards or payments in lieu thereof;

(vi) all Mortgagor's rights and interests in all agreements now or hereafter in existence providing for or relating to the construction, alteration, maintenance, repair, operation or management of the Mortgaged Property or any part thereof, as well as the plans and specifications therefor, and all copies thereof (together with the right to amend or terminate the same or waive the provisions of the foregoing) and any amendments, renewals and replacements thereof; to the extent permitted by the relevant authorities, all licenses, permits and approvals for the ownership, construction, maintenance, operation, use and occupancy of the Mortgaged Property or any part thereof and any amendments, renewals and replacements thereof; all Mortgagor's rights and interests in all warranties and guaranties from contractors, subcontractors, suppliers and manufacturers to the maximum extent permissible relating to the Mortgaged Property or any part thereof; all insurance policies covering or affecting the Mortgaged Property or any part thereof; all of

Mortgagor's now and hereafter arising or acquired Accounts, General Intangibles, Goods, Inventory, Chattel Paper, Documents and Instruments (as such terms are defined in Article 9 of the Uniform Commercial Code of the state in which the Realty is located) arising out of, used in connection with, or otherwise relating to the Mortgaged Property (collectively, the "Other Property").

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, its successors and assigns, to its own use forever, in accordance with the provisions hereof.

1. REPRESENTATIONS AND WARRANTIES

Mortgagor represents and warrants to Mortgagee as follows:

1.1 Warranty of Title.

(a) Mortgagor has good and marketable title to an estate in fee simple absolute in the Realty and Improvements and has all right, title and interest in all other property constituting a part of the Mortgaged Property, in each case free and clear of all liens and encumbrances, except as may otherwise be set forth on Exhibit B attached hereto;

(b) this Mortgage is a valid and enforceable first lien on the Mortgaged Property (except as aforesaid) and Mortgagee shall, subject to Mortgagor's right of possession prior to an Event of Default, quietly enjoy and possess the Mortgaged Property; and

(c) Mortgagor shall preserve such title as Mortgagor warrants herein and the validity and priority of the lien hereof and shall forever warrant and defend the same to Mortgagee against the claims of all persons and parties whomsoever.

1.2 No Casualty or Taking.

None of the Mortgaged Property has been damaged by fire or other casualty which is not now fully restored and no notice of taking by eminent domain or condemnation of any of the Mortgaged Property has been received and Mortgagor has no knowledge that any taking is contemplated.

1.3 Mortgagor acknowledges that this Mortgage is one of the "Mortgages" as the same is defined in the Loan Agreement.

2. AFFIRMATIVE COVENANTS

Until all of the Secured Obligations shall have been fully paid, satisfied and discharged, Mortgagor shall:

2.1 Payment and Performance of Secured Obligations.

Pay or perform all Secured Obligations when due as provided in the Loan Documents.

2.2 Legal Requirements.

Promptly comply with and conform in all material respects to all present and future laws, statutes, codes, ordinances, orders, decrees, regulations and requirements, even if unforeseen or extraordinary, of every governmental authority or agency and all covenants, restrictions and conditions which may be applicable to Mortgagor or to any of the Mortgaged Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Mortgaged Property (collectively, the "Legal Requirements"), even if such compliance necessitates structural changes or improvements or results in interference with the use or enjoyment of any of the Mortgaged Property, provided that no structural changes shall be made without the prior written consent of Mortgagee, not to be unreasonably withheld.

2.3 Impositions.

(a) Before interest or penalties are due thereon and otherwise when due, pay all taxes of every kind and nature (including real and personal property taxes on the Mortgaged Property, income, franchise, withholding, profits and gross receipts taxes) assessed against Mortgagor or any portion of the Mortgaged Property, all charges for any easement or agreement maintained for the benefit of any of the Mortgaged Property, all general and special assessments (including, without limitation, any condominium or planned unit development assessments, if any), levies, permits, inspection and license fees, all mortgages and other liens or encumbrances upon any portion of the Mortgaged Property, all water and sewer rents and charges, and all other charges and liens, whether of a like or different nature, even if unforeseen or extraordinary, now or hereafter imposed upon or assessed against Mortgagor or any of the Mortgaged Property or arising in respect of the ownership, occupancy, use or possession thereof. In addition, Mortgagor shall pay promptly on demand all taxes, assessments and charges which may now or hereafter be imposed upon Mortgagee by reason of its holding any of the Loan Documents, including intangibles, business privilege and excise taxes, but excluding any taxes upon the income derived by Mortgagee upon the interest or other sums collected by Mortgagee pursuant to the Loan Documents. The obligations referred to in this Section are hereinafter collectively referred to as the "Impositions". Within thirty (30) days after the payment of any Imposition, Mortgagor shall deliver to Mortgagee evidence acceptable to Mortgagee of such payment. Mortgagor shall also deliver to Mortgagee within ten (10) days of receipt thereof copies of all settlements and notices pertaining to the Impositions which may be issued by any governmental authority.

(b) Subject to the right of Mortgagor to contest the payment of an Imposition as hereinafter provided, Mortgagee may pay or perform any Imposition and add the amount so paid or the cost incurred to the Secured Obligations, and all such amounts shall on demand be due and payable, together with interest thereon, from the date of such demand at the highest rate applicable to any portion of the Secured Obligations, but in no event exceeding the highest rate permitted by law (the "Default Rate").

(c) Mortgagor may in good faith contest by proper legal proceedings the validity of any Legal Requirement or the validity or amount of any Imposition, provided, (i) an Event of Default does not exist; (ii) Mortgagor provides Mortgagee with security satisfactory to Mortgagee assuring compliance with or payment of the Legal Requirement or Imposition and

any additional charge, interest, penalty, expense or other payment which may arise from or be incurred as a result of any delay in such compliance or payment during the course of such contest, all as estimated from time to time by Mortgagee; and (iii) such contest operates to suspend enforcement of compliance with or collection of the Legal Requirement or Imposition and is maintained and prosecuted with diligence.

2.4 Maintenance and Impairment of Security.

Keep the Mortgaged Property in good condition and order and in a rentable and tenantable state of repair and will make or cause to be made, as and when necessary, all repairs, renewals, and replacements, structural and nonstructural, exterior and interior, foreseen and unforeseen, ordinary and extraordinary, provided, however, that no structural repairs, renewals or replacements shall be made without Mortgagee's prior written consent not to be unreasonably withheld. Mortgagor shall not remove, demolish or alter the Mortgaged Property nor commit or suffer waste with respect thereto nor permit the Mortgaged Property to become deserted or abandoned. Mortgagor shall permit Mortgagee and its agents at any reasonable time and from time to time to enter upon and visit the Mortgaged Property for the purpose of inspecting and appraising the same. Mortgagor covenants and agrees not to take or permit any action with respect to the Mortgaged Property which will in any manner impair the security of this Mortgage.

2.5 Use of Mortgaged Property.

Use, and permit others to use, the Mortgaged Property only for uses permitted under applicable Legal Requirements.

3. **NEGATIVE COVENANTS**

Until all of the Secured Obligations shall have been fully paid, satisfied and discharged:

3.1 No Other Financing or Liens.

Without the prior written consent of Mortgagee, Mortgagor shall not enter into any lease for any personal property as lessee which is to be used in connection with the operation of Mortgagor's business at the Mortgaged Property or create or cause or permit to exist any lien on, or security interest in, whether voluntary or involuntary, any part of the Mortgaged Property, other than in favor of Mortgagee or Permitted Liens.

3.2 Sale of Mortgaged Property, Etc.

Mortgagor shall not sell, assign, give, mortgage, pledge, hypothecate, encumber, lease or otherwise transfer the Mortgaged Property or any part thereof or interest therein, voluntarily or involuntarily, without Mortgagee's prior written consent.

4. INSURANCE, CONDEMNATION AND RESTORATION

4.1 Insurance.

(a) Mortgagor shall maintain comprehensive public liability insurance, fire insurance with extended coverage, builder's risk insurance with respect to any construction, renovation or reconstruction, contractual liability insurance for all indemnification obligations of Mortgagor under all Leases, and such other insurance as may be required pursuant to the Loan Agreement.

(b) If the Mortgaged Property is located in an area which has been identified by any governmental agency, authority or body as a flood hazard area or the like, then Mortgagor shall maintain a flood insurance policy covering the Mortgaged Property in an amount not less than the full replacement value of the Mortgaged Property or the maximum limit of coverage available under the federal program, whichever amount is less.

(c) Mortgagor shall promptly comply with and conform to (i) all provisions of each insurance policy and (ii) all requirements of the insurers thereunder applicable to Mortgagor or any of the Mortgaged Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Mortgaged Property.

(d) If Mortgagor shall not at any time comply with the terms of this Section, irrespective of the passage of any grace period, Mortgagee may cure such non-compliance and may purchase such insurance as it may elect. Mortgagor shall reimburse Mortgagee on demand for any costs incurred by Mortgagee in connection with any such actions, together with interest at the Default Rate. Any such actions by Mortgagee shall not constitute a waiver of any non-compliance of the terms of this Mortgage by Mortgagor.

4.2 Condemnation.

Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Mortgaged Property, shall notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings in cooperation with Mortgagor, and Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. Any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof, is hereby assigned to and shall be received and collected directly by Mortgagee, and any award or compensation shall be applied, at Mortgagee's option, to any part of the Secured Obligations and in any order (notwithstanding that any of such Secured Obligations may not then be due and payable) or to the repair and restoration of any of the Mortgaged Property under such terms and conditions as Mortgagee may impose.

5. DEFAULT

5.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

- (a) an "Event of Default", as defined in the Loan Agreement, shall have occurred;
- (b) Mortgagor shall fail to perform or observe any of the obligations in Article 3 or 4 of this Mortgage; or
- (c) Mortgagor shall fail to perform any of the other obligations set forth in Article 2 hereof and such failure to perform shall continue for twenty (20) calendar days.

5.2 Demand Obligation.

Nothing in this Mortgage or any of the other Loan Documents shall be construed to limit the applicability of any term of the Loan Documents providing for the payment of any Secured Obligations on demand.

6. REMEDIES

6.1 Rights and Remedies of Mortgagee.

If an Event of Default occurs, Mortgagee may, at its option and notwithstanding any contrary provisions in the Loan Documents, and in addition to its rights and remedies under any Loan Document, without demand, notice or delay, do one or more of the following:

- (a) Mortgagee may declare the entire unpaid principal balance of the Secured Obligations, together with all interest thereon, to be due and payable immediately.
- (b) Mortgagee may (i) institute and maintain an action of mortgage foreclosure against the Mortgaged Property and the interests of Mortgagor therein, (ii) institute and maintain an action on any instruments evidencing the Secured Obligations or any portion thereof, and (iii) take such other action at law or in equity for the enforcement of any of the Loan Documents as the law may allow, and in each such action Mortgagee shall be entitled to all costs of suit and reasonable attorneys' fees actually incurred.
- (c) Mortgagee may, without releasing Mortgagor or any obligor or guarantor of any of the Secured Obligations from any obligation under any of the Loan Documents and without waiving any Event of Default, enter upon and take possession of the Mortgaged Property or any portion thereof, with or without legal action and by force if necessary, or have a receiver appointed without proof of depreciation or inadequacy of the value of the Mortgaged Property, the insolvency of Mortgagor, or any other proof. Mortgagee or said receiver may manage and operate the Mortgaged Property, make, cancel, enforce or modify the Leases or any of them, obtain and evict tenants, establish or change the amount of any Rents, and perform any acts and advance any sums which Mortgagee deems proper to protect the security of this Mortgage, all such sums to be payable on demand, together with interest thereon at the Default Rate, from the date of such demand, and such sums and interest to be secured by this Mortgage.
- (d) Mortgagee may take possession of the Equipment and Other Property, or any portion thereof, and may use and deal with the same to the same extent as Mortgagor is entitled to do so and may sell the same pursuant to law and exercise such other rights and remedies with

respect to the same as may be provided by law, and file such continuation statements which it deems desirable.

6.2 Sale in Parcels or Units.

In case any sale under this Mortgage occurs by virtue of judicial proceedings, the Mortgaged Property may be sold in one parcel or unit and as an entity, or in such parcels or units, and in such manner or order, as Mortgagee in its sole discretion may elect.

6.3 Power of Sale.

If an Event of Default should occur as provided in any of the other covenants, conditions contained in any other instrument evidencing or securing the indebtedness described herein, Mortgagee shall have the right to sell the Mortgaged Property at public outcry, in front of the Court House door of the county wherein the Mortgaged Property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for Mortgagee, is authorized and empowered to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the Mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises.

6.4 Remedies Cumulative.

All remedies contained in this Mortgage are cumulative and Mortgagee also has all other remedies provided by law or in equity or in any of the other Loan Documents. No delay or failure by Mortgagee to exercise any right or remedy under this Mortgage will be construed to be a waiver of that right or remedy or a waiver of any Event of Default. Mortgagee may exercise any one or more of its rights and remedies without regard to the adequacy of its security. One or more of the other Loan Documents may contain provisions pursuant to which all or a part of the Secured Obligations shall become immediately and automatically due and payable upon the occurrence of certain events described therein. Nothing in this Mortgage shall be construed as limiting the effectiveness of such provisions, and in the event of any inconsistency with the terms of this Mortgage, those provisions more advantageous to Mortgagee shall govern.

6.5 No Merger.

(a) If Mortgagee or any other person or entity owning or holding this Mortgage shall acquire or shall become vested with the fee title to the Mortgaged Property or any other estate or interest in the Mortgaged Property, such estates shall not merge as a result of such acquisition and shall remain separate and distinct from all other estates and interests in the Mortgaged Property for all purposes after such acquisition. The lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Mortgagee or such other person or entity shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder as to each separate estate unless and until Mortgagee or such other person or entity shall affirmatively elect in writing to merge such estates.

(b) Upon the foreclosure of the lien created hereby on the Mortgaged Property, as herein provided, any Leases then existing shall not be destroyed or terminated by application of the doctrine of merger or by operation of law or as a result of such foreclosure unless Mortgagee or any purchaser at a foreclosure sale shall so elect by written notice to the lessee in question.

7. ENVIRONMENTAL MATTERS

7.1 Environmental Warranty.

Mortgagor represents and warrants to Mortgagee:

(a) Except as disclosed in writing to Mortgagee prior to the date of this Mortgage, neither Mortgagor nor, to the best of Mortgagor's knowledge, any previous owner, lessee or other occupant of all or any part of the Mortgaged Property, nor any third party, has used, generated, released, discharged, spilled, emitted, stored or otherwise managed any hazardous waste, toxic substances or other regulated materials (all of which are collectively called "Regulated Substances") on any part of the Mortgaged Property except in compliance with Environmental Laws (as hereinafter defined). For purposes of this representation and warranty, Regulated Substances shall include (but are not necessarily limited to) any substances that are defined as "hazardous" or "toxic" or otherwise regulated under any local, state or federal Environmental Law (as hereinafter defined).

(b) Except as disclosed in writing to Mortgagee prior to the date of this Mortgage, neither Mortgagor nor, to the best of Mortgagor's knowledge, any previous owner, lessee or other occupant of all or any part of the Mortgaged Property, nor any third party, has disposed of any Regulated Substances on any part of the Mortgaged Property.

(c) Except as disclosed in writing to Mortgagee prior to the date of this Mortgage, there is no asbestos or asbestos-containing material located on any part of the Mortgaged Property.

(d) If there is on-site sewage treatment, all necessary permits have been obtained and remain in effect with respect to those treatment facilities, and no discharge of raw, untreated or inadequately treated sewage from the Mortgaged Property has occurred or will occur at any time that this Mortgage remains in effect.

(e) No part of the Mortgaged Property constitutes "wetlands" as defined under all applicable Environmental Laws.

(f) No part of the Mortgaged Property, nor any property adjoining, or in the proximity of, the Mortgaged Property has been listed as a Superfund Site on the National Priorities List, has been listed on CERCLIS, or has been identified on any similar list compiled by any governmental agency.

(g) Except as disclosed in writing to Mortgagee prior to the date of this Mortgage, there are no underground storage tanks located on the Mortgaged Property. All tanks, fuel lines

and dispensing equipment shall be maintained in compliance with all Environmental Laws pertaining to underground storage tanks and dispensing of any product therefrom.

(h) Mortgagor shall promptly notify Mortgagee in writing of any pending or threatened investigation or litigation by any governmental authority, or by any third party, relating to the Mortgaged Property, and arising under any Environmental Law or alleging a common law or statutory nuisance. Mortgagor shall, within two (2) Business Days of receipt, deliver to Mortgagee a copy of all notices, pleadings or other materials of any kind received from any public authority or any third party relating in any manner to any of the matters set forth in this Section 7.1.

(i) Mortgagor shall, within two (2) Business Days after becoming aware of the release, discharge, spill or other disposal of any Regulated Substances on any part of the Mortgaged Property, notify Mortgagee in writing as to such occurrence, and Mortgagor shall forthwith proceed to correct or remedy such condition as expeditiously as possible in compliance with all applicable Environmental Laws, and in full cooperation with any appropriate governmental authority.

(j) For purposes of this Section 7.1, the term "Environmental Laws" shall mean all federal, state and local laws, statutes, codes and ordinances pertaining to the protection of human health or the environment, together with any administrative regulations promulgated under any of the foregoing, including those statutes previously identified above, and further including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C.A. 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901, et seq., all as amended from time to time.

7.2 Environmental Indemnification.

Mortgagor covenants and agrees, at its sole cost and expense, to indemnify, protect and hold Mortgagee harmless against and from all claims, damages, losses, liabilities, penalties, fines or judgments, including any reasonable attorneys' fees, expert fees or costs actually incurred, arising in any manner out of any of the matters set forth in Section 7.1 above, or otherwise arising under any Environmental Law, whether such matters arise before or after the exercise of any remedies by Mortgagee under this Mortgage, or the taking of title by Mortgagee to all or any portion of the Mortgaged Property. Indemnified matters shall include, without limitation, all of the following: (i) the costs of removal of any and all Regulated Substances from all or any portion of the Mortgaged Property or any surrounding area, (ii) additional costs required to take necessary precautions to protect against the release of Regulated Substances on, in, under or affecting the Mortgaged Property onto the land and into the air, any body of water, any other public domain or any surrounding areas and (iii) costs incurred to comply, in connection with all or any portion of the Mortgaged Property or any surrounding areas, with all Environmental Laws with respect to Regulated Substances. The indemnification obligations of this section shall survive repayment of the Secured Obligations and satisfaction of this Mortgage.

8. ADDITIONAL RIGHTS AND OBLIGATIONS

8.1 Mortgagee's Right to Protect Security.

Mortgagee is hereby authorized to do any one or more of the following, irrespective of whether an Event of Default has occurred: (a) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; (b) take such action as Mortgagee may determine to pay, perform or comply with any Impositions or Legal Requirements, to cure any Events of Default and to protect its security in the Mortgaged Property, including the recordation or filing of financing statements and other documents to further assure the enforceability or priority of Mortgagee's liens and security interests, advance sums on behalf of Mortgagor to pay, perform or comply with any Imposition, Legal Requirement, prohibited lien, claims, costs and expenses in connection with the Mortgaged Property, including payment for utilities, fuel or any other necessary maintenance expenses, fees, insurance and repairs; and for the purpose of exercising any such powers and all other rights and powers granted by this Mortgage to Mortgagee, Mortgagee is hereby appointed attorney-in-fact for Mortgagor. All sums paid by or otherwise owing to Mortgagee under this Section shall be paid by Mortgagor to Mortgagee on demand, and until paid such sums shall be added to the principal secured hereby, shall be included as part of the Secured Obligations and shall bear interest at the Default Rate from the date of demand.

8.2 Mortgagee's Costs and Expenses.

In the event of an Event of Default or the exercise by Mortgagee of any of its rights hereunder, or if Mortgagee shall become a party, either as plaintiff or defendant or otherwise, to any suit or legal proceeding affecting any of the Mortgaged Property or the Secured Obligations, or if review and approval of any document, or any other matter related to any of the Secured Obligations, is required by, or requested of, Mortgagee, Mortgagor shall pay to Mortgagee on demand its costs, expenses and reasonable attorneys' fees actually incurred in connection therewith. If such amounts are not paid, they shall be added to the principal secured hereby, shall be included as part of the Secured Obligations and shall bear interest at the Default Rate from the date of demand.

8.3 Security Agreement Under Uniform Commercial Code.

This Mortgage is a Security Agreement as defined in the Uniform Commercial Code. Notwithstanding the filing of a financing statement covering any of the Mortgaged Property in the records normally pertaining to personal property, at Mortgagee's option all of the Mortgaged Property, for all purposes and in all proceedings, legal or equitable, shall be regarded (to the extent permitted by law) as part of the Realty, whether or not any such item is physically attached to the Realty or Improvements. The mention in any such financing statement of any of the Mortgaged Property shall not be construed as in any way altering any of the rights of Mortgagee or adversely affecting the priority of the lien granted hereby or by any other Loan Document, but such mention in the financing statement is hereby declared to be for the protection of Mortgagee in the event any court shall at any time hold that notice of Mortgagee's priority of interest, to be effective against any third party, must be filed in the Uniform

Commercial Code records. This Mortgage constitutes a fixture filing under the Uniform Commercial Code.

8.4 Waivers by Mortgagor.

Mortgagor, to the extent permitted by law, hereby waives all errors and imperfections in any proceedings instituted by Mortgagee under any of the Loan Documents and all benefit of any present or future statute of limitation or repose, or moratorium law, or any other present or future law, regulation or judicial decision which (a) exempts any of the Mortgaged Property or any other property, real or personal, or any part of the proceeds arising from any sale thereof from attachment, levy or sale under execution, (b) provides for any stay of execution, marshaling of assets, exemption from civil process, redemption, extension of time for payment or valuation or appraisal of any of the Mortgaged Property, or (c) conflicts with any provision of any of the Loan Documents.

8.5 Payment of Fees.

The Mortgagor will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution, acknowledgment, filing and recording of this Mortgage, any financing statements, releases, continuation statements, and any instruments of further assurance and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the other Loan Documents.

8.6 Further Assurances.

Mortgagor agrees to execute such further assurances, documents and instruments as may be desirable by Mortgagee for the purposes of further evidencing, carrying out and/or confirming this Mortgage and for all other purposes intended by this Mortgage.

9. MISCELLANEOUS MATTERS

9.1 Notices.

Except as otherwise provided in this Mortgage, all notices hereunder shall be in writing and shall be deemed to have been duly given for all purposes when delivered in person, or when deposited in the United States mail, by registered or certified mail, return receipt requested, directed to the party to receive the same at the addresses set forth at the beginning of this Mortgage or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived. Copies of all notices by Mortgagor pursuant to this Section must be sent to:

Buchanan Ingersoll Professional Corporation
One Oxford Center, 20th Floor
301 Grant Street
Pittsburgh, Pennsylvania 15219
Attention: Michael A. Donadee, Esquire

9.2 Governing Law.

This Mortgage shall be interpreted in accordance with the law of the jurisdiction in which the Realty is located, without regard to principles of conflicts of law.

9.3 Status of Parties.

It is understood and agreed that the relationship of the parties is that of Mortgagor and Mortgagee and that nothing herein shall be construed to constitute a partnership, joint venture or co-tenancy between Mortgagor and Mortgagee.

9.4 Severability.

In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be inapplicable, invalid, illegal, or unenforceable in any respect, such inapplicability, invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such inapplicable, invalid, illegal or unenforceable provision had never been contained herein.

9.5 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee.

9.6 Time of Essence.

Time is of the essence as to all of Mortgagor's obligations hereunder and under the other Loan Documents and under any and all other documents relating in any manner to any of the Secured Obligations.

9.7 Section Headings.

The section headings in this Mortgage are used only for convenience in finding the subject matters and are not part of this Mortgage or to be used in determining the intent of the parties or otherwise interpreting this Mortgage.

9.8 Performance by Mortgagee.

Any act which Mortgagee is permitted to perform under the Loan Documents may be performed at any time and from time to time by Mortgagee or any person or entity designated by Mortgagee.

9.9 Attorney-in-Fact.

Each appointment of Mortgagee as attorney-in-fact for Mortgagor in this Mortgage is irrevocable and coupled with an interest.

9.10 Refusal of Consent.

Except as otherwise specified herein, Mortgagee has the right to refuse to grant its consent whenever such consent is required under this Mortgage.

9.11 No Oral Modification.

This Mortgage may be modified, amended, discharged or waived only by an agreement in writing, signed by all of the parties hereto.

9.12 Defeasance.

If Mortgagor pays to Mortgagee in full the Secured Obligations in accordance with the provisions of the Loan Documents, then this Mortgage shall become void.

9.13 WAIVER OF JURY TRIAL.

MORTGAGOR WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS RELATED TO ANY OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGOR ACKNOWLEDGES THAT NEITHER MORTGAGEE NOR ANY PERSON ACTING ON BEHALF OF MORTGAGEE HAS OR HAVE MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. MORTGAGOR FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. MORTGAGOR AGREES THAT THE OBLIGATION EVIDENCED BY THIS MORTGAGE IS AN EXEMPTED TRANSACTION UNDER THE TRUTH-IN-LENDING ACT, 15 U.S.C. SECTION 1061, ET SEQ. MORTGAGOR FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING OF THIS WAIVER PROVISION AND AS EVIDENCE OF THIS FACT SIGNS ITS INITIALS.

WTG
(INITIALS OF MORTGAGOR)

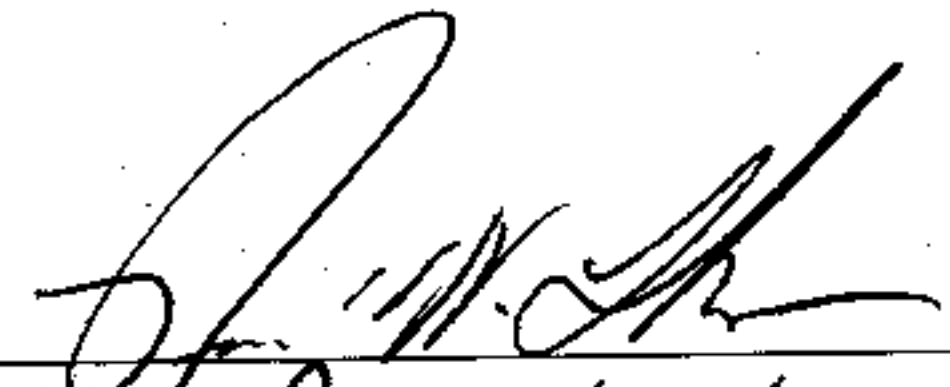
[SIGNATURES APPEAR ON FOLLOWING PAGE]


[SIGNATURE PAGE 1 OF 1 TO MORTGAGE AND SECURITY AGREEMENT]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed the day and year first above written.

WITNESS/ATTEST:

OAK MOUNTAIN ENERGY, L.L.C., an Alabama
limited liability company


Title: President

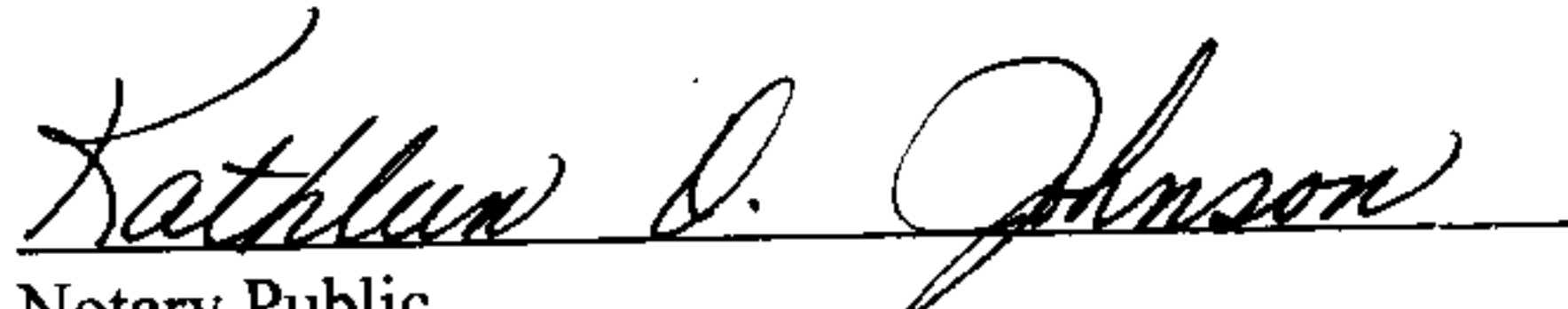
By: 
Title: Vice President

STATE OF ALABAMA

COUNTY OF SHELBY

I, KATHLEEN O. JOHNSON, a notary public in and for said county in said state, hereby certify that WILLIAM J. GIULIANI, whose name as VICE PRESIDENT of OAK MOUNTAIN ENERGY, L.L.C., 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 the instrument, s/he, in the capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date.

Given under my hand and official seal this 9TH day of APRIL, 1998.


Notary Public

My commission expires: MARCH 16, 1998

Exhibit A
Property in Shelby County, Alabama

Commence at the Southeast corner of Section 20, Township 21 South, Range 4 West; thence run Northwesterly 290 feet, more or less, along the North line of the South diagonal of the South half of the Southeast Quarter of the Southeast Quarter of said Section 20, Township 21 South, Range 4 West to the East right of way line of Southern Railway Company, said point being the point of beginning; thence continue Northwesterly 1,201 feet, more or less, to the Northwest corner of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter of said Section 20, Township 21 South, Range 4 West; thence run Southwesterly 932 feet, more or less, to the Southwest corner of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter of said Section 20, Township 21 South, Range 4 West, said point also being on the South line of said Section 20, Township 21 South, Range 4 West, and also being on the North line of Section 29, Township 21 South, Range 4 West; thence run 1,474 feet, more or less, to the Southeast corner of the Southwest Quarter of the Southwest Quarter of the Northwest Quarter of the Northeast Quarter of said Section 29, Township 21 South, Range 4 West, said point also being on the South line of the North half of the Northeast Quarter of said Section 29, Township 21 South, Range 4 West; thence run Easterly 1,459 feet, more or less, along the South line of said North Half of the Northeast Quarter of said Section 29, Township 21 South, Range 4 West to a point on the West line of a tract of land quitclaimed by USX Corporation to Oak Mountain Energy Corporation by deed dated August 24, 1996; thence run Northeasterly along the West line of said tract 207.29 feet, more or less; thence turn a deflection angle to the right of 7 degrees, 42 minutes, 34 seconds and run Northeasterly along the West line of said tract 122.28 feet; thence turn a deflection angle to the right of 10 degrees, 18 minutes, 36 seconds and run Northeasterly along the West line of said tract 191.87 feet; thence turn a deflection angle to the right of 2 degrees, 11 minutes, 40 seconds and run Northeasterly along the West line of said tract 490.22 feet; thence turn a deflection angle to the right of 86 degrees, 36 minutes, 16 seconds and run Southeasterly 100 feet, more or less, to the East right of way line of Southern Railway Company; thence run Northeasterly along the East right of way line of Southern Railway Company to the point of beginning.

Minerals and Mining rights excepted.

EXHIBIT B
PERMITTED EXCEPTIONS

1. Taxes not yet due and payable for 1998 and subsequent years.
2. Title to minerals within and underlying the premises, together with mining rights and privileges.
3. Title to that portion of the Mortgaged Property within any road right-of-way.
4. Matters which would be identified by an accurate survey of the property.

Inst # 1998-15285

Inst # 1998-15285

04/28/1998-15285
02:29 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
019 HCD 203.50