

This instrument prepared by:

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Inst # 2000-13916

04/28/2000-13916
04:30 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
030 CJA 3081.00

**AMENDED AND RESTATED FUTURE ADVANCE
FEE AND LEASEHOLD MORTGAGE AND SECURITY AGREEMENT**
(Alabama)

THIS AMENDED AND RESTATED FUTURE ADVANCE FEE AND LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made this 24th day of April, 2000, to be effective as of April 24, 2000, by **The Whitt Group of West Virginia Inc.**, a West Virginia corporation, having an address at P.O. Box 532, Beckley, West Virginia 25802 and 1051 Oak Mountain Drive, Pelham, AL 35214 ("Debtor"), in favor of **Mellon Bank, N.A.**, as **Agent** ("Agent"), as administrative and collateral agent for the financial institution or institutions (collectively "Banks") identified below, with an address at Two Mellon Bank Center, Pittsburgh, Pennsylvania, 15259 (Agent and the Banks are collectively referred to herein as "Secured Party").

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

THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" AS DEFINED IN SECTION 7-9-313 (1) (C) OF THE CODE OF ALABAMA AND SECURES, AMONG OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

WITNESSETH:

WHEREAS, Oak Mountain Energy, LLC, an Alabama limited liability company ("Oak Mountain"), previously executed and delivered in favor of Agent that certain (i) Future Advance Fee and Leasehold Mortgage and Security Agreement, dated as of 16, 1997, and (ii) Mortgage and Security Agreement, dated as of March 31, 1998 (collectively, the "Prior Mortgages");

WHEREAS, the Prior Mortgages secure, among other things, the liabilities and obligations arising out of or under that certain Credit Agreement, dated as of April 16, 1997, as amended (the "Credit Agreement"), by and among Oak Mountain, Mellon Bank, N.A., as the

Agent and one of the Banks, and The First National Bank of Chicago, as one of the Banks (which is now known as Bank One, NA);

WHEREAS, pursuant to the terms and conditions of the Credit Agreement, the Agent is acting in such capacity on behalf of Mellon Bank, N.A. and Bank One, NA (collectively, the "Banks");

WHEREAS, pursuant to the Prior Mortgages, Oak Mountain granted the Agent liens on and certain real estate interests owned by Oak Mountain in fee simple and under leases;

WHEREAS, as a result of certain Events of Default under the Prior Mortgages, Agent has foreclosed on the Prior Mortgages pursuant to power of sale clauses contained therein ("Foreclosure Sale");

WHEREAS, to enable the Debtor to bid at the Foreclosure Sale and to repay the purchase price over time, the Banks extended credit to the Debtor in an amount of up to \$3,000,000, equally between the Banks, which credit is evidenced by those certain promissory notes dated as of March 22, 2000 in the stated amount of \$1,500,000 in favor of each of Mellon Bank, N.A. and Bank One, NA (collectively, the "Original Notes");

WHEREAS, Debtor executed and delivered to Agent, to secure its obligations under the Original Notes, that certain Future Advance Fee and Leasehold Mortgage and Security Agreement dated March 22, 2000, and recorded in Shelby County, Alabama on 9/28/2000 in 2000-13915 (the "Original Mortgage");

WHEREAS, Debtor, New Century Mining, Inc., Agent and the Banks are parties to that certain Acquisition Agreement dated of even date herewith (the "Acquisition Agreement") pursuant to which the Banks, among other things, have agreed to amend and restate the Original Notes with those certain Real Estate Term Notes (as such term is defined in the Acquisition Agreement);

WHEREAS, the Real Estate Term Notes are dated of even date herewith, are in the stated amount of \$1,500,000 in favor of each of the Banks and are to be secured by the Original Mortgage as amended and restated by this Mortgage;

WHEREAS, in accordance with the terms of the Acquisition Agreement, the Banks are making Personalty Term Loans available to the Mortgagor and New Century Mining, Inc. in the amount of \$1,000,000 in favor of each of Mellon Bank, N.A. and Bank One, NA;

WHEREAS, Debtor and the Agent wish for the Mortgage to also secure all Obligations of the Debtor to the Banks arising out of or under the Acquisition Agreement, including without limitation, the Personalty Term Notes, the Real Estate Term Notes and all Royalties to be paid thereunder;

WHEREAS, to renew, amend and restate the Original Mortgage in its entirety in accordance with the terms hereof;

WHEREAS, pursuant to the Foreclosure Sale, Debtor has acquired lands and interests situate in Shelby County, Alabama, as more fully described in Exhibit A attached hereto and made a part hereof, together with various improvements now or hereafter erected thereon (collectively, the "Fee Property"); and

WHEREAS, pursuant to certain Leases (as hereinafter defined), Debtor is or may become the lessee of certain other lands and Coal and mineral interests situate in Shelby County and Bibb County, Alabama, as more fully described on Exhibit B attached hereto and made a part hereof, together with various improvements now or hereafter erected thereon (collectively, the "Leasehold Properties") (the Leasehold Properties and the Fee Property are collectively referred to herein as the "Properties").

NOW, THEREFORE, in consideration of the Real Estate Term Loans from the Banks to the Debtor and for the purpose of securing the obligations of Debtor arising out of or under the Notes, and intending to be legally bound hereby, Debtor and Secured Party covenant and agree as follows:

1. Certain Definitions

Except as otherwise provided herein, capitalized terms used in this Mortgage shall have the meanings ascribed in the Acquisition Agreement or the Notes, as applicable. When used herein, unless the context otherwise requires:

1.1 "Accounts" shall have the meaning set forth in Section 2.9 (b)

1.2 "Claims" shall have the meaning set forth in Section 6.10;

1.3 "Coal" means all of the coal and other minerals produced, including any coalbed methane gas, in which Debtor may have any interest, severed from or located on the Properties, together with all of the in-place coal located in, on or under the Properties, and granted and conveyed to Debtor pursuant to the Leases. With respect to rights or interests in and to any properties hereafter acquired by Debtor, "Coal" means in-place, produced and severed coal, as to such Properties which are mortgageable, and produced and severed coal, as to such Properties which are not mortgageable;

1.4 "Collateral" shall have the meaning set forth in Article 2 hereof;

1.5 "Leases" shall mean that certain Underground Coal Mining Lease dated November 13, 1995 by and between M. Brian Gordon, Sr. and Janice O. Gordon, as "Lessor", and Oak Mountain Energy Corporation, as "Lessee", a Memorandum of which was recorded in the Office of the Shelby County Judge of Probate on January 25, 1996 as Inst. # 1996-02522 and any and all other leases entered into now or hereafter by the Debtor, as lessee, with any party;

1.6 "Mine(s)" shall mean any excavation or opening into the earth, now and hereafter made, from which Coal is or can be extracted on or from any of the Properties, together with all

appurtenances, fixtures, structures, improvements and all tangible property of whatsoever kind or nature in connection therewith, and together with each and every license, permit, bond, governmental approval and contract right in connection therewith;

1.7 "Note" or "Notes" shall mean, separately and collectively, any and all Notes, delivered by the Debtor, together with New Century Mining, Inc., a West Virginia corporation, or any other party, in favor of the Banks, including without limitation, the Real Estate Term Notes and the Personalty Term Notes;

1.8 "Obligations" means all obligations of the Debtor or New Century Mining, Inc., a West Virginia corporation, now existing or hereafter arising, for Royalties, principal, interest or otherwise, incurred under or in connection with the Acquisition Agreement, the Notes or any of the other Acquisition Documents;

1.9 "Operating Equipment" shall mean all surface and subsurface machinery, equipment, facilities and other property of whatsoever kind or nature, now and hereafter located on any of the Properties and anywhere else, which are now and hereafter owned by the Debtor, and which are useful for the production, handling, treatment, processing, storage or transportation of Coal, including, but not by way of limitation, all hoisting shafts, air shafts, engines, boilers, dynamos, generators, belts and conveyor belts and other electrical apparatus, machinery and tipples, store houses and other buildings of every kind used by Debtor in connection with the Mines and the Properties, and all tools, supplies, equipment and personal property of every kind, sort or character, whether now owned or hereafter to be purchased or acquired by the Debtor in connection with the Mines, the Properties or the processing and transportation of Coal;

1.10 "Plant(s)" shall mean the tipples, processing facilities, machinery and ancillary facilities now and hereafter owned or controlled by the Debtor, or to which the Debtor has rights, and all equipment, tools, supplies and other property now and hereafter owned by the Debtor and now and hereafter used in connection with each such facility, including, without limitation, each contract right, sidetrack agreement, easement and right-of-way, all advanced deposits, governmental approvals and bonds, and all similar agreements and rights;

1.11 "Reclamation Bonds" shall mean, to the extent assignable by Debtor to Secured Party, each and every security deposit of money or other property now and hereafter made with any regulatory authority for the purpose of securing the Debtor's obligation to reclaim any Mine and any of the Properties and the right to receive a refund or return of such security in the event a successor permittee (as that term is defined by local law) begins mining on any of the Properties;

1.12 "Required Mining Permits" shall mean all material licenses, permits, authorizations, plans, approvals and bonds necessary under the Environmental Laws for Debtor to continue to conduct Coal mining and related operations on, in or under the Properties substantially in the manner as such operations had been authorized immediately prior to Debtor's acquisition of its interests in the Properties and as may be necessary for Debtor to conduct Coal mining and related operations on, in or under the Properties, further including the production, recovery or distribution of methane gas from the Coal;

1.13 "Trust Moneys" shall have the meaning set forth in Article 9 hereof.

2. Grant of Mortgage and Security Interest

In order to secure the payment and performance of the Obligations, the Debtor, for good and valuable consideration and intending to be legally bound hereby, by these presents does give, grant, bargain, sell, mortgage, assign, grant a security interest in, transfer, convey and set over unto the Secured Party, its successors and assigns forever, all of its right, title and interest in and to all of its property of each and every kind whatsoever, including all real property, all personal property, both tangible and intangible, and all fixtures, and including all such property now owned and hereafter acquired or owned by it and all rents, issues, profits, products and proceeds thereof, as hereinafter set forth, including without limitation all of the following described property in which it now has or hereafter acquires an interest, subject only to security interests, liens and other matters permitted under this Mortgage:

- 2.1 the Properties;
- 2.2 the Leases, together with all of the right, title and interest of Debtor in and to all premises, rights and interests demised thereby;
- 2.3 the Coal;
- 2.4 the Mines;
- 2.5 the Required Mining Permits;
- 2.6 the Plants;
- 2.7 the Operating Equipment;
- 2.8 All personal property and fixtures of the Debtor of any type or description, wherever located and now existing or hereafter arising or acquired, including but not limited to the following:
 - (a) all of the Debtor's goods, including, without limitation:
 - (i) all inventory, whether raw materials, in process or finished, all material or equipment usable in processing the same and all documents of title covering any inventory (all of the foregoing, "Inventory");
 - (ii) all other equipment (the "Other Equipment") employed in connection with the Debtor's business, together with all present and future additions, attachments and accessions thereto and all substitutions therefor and replacements thereof;

- (b) all of the Debtor's present and future accounts, accounts receivable, general intangibles, contracts and contract rights (herein sometimes referred to as "Accounts"), together with
- (i) all claims, rights, powers or privileges and remedies of the Debtor relating thereto or arising in connection therewith, including, without limitation, all rights of the Debtor to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, waiver or approval, together with full power and authority to demand, receive, enforce, collect or receipt for any of the foregoing, to enforce or execute any checks or other instruments or orders, to file any claims and to take any action which (in the opinion of the Secured Party) may be necessary or advisable in connection with any of the foregoing,
 - (ii) all liens, security, guaranties, endorsements, warranties and indemnities and all insurance and claims for insurance relating thereto or arising in connection therewith,
 - (iii) all rights to property forming the subject matter of the Accounts, including without limitation rights to stoppage in transit and rights to returned or repossessed property,
 - (iv) all writings relating thereto or arising in connection therewith, including without limitation all notes, contracts, security agreements, guaranties, chattel paper and other evidence of indebtedness or security, all powers-of-attorney, all books, records, ledger cards and invoices, all credit information, reports or memorandums and all evidence of filings or registrations relating thereto,
 - (v) all catalogs, computer and automatic machinery software and programs and the like pertaining to operations by the Debtor in, on or about any of its Plants or warehouses, all sales data and other information relating to sales or service of products now or hereafter manufactured on or about any of its Plants, all accounting information pertaining to operations in, on or about any of its plants, all media in which or on which any of the information or knowledge or data is stored or contained and all computer programs used for the compilation or printing out of such information, knowledge, records or data, and
 - (vi) all accounts, contract rights, general intangibles and other property rights of any nature whatsoever arising out of or in connection with the foregoing, including without limitation, payments due and to

become due, whether as repayments, reimbursements (including, without limitation, refunds to which the Debtor is entitled, if any, under any Reclamation Bonds), contractual obligations, indemnities, damages or otherwise;

- (c) all other personal property of the Debtor of any nature whatsoever, including, without limitation, all accounts, bank accounts, deposits, credit balances, contract rights, inventory, general intangibles, mineral rights, goods, equipment, instruments, chattel paper, investment property, machinery, furniture, furnishings, fixtures, tools, supplies, appliances, plans and drawings, together with all customer and supplier lists and records of the business, and all property from time to time described in any financing statement (UCC-1) signed by the Debtor naming the Secured Party or any of the Banks as secured party; and
- (d) all additions, accessions, replacements, substitutions or improvements and all products and proceeds, including without limitation proceeds of insurance, of any and all of the Collateral described in this Section 2.9;

- 2.9 all items incorporated as part of or attributed to any of the Properties in such manner that an item is no longer personal property under applicable state law;
- 2.10 all easements, rights-of-way, licenses and privileges belonging to or appurtenant to the Properties, the Leases, the Mines and the Plants; and
- 2.11 all other records and data of the Debtor related to the mining and production of Coal, including without limitation all engineering and mining plans, data, surveys, assessments, appraisals and reports.

All of the above-described property is hereinafter collectively called the "Collateral," except that the Collateral shall not be deemed to include any property of the Debtor with respect to which the Debtor is obligated to obtain the approval of a third party or parties to transfer the same, until such approval has been obtained, whether by Debtor or by Secured Party, from each such third party.

TO HAVE AND TO HOLD the Collateral, subject to the terms and conditions herein, unto and to the use and benefit of the Secured Party forever, without the Secured Party having any liability in any respect for the performance of any covenant or obligation of the Debtor in respect of the Collateral, to secure the payment and performance of the Obligations, provided always that these presents are upon the express condition that if the Debtor shall pay and perform all Notes, the Acquisition Agreement and all other Acquisition Documents in strict accordance with their terms, and shall perform all other obligations under this Mortgage, then these presents and the lien and estate hereby granted shall cease and terminate, and provided further that if any Note is paid following acceleration of the sums due thereunder or if any of the Notes is paid in the course of any bankruptcy, insolvency, reorganization, liquidation or other legal proceeding involving the sale or liquidation of the assets of the Debtor or the readjustment, composition or

discharge of the debts of the Debtor, then the lien and estate hereby granted shall survive until such time as all of the Obligations have been fully paid and performed, and then these presents and the lien and estate hereby granted shall cease and terminate.

It is expressly understood that this Mortgage is intended to and does secure not only the Obligations, but also future advances and any and all other obligations, indebtedness and liabilities, direct or contingent, of Debtor to Secured Party, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Collateral is located and whether the same may be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Obligations may, at the option of the Banks, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

3. Representations and Warranties of the Debtor

Debtor represents and warrants to Secured Party as follows:

3.1 Debtor has good and marketable title to an estate in fee simple absolute in the Fee Property, and has good and marketable title to a leasehold estate in and to the Leasehold Properties, and has all right, title and interest in all other property constituting a part of the Properties, in each case free and clear of all liens and encumbrances, except for Permitted Liens; this Mortgage is a valid and enforceable first lien on the Properties (except as aforesaid) and Secured Party shall, subject to Debtor's right of possession prior to an Event of Default, quietly enjoy and possess the Properties; Debtor shall preserve such title as Debtor warrants herein and the validity and priority of the lien hereof and shall forever warrant and defend the same to Secured Party against the claims of all persons and parties whomsoever.

3.2 The Collateral has been acquired by Debtor for business purposes.

4. Covenants of the Debtor

The Debtor covenants and agrees with the Secured Party as follows, such covenants and agreements to survive the execution hereof and to continue until such time as the lien and security interest created hereby shall terminate:

4.1 As long as this Mortgage remains in effect, and all of the Notes and the other Obligations are paid in full or otherwise fully performed, Debtor will perform and comply with all obligations, terms, covenants and conditions by which Debtor is bound pursuant to the this Mortgage.

4.2 Debtor shall maintain such insurance on the Collateral as is required by the Banks, naming the Secured Party as lender loss payee and additional insured thereunder, all at no cost to the Banks.

4.3 Debtor shall allow reasonable inspection by representatives of the Secured Party of Debtor's property and records, including without limitation, the Plants and the Mines.

4.4 Debtor shall pay all taxes or governmental assessments levied on it, or on any of the Collateral prior to the date on which penalties attach, and shall not create, incur or assume any security interest, lien, charge or encumbrance on or in any of the Collateral or its properties or assets, whether now owned or hereafter acquired, or enter into any arrangement for the acquisition of property subject to a conditional sale or other title retention agreement, except Permitted Liens (as determined by the Banks in their sole discretion).

4.5 Debtor agrees to assign or mortgage promptly to Secured Party all future coal leases or agreements to which Debtor may become a party, which by their terms do not prohibit such assignment or mortgaging, and to use its best efforts to obtain appropriate consents to such assignment or mortgaging where such prohibitions do exist.

4.6 For so long as the lien hereby created in favor of the Secured Party shall remain in effect, and subject only to Permitted Liens, Debtor warrants and forever defends the Collateral unto the Secured Party against every person whomsoever lawfully claiming the same or any part thereof.

4.7 Debtor will execute and deliver such other and further instruments and will do such other and further acts as in the opinion of the Secured Party may be necessary or desirable to carry out more effectively the purpose of this Mortgage and the Debtor's anticipated acquisition of the Properties at the Foreclosure Sale for credit extended by the Banks, including, without limiting the generality of the foregoing, prompt correction of any defect occurring after the date hereof which may hereafter be discovered in the title to or description of any of the Collateral or in the execution and acknowledgment of this Mortgage or the Notes.

4.8 Debtor shall promptly, insofar as not contrary to applicable law, do all things necessary or expedient to be done, including without limitation file and refile in such offices, at such times and as often as may be necessary, this instrument and every other instrument in addition or supplemental hereto, including applicable financing statements, in order to create, perfect, maintain and preserve the lien, mortgage and security interest created hereby and the rights and remedies of Secured Party hereunder, and shall promptly furnish to Secured Party evidence satisfactory to the Secured Party of all such filings and refilings and other necessary and expedient actions. Secured Party shall pay or reimburse the Debtor the expense of the initial filings required hereby, and Debtor shall bear such expenses for all future filings and any refilings.

4.9 Debtor will promptly comply with and conform to all present and future Laws which are applicable to the Properties, and all covenants, restrictions and conditions which may be applicable to Debtor or to any of the Properties or to the use, manner of use, occupancy, possession or operation of any of the Properties.

4.10 Debtor will pay all taxes of every kind and nature in accordance with Section 8.12. In addition, Debtor shall pay promptly on demand all taxes, assessments and charges

which may now or hereafter be imposed upon Secured Party by reason of its holding any of the Notes, including intangibles, business privilege and excise taxes, and further including any tax imposed on the execution, delivery or recordation of this Mortgage, or an related financing statements, but excluding any taxes upon the income derived by Secured Party upon the interest or other sums collected by Secured Party on the Obligations.

4.11 Without the prior written consent of Agent, Debtor shall not enter into any lease for any personal property as lessee which is to be used in connection with the operation of Debtor's business, or create or cause or permit to exist any lien on, or security interest in, whether voluntary or involuntary, any part of the Collateral, other than in favor of Secured Party.

4.12 Debtor shall not sell, assign, give, mortgage, pledge, hypothecate, encumber, lease or otherwise transfer the Collateral or any part thereof or interest therein, voluntarily or involuntarily, without Secured Party's prior written consent, which may be granted or withheld in Secured Party's sole discretion.

5. Events of Default

5.1 The following shall constitute "Events of Default":

- (a) the occurrence of any Event of Default, as defined in the Acquisition Agreement; or
- (b) failure by the Debtor, within twenty (20) days after notice thereof from the Secured Party, to cure a default in the due performance or observance of any covenant contained in Sections 4.2 through 4.13 of this Mortgage.

6. Enforcement of the Security

6.1 If any Event of Default shall occur, all sums due and remaining unpaid under and of the Notes, together with all accrued interest thereon, and all Obligations shall, without further act, become and be immediately due and payable, and shall all be forthwith paid and performed, in each case without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Debtor.

6.2 Upon the occurrence, and during the continuance, of an Event of Default, or at any time thereafter, Secured Party may (i) exercise such remedies as are set forth in the Notes or the other Acquisition Documents, (ii) institute foreclosure proceedings against the fee or leasehold estate of Debtor in the Properties secured hereby, in law or in equity, or (iii) Secured Party may proceed by a suit or suits in equity or at law, whether for a foreclosure hereunder, or for the sale of the Collateral, or for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or (iv) for the appointment of a receiver pending any foreclosure hereunder or the sale of the Collateral, and upon application to court of competent jurisdiction, Secured Party shall be entitled, without notice and without

regard to the adequacy of any security for the Obligations hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Collateral and to collect the rents, profits, issues, royalties and revenues thereof, or (v) for the enforcement of any other appropriate legal or equitable remedy. Secured Party may elect to treat any fixtures included in the Collateral either as real property or personal property and proceed to exercise such rights as apply to the type of property selected.

6.3 In addition to any rights and remedies now or hereafter granted under applicable law and not by way of limitation of any such rights and remedies, upon the occurrence of an Event of Default, and during the continuance thereof, the Secured Party shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the States of Alabama and Pennsylvania, as applicable, in addition to the rights and remedies provided herein. Without in any way limiting the foregoing, after the occurrence of an Event of Default and during the continuance thereof, upon the giving of notice to the Debtor of Secured Party's intent to pursue any one or all of the following or any other remedies:

- (a) The Secured Party shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Alabama and in Pennsylvania in addition to the rights and remedies provided herein. The Secured Party shall have the right, without further notice to, or assent by, the Debtor, in the name of the Debtor or in the name of the Debtor or in the name of the Secured Party or otherwise:
 - (i) to ask for, demand, collect, receive, compound and give acquaintance for the Accounts or any part thereof;
 - (ii) to extend the time of payment of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any of the Accounts;
 - (iii) to endorse the name of the Debtor on any checks, drafts or other orders or instruments for the payment of moneys payable to the Debtor which shall be issued in respect of any Account;
 - (iv) to file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by the Secured Party necessary or advisable for the purpose of collecting or enforcing payment of any Account;
 - (v) to make test verifications of the Accounts or any portion thereof;
 - (vi) to notify any or all account debtors under any or all of the Accounts to make payment thereof directly to the Secured Party for the account of the Secured Party and to require the Debtor to forthwith give similar notice to the account debtors;

- (vii) to require the Debtor forthwith to account for and transmit to the Secured Party in the same form as received all proceeds (other than physical property) of collection of Accounts received by the Debtor and, until so transmitted, to hold the same in trust for the Secured Party and not commingle such proceeds with any other funds of the Debtor;
- (viii) to take possession of any or all of the Collateral and, for that purpose, to enter, with the aid and assistance of any person or persons and with or without legal process, any premises where the Collateral, or any part thereof, is or may be, placed or assembled, and to remove any of such Collateral;
- (ix) to execute any instrument and do all other things necessary and proper to protect and preserve and realize upon the Collateral and the other rights contemplated hereby;
- (x) upon notice to such effect, to require the Debtor to deliver, at the Debtor's expense, any or all Collateral to the Secured Party at a place designated by the Secured Party, and after delivery thereof, the Debtor shall have no further claim to or interest in the Collateral; and
- (xi) without obligation to resort to other security, at any time and from time to time, to sell, re-sell, assign and deliver all or any of the Collateral, in one or more parcels at the same or different times, and all right, title, interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for future delivery, and at such price or prices and on such terms as the Secured Party may determine, with the amounts realized from any such sale to be applied to the Secured Obligations in the manner determined by the Secured Party.

The Debtor hereby agrees that all of the foregoing may be effected without demand, advertisement or notice (except as otherwise provided herein or as may be required by law), all of which (except as otherwise provided) are hereby expressly waived, to the extent permitted by law. The Secured Party shall not be obligated to do any of the acts hereinabove authorized, but in the event that the Secured Party elects to do any such act, the Secured Party shall not be responsible to the Debtor except for the gross negligence or willful misconduct of Secured Party.

- (b) The Secured Party may take legal proceedings for the appointment of a receiver (to which the Secured Party shall be entitled as a matter of right) to take possession of the Collateral pending the sale thereof pursuant either to the powers granted by this Mortgage or to a judgment, order or decree made in any judicial proceeding for the foreclosure or involving the enforcement of this Mortgage. If, after the exercise of any or all of such

rights and remedies, any of the Secured Obligations shall remain unpaid, the Debtor shall remain liable for any deficiency. After termination of this Mortgage and the indefeasible payment in full of the Obligations, any proceeds of the Collateral received or held by the Secured Party shall be turned over to the Debtor, and the Collateral shall be reassigned to the Debtor by the Secured Party, without recourse to the Secured Party and without any representations, warranties or agreements of any kind.

- (c) Upon any sale of any of the Collateral, whether made under the power of sale hereby given or under judgment, order or decree in any judicial proceeding for the foreclosure or involving the enforcement of this Mortgage:
- (i) the Secured Party may bid for and purchase the property being sold, and upon compliance with the terms of sale, may hold, retain, possess and dispose of such property in its own absolute right without further accountability, and may, in paying the purchase money therefor, deliver any Note or claims for interest thereon and any other instruments evidencing the Secured Obligations or agree to the satisfaction of all or a portion of the Obligations in lieu of cash in payment of the amount which shall be payable thereon, and the Notes and such instruments, in case the amounts so payable thereon shall be less than the amount due thereon, shall be returned to the Secured Party after being appropriately stamped to show partial payment;
 - (ii) the Secured Party may make and deliver to the purchaser or purchasers a good and sufficient deed, bill of sale, and instrument of assignment and transfer of the property sold;
 - (iii) the Secured Party is hereby irrevocably appointed the true and lawful attorney-in-fact of the Debtor, in its name and stead, to make all necessary deeds, bills of sale, and instruments of assignment and transfer of the property thus sold and for such other purposes as are necessary or desirable to effectuate the provisions (including without limitation this Section 6.3) of this Mortgage, and for that purpose it may execute and deliver all necessary deeds, bills of sale, and instruments of assignment and transfer, and may substitute one or more persons with like power, the Debtor hereby ratifying and confirming all that its said attorney, or such substitute or substitutes, shall lawfully do by virtue hereof; but if so requested by the Secured Party or by any purchaser, the Debtor shall ratify and confirm any such sale or transfer by executing and delivering to the Secured Party or to such purchaser all property,

deeds, bills of sale, instruments or assignment and transfer, and releases as may be designated in any such request;

- (iv) all right, title, interest, claim and demand whatsoever, either at law or in equity or otherwise, of the Debtor of, in and to the property so sold shall be divested; such sale shall be a perpetual bar both at law and in equity against the Debtor, its successors and assigns, and against any and all persons claiming or who may claim the property sold or any part thereof from, through or under the Debtor, its successors or assigns;
- (v) the receipt of the Secured Party or of the officer thereof making such sale shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money, and such purchaser or purchasers, and his or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Secured Party or of such officer therefor, be obliged to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof; and
- (vi) to the extent that it may lawfully do so, and subject to any legal requirement that the Secured Party act in a commercially reasonable manner, the Debtor agrees that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisement, valuation, stay, extension or redemption laws, or any law permitting it to direct the order in which the Collateral or any part thereof shall be sold, now or at any time hereafter in force, or to require marshalling of assets, which may delay, prevent or otherwise affect the performance or enforcement of this Mortgage or the Notes whereby the Debtor has granted any lien to the Secured Party, and the Debtor hereby expressly waives all benefit or advantage of any such laws and covenants that it will not hinder, delay or impede the execution of any power granted or delegated to the Secured Party in this Mortgage, but will suffer and permit the execution of every such power as though no such laws were in force. In the event of any sale of Collateral pursuant to this Section 6.3, the Secured Party shall, at least ten (10) days before such sale, give the Debtor written notice (which may be sent by telecopy) of its intention to sell, except that, if the Secured Party shall determine in its sole discretion that any of the Collateral threatens to decline speedily in value, any such sale may be made upon three (3) days' written notice to the Debtor (which may be sent by telecopy).

6.4 If an Event of Default shall have occurred, and during the continuance thereof, Secured Party may sell the Collateral, or any part thereof, to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Collateral is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Secured Party or any person conducting the sale for Secured Party is authorized to execute to the purchaser at said sale a deed to the Collateral so purchased. Secured Party may bid at such sale and purchase the Collateral, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Collateral may be offered for sale and sold as a whole without first offering it any other manner or may be offered for sale and sold in any other manner as Secured Party may elect. The provisions of Section 6.3 of this Mortgage shall apply with respect to Secured Party's enforcement of rights or interests in personal property which constitutes Collateral hereunder.

6.5 In addition to, and not in limitation of the remedies set forth in Sections 6.2, 6.3 and 6.4, whenever from time to time and at any time an Event of Default hereunder occurs, and during the continuance thereof, the Secured Party may notify the purchasers of Coal produced from the Properties or coal otherwise produced or obtained and sold by Debtor to make direct payment to the Secured Party of any amounts due or to become due to the Debtor as proceeds of such transaction giving rise to the Account. All parties producing, purchasing or receiving any severed coal, or having such or proceeds therefrom in their possession, for which they or others are accountable to the Secured Party by virtue of the provisions of this Article 6, are hereby authorized and directed by the Debtor, upon receipt of notice from the Secured Party, to turn such coal or the proceeds thereof over to the Secured Party and to treat and regard the Secured Party as the assignee and transferee of the Debtor, entitled in the Debtor's place and stead to receive such coal and all proceeds therefrom; and said parties and each of them shall be fully protected in so treating and regarding the Secured Party and shall be under no obligation to investigate whether an Event of Default then actually exists or to see to the application by the Secured Party of any such proceeds or payments received by it. The Secured Party shall not be liable to the Debtor for failure to enforce collection of any proceeds so demanded by it or any action in connection therewith, except to use reasonable care, to give the Debtor promptly information concerning the proceeds received from time to time and to account to the Debtor therefor.

6.6 All moneys which the Secured Party shall receive, in accordance with the provisions hereof, shall be applied (to the extent thereof) in the following manner: First, to the payment of all costs and expenses incurred in connection with the administration and enforcement of, or the preservation of any rights under, this Mortgage or any of the reasonable expenses and disbursements of the Secured Party (including without limitation the fees and disbursements of its counsel and agents); Second, to the payment of all Obligations arising out of the Notes and, if not therein provided, in such order as the Secured Party may determine; and Third to the payment of all other Obligations in such order as the Secured Party may determine. If after applying any amounts which the Secured Party has received in respect of the Collateral

any of the Obligations remain unpaid, the Debtor shall continue to be liable for any deficiency, together with interest.

6.7 In addition to the other remedies set forth in this Article 6, Debtor irrevocably appoints Agent to be its attorney-in-fact and, at any time after the occurrence of an Event of Default, authorizes such officers as Agent may designate to execute on behalf of Debtor any document or instrument, or to take any other action necessary or desirable, to assign and transfer the Required Mining Permits to Agent or to its designee.

6.8 All costs and expenses, including reasonable attorneys' fees and legal expenses, incurred by Secured Party in protecting and enforcing its rights hereunder shall be a demand obligation of Debtor to Secured Party and, to the extent not paid within five (5) business days after notice to Debtor, shall bear interest at the rate of two percent (2%) per annum above the Prime Rate, which sums shall constitute part of the Obligations.

6.9 In the event of an occurrence of an Event of Default which results in all or any portion of the Collateral being damaged, taken or acquired, either temporarily or permanently, by any condemning authority under any condemnation, eminent domain or similar proceeding such that operation of the Collateral for mining purposes is significantly impaired, the amount of any award or other payment for such damage, taking or acquisition made in consideration thereof, to the extent of the full amount of the then unpaid indebtedness secured hereby (both principal and interest), is hereby assigned to Secured Party, who may collect and receive the same and give proper receipts therefor in the name of the Debtor, and the same shall be paid forthwith by any such authority to Secured Party. Any award or payment so received by Secured Party shall be applied in accordance with the provisions of Article 9 hereof.

6.10 The Debtor agrees to indemnify the Secured Party against and hold Secured Party harmless from all claims, actions, liabilities, judgments, costs, attorneys' fees or other charges of whatsoever kind or nature, other than those arising under any sales contract (collectively, "Claims" and individually, a "Claim"), made against or incurred arising out of any assertion by a third party that it was entitled to Coal or the proceeds thereof received by the Secured Party pursuant to this Article. The Secured Party will notify the Debtor, in writing, promptly of the commencement of any legal proceedings with respect to any Claim, and the Debtor may elect to defend against such Claim. Should the Debtor fail to take such action, the Secured Party may defend such Claim, employing attorneys therefor, and, unless furnished with reasonable indemnity, shall have the right to pay or compromise and adjust all such Claims. The Debtor will indemnify and pay to the Secured Party any and all such amounts as may be paid by the Secured Party in respect thereof or as may be successfully adjudged against the Secured Party.

6.11 In case any sale of the Properties under this Mortgage occurs by virtue of judicial proceedings, or under the power of sale granted under Section 6.4 above, the Properties 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 Secured Party in its sole discretion may elect.

6.12 All remedies contained in this Mortgage are cumulative and Secured Party also has all other remedies provided by law or in equity or in any of the Acquisition Documents. No

delay or failure by Secured Party 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. Secured Party may exercise any one or more of its rights and remedies without regard to the adequacy of its security. One or more of the Notes may contain provisions pursuant to which all or a part of the 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 Secured Party shall govern.

6.13 Debtor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Debtor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Collateral be set off against any part of the indebtedness secured hereby.

7. The Leases

7.1 Debtor hereby covenants, warrants and represents as follows:

- (a) each of the Leases is in full force and effect, unmodified by any writing or otherwise;
- (b) all rent and other charges reserved in or due and payable under each Lease, including without limitation, all minimum, advance and other royalties of any kind payable under any of the Leases, have been paid to the extent due and payable to the date hereof;
- (c) Debtor is in material compliance with all of its obligations to mine and recover Coal under each of the Leases;
- (d) Debtor enjoys the quiet and peaceful possession of the leasehold estate granted pursuant to each of the Leases;
- (e) Debtor has not delivered or received any notices of default under any Lease and is not in default under any of the terms of any Lease and there are no circumstances known to Debtor which, with the passage of time or the giving of notice or both, would constitute a default under any Lease;
- (f) no lessor under any Lease is in default, after any applicable grace or cure period, under any of the terms of the Lease on its part to be observed or performed;
- (g) Debtor has delivered to Secured Party a true, accurate and complete copy of each Lease;

- (h) Debtor promptly shall pay the rent and all other sums and charges mentioned in, and payable under, each Lease, subject to the terms and conditions of each Lease;
- (i) Debtor promptly shall perform and observe all of the terms, covenants and conditions required to be performed and observed by the lessee under each Lease, the breach of which could permit any party to such Lease to validly terminate such Lease (including, but without limiting the generality of the foregoing, any payment obligations), shall do all things necessary to preserve and to keep unimpaired its rights under the Lease, shall not waive, excuse or discharge any of the obligations of the lessor under each such Lease without Secured Party's prior written consent in each instance and shall diligently and continuously enforce the obligations of the lessor under each Lease;
- (j) Debtor shall not do, permit or suffer any event or omission as a result of which there could occur a default under any Lease or any event which, with the giving of notice or the passage of time, or both, would constitute a default under any Lease which could permit any party to any Lease to validly terminate any Lease (including, but without limiting the generality of the foregoing, a default in any payment obligation);
- (k) Debtor shall not cancel, terminate, surrender, modify or amend or in any way alter or permit the alteration of any of the provisions of any Lease or agree to any termination, amendment, modification or surrender of the Lease without Secured Party's prior written consent in each instance;
- (l) Debtor shall deliver to Agent copies of any notice of default by any party under any Lease, or of any notice from the lessor under any Lease of its intention to terminate the Lease or to re-enter any take possession of the demised premises, immediately upon delivery or receipt of such notice, as the case may be;
- (m) Debtor shall promptly furnish to Agent copies of such information and evidence as Agent may request concerning Debtor's due observance, performance and compliance with the terms, covenants and conditions of each Lease;
- (n) Debtor shall not consent to the subordination of any Lease to any mortgage or similar encumbrance of the fee interest in any portion of the premises demised by such Lease;
- (o) any default, beyond any applicable grace or cure period, under any Lease, or any failure by Debtor to perform its obligations under any Lease shall constitute a default hereunder; and

- (p) Debtor, at its sole cost and expense, shall execute and deliver to Agent, within five (5) days after request, such documents, instruments or agreements as may be required to permit Agent to cure any default under any Lease.

7.2 In the event of default by Debtor in the performance of any of its obligations under any Lease, after any applicable grace or cure period, including, but without limiting the generality of the foregoing, any default in the payment of any sums payable thereunder, or any default in any obligations related to the mining and recovery of Coal, then, in each and every case, Secured Party may, at its option, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Secured Party thereunder in the name of and on behalf of Debtor. Debtor shall, on demand, reimburse Secured Party for all advances made and expenses incurred by Secured Party in curing any such default (including, without limiting the generality of the foregoing, reasonable attorneys' fees and disbursements), together with interest thereon at 2% above the Prime Rate.

7.3 Debtor shall use reasonable, diligent and good faith efforts to obtain and deliver to Agent, within twenty (20) days after written demand by Agent, an estoppel certificate from the lessor under each Lease setting forth (i) the name of the lessee and the lessor thereunder, (ii) that the Lease is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the basic rent and royalty payments required under the Lease, (iv) the date to which all rental charges have been paid by the lessee under the Lease, (v) whether a notice of default has been received by the lessor under the Lease which has not been cured, and if such notice has been received, the date it was received and the nature of the default, (vi) whether there are any alleged defaults of the lessee under the Lease and, if there are, setting forth the nature thereof in reasonable detail, and (vii) if the lessee under the Lease shall be in default after the giving of notice or the passage of time, or both, the circumstances relating to such default.

7.4 Secured Party shall be liable for the obligations of the lessee arising under the Lease for only that period of time which Secured Party is in possession of the demised premises or has acquired, by foreclosure or otherwise, and is holding all of Debtor's right, title and interest therein.

7.5 It is hereby agreed that the fee title and leasehold estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the lessor under the Lease, Debtor or a third party, whether by purchase or otherwise. If Debtor shall acquire fee title to any of the Leasehold Properties, or any other estate, title or interest in any property demised under any Lease, or any portion thereof, then, immediately upon Debtor's acquisition thereof, this Mortgage automatically shall spread to cover Debtor's interest in such leased property on the same terms, covenants and conditions as set forth herein. It is the intention of Debtor and Secured Party that no documents, instruments or agreements shall be necessary to confirm the foregoing spread of this Mortgage to cover Debtor's interest in such leased property, as aforesaid, and that such spreader shall occur automatically upon the consummation of Debtor's acquisition of such estate, title or interest to such leased property. Notwithstanding the

foregoing, Debtor shall make, execute, acknowledge and deliver to Secured Party or so cause to be made, executed, acknowledged and delivered to Secured Party, in form satisfactory to Secured Party, all such further or other documents, instruments, agreements or assurances as may be required by Debtor to confirm the foregoing spread of this Mortgage to cover Debtor's interest in such leased property. Debtor shall pay all expenses incurred by Secured Party in connection with the preparation, execution, acknowledgment, delivery and/or recording of any such documents, including but without limiting the generality of the foregoing, all filing, registration and recording fees and charges, documentary stamps, mortgage taxes, intangible taxes and reasonable attorneys' fees, costs and disbursements.

8. Use of Property

8.1 So long as no Event of Default shall have occurred and be continuing, the Debtor shall be permitted, subject to the provisions of this Mortgage, to possess, use, manage, operate and enjoy the Collateral and to collect, receive, use, invest and dispose of the rents, issues, tolls, profits, revenues and other income from the Collateral, with power, in the ordinary course of business, freely and without let or hindrance on the part of the Secured Party, subject to the terms of the Leases, to gather, cut, mine and produce Coal, timber, peat, minerals, products, materials and supplies and to use, consume and dispose of any thereof, and to alter, repair and change the position of any of its Mines, mills, Plants, warehouses, buildings, works, structures, machinery, Operating Equipment, Other Equipment and other property, and to deal with, exercise any and all rights under, receive and enforce performance under, and adjust and settle all matters relating to current performance of chooses in action, leases and contracts.

8.2 If any property owned by Debtor which is subject to the lien and security interest hereof shall be taken by the exercise of the right of redemption, eminent domain or transferred to a governmental authority in contemplation thereof, the Secured Party shall release the property so taken from the lien and security interest hereof upon being furnished with an opinion of counsel to the effect that such property has been lawfully taken by exercise of such right or transferred in contemplation thereof. Cash equal to the proceeds from the redemption, taking or transfer of such property shall be held by Debtor paid to the Secured Party to satisfy the Obligations.

9. Application of Trust Moneys

9.1 All moneys received by Debtor:

- (a) for application under this Article 9 as elsewhere herein provided, or whose disposition is not elsewhere herein otherwise specifically provided for, or
- (b) as compensation for, or proceeds of sale of, any part of the Collateral taken by eminent domain or purchased by, or sold pursuant to an order of, a governmental authority, or
- (c) as proceeds of insurance upon any part of the Collateral

(all such moneys being hereinafter sometimes called "Trust Moneys"), shall be held in trust by Debtor for the benefit of the Secured Party and shall be held and disbursed to pay the Obligations, as and when they become due and payable.

9.2 To the extent that any Trust Moneys consist of amounts referred to in Section 9.1(c), they may be withdrawn by Debtor to reimburse Debtor for expenditures made, or to pay costs incurred, by such Debtor to repair, rebuild or replace the property destroyed or damaged, subject to the prior written approval of Secured Party in each such instance, it being understood that disbursement of all insurance proceeds received by Debtor shall occur as directed by the Secured Party.

10. Miscellaneous

10.1 Except as otherwise permitted in this Mortgage, any notice delivered under this Mortgage shall be deemed to have been sufficiently given or served for all purposes thereof (i) when mailed, postage prepaid, by registered or certified mail, return receipt requested, or (ii) when sent by Federal Express (or similar overnight express or courier service) to the addresses set forth above or at such other address as either party may designate in a writing delivered to the other party, or (iii) personally delivered, provided that in the case where the Secured Party is required to give only three days' notice of a proposed sale of the Collateral, such notice shall not be deemed given until delivered to the chief executive office of the Debtor provided for herein.

10.2 No delay on the part of the Secured Party in exercising any of its rights, remedies, powers and privileges hereunder, or partial or single exercise thereof, shall constitute a waiver thereof. None of the terms and conditions of this Mortgage may be changed, waived, modified or varied in any manner whatsoever unless in a writing duly signed by the Debtor and the Secured Party. No notice to or demand on the Debtor in any case shall entitle the Debtor to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Secured Party to any other or further action in any circumstances without notice or demand.

10.3 The obligations of the Debtor hereunder shall remain in full force and effect without regard to, and shall not be impaired by, (i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Debtor; (ii) any exercise or nonexercise, or any waiver of, any right, remedy, power or privilege under or in respect of the Notes, the Acquisition Documents or this Mortgage, whereby the Debtor has granted any lien to the Secured Party or any other agreement executed in connection with any of the foregoing, the Obligations or any security for any of the Obligations; or (iii) any amendment to or modification of any of the foregoing; whether or not the Debtor shall have notice or knowledge of any of the foregoing. The rights and remedies of the Secured Party herein provided are cumulative and not exclusive of any rights or remedies which the Secured Party would otherwise have.

10.4 This Mortgage shall be binding upon the Debtor and its successors and assigns and shall inure to the benefit of the Secured Party and its successors and assigns, except that the Debtor may not transfer or assign any of its obligations, rights or interest hereunder without the

prior written consent of the Secured Party, and any such purported assignment by the Debtor shall be void. All agreements, representations and warranties made herein shall survive the execution and delivery of this Mortgage.

10.5 The descriptive headings of the several sections of this Mortgage are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Mortgage.

10.6 Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.7 All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and the provisions hereof are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable in whole or in part or not entitled to be recorded, registered or filed under the provisions of any applicable law.

10.8 This Mortgage and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the Commonwealth of Pennsylvania, except to the extent that matters of title, or creation, perfection, priority or enforcement of the security interests created hereby, including without limitation, matters of judicial procedure, are otherwise required to be governed by the laws of the State of Alabama, then the laws of the State of Alabama shall apply.

10.9 It is expressly agreed, anything herein or in any other agreement or instrument executed in connection with the Obligations to the contrary notwithstanding, that the Debtor shall remain liable to perform all of the obligations, if any, assumed by it with respect to the Collateral, and the Secured Party shall not have any obligations or liabilities with respect to any Collateral by reason of or arising out of this Mortgage, nor shall the Secured Party be required or obligated in any manner to perform or fulfill any of the obligations of the Debtor under or pursuant to or in respect of any Collateral.

10.10 EACH OF THE SECURED PARTY AND THE DEBTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS MORTGAGE OR THE NOTES, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE BANKS, THE SECURED PARTY OR THE DEBTOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE SECURED PARTY ENTERING INTO THIS MORTGAGE AND FOR THE BANKS AND THE BANKS EXTENDING CREDIT TO THE DEBTOR.

10.11 Except as otherwise provided herein, each and every covenant herein contained shall be performed and kept by the Debtor solely at its expense. Upon the occurrence of an Event of Default, the Secured Party, or any receiver appointed hereunder, may, but shall not be obligated to, make advances to perform the same on the Debtor's behalf and the Debtor hereby agrees to repay such sums upon demand plus interest thereon at the rate of 2% per annum above the Prime Rate. No such advance shall be deemed to relieve the Debtor from any Event of Default hereunder.

10.12 This Mortgage is a "security agreement" as defined in the Uniform Commercial Code. Notwithstanding the filing of a financing statement covering any of the Collateral in the records normally pertaining to personal property, at Secured Party's option all of the Collateral, for all purposes and in all proceedings, legal or equitable, shall be regarded (to the extent permitted by law) as part of the Properties. The mention in any such financing statement of any of the Collateral shall not be construed as in any way altering any of the rights of Secured Party or adversely affecting the priority of the lien granted hereby or by any other document or agreement, but such mention in the financing statement is hereby declared to be for the protection of Secured Party in the event any court shall at any time hold that notice of Secured Party'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. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

(a) Name of Debtor: The Whitt Group of West Virginia Inc..

Address of Debtor: 1051 Oak Mountain Drive
Pelham, AL 35214

(b) Name of Secured Party: Mellon Bank, N.A., as Agent

Address of Secured Party: Two Mellon Bank Center
Room 230
Pittsburgh, PA, 15259
Attn: Robert E. Heuler, Vice-President

(c) Record Owner of Real Estate:

Property Described on Exhibit A: Debtor

Property Described on Exhibit B: USX Corporation;

10.13 No release from the lien of this Mortgage of any part of the Collateral by Secured Party shall in anywise alter, vary or diminish the force, effect or lien of this Mortgage on the balance of the Collateral.

10.14 No provision of this Mortgage, the Notes or of any other instrument or agreement which creates any of the Obligations secured hereby shall require the payment or permit the collection of interest in excess of the maximum permitted by law or which is otherwise contrary to law. If any excess of interest in such respect is provided for herein, in any Note or in any of such other instruments or agreements, or shall be adjudicated to be so provided for herein in any Note or in any of such other instruments or agreements, the Debtor shall not be obligated to pay such excess.


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

10.16 This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

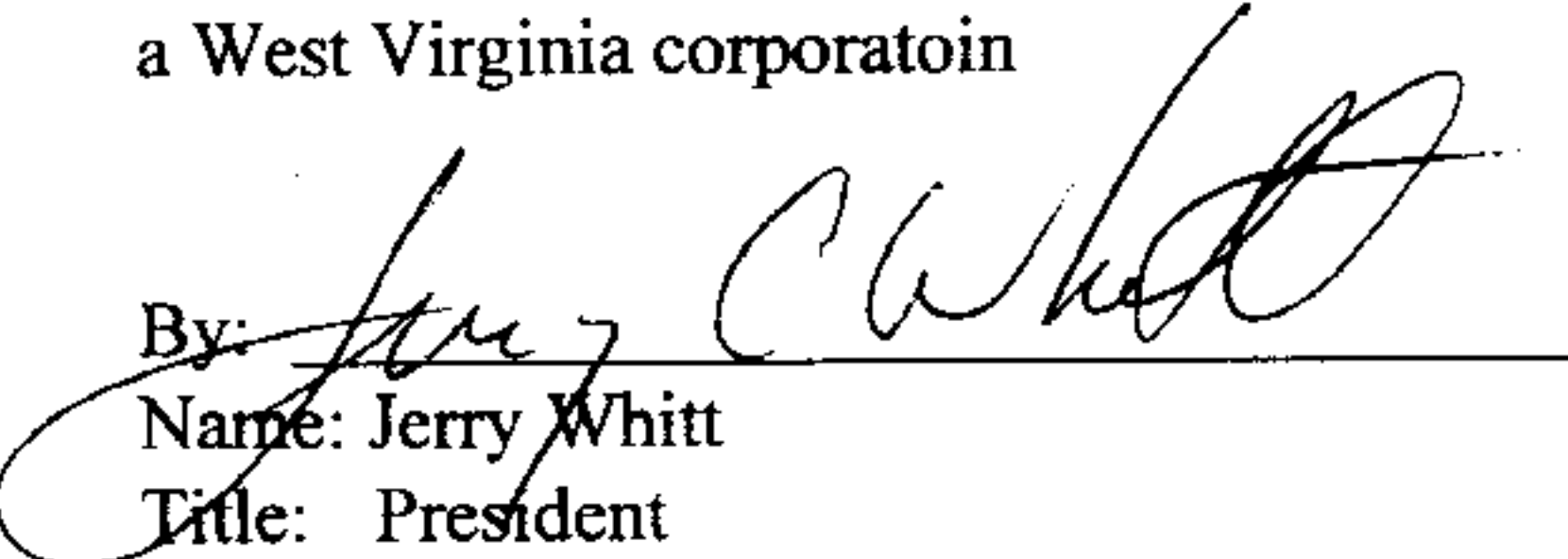
IN WITNESS WHEREOF, this Future Advance Fee and Leasehold Mortgage and Security Agreement has been duly executed by Debtor the day and year first above written.

WITNESS/ATTEST:

The Whitt Group of West Virginia Inc.
a West Virginia corporation

By: 
Name: DARYN BOOKOUT
Title: SECRETARY

[Corporate Seal]

By: 
Name: Jerry Whitt
Title: President

Date Executed: April 24, 2000

COMMONWEALTH OF PENNSYLVANIA)

) SS:

COUNTY OF ALLEGHENY)

I, Marta R. Gnazzo, a notary public in and for said county in said state hereby certify that Jerry Whitt, whose name as President of The Whitt Group of West Virginia Inc., a West Virginia corporation, 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 officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 24th day of April, 2000.

Marta R. Gnazzo
Notary Public

[Notarial Seal]

266526

My commission expires:

Notarial Seal
Marta R. Gnazzo, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Feb. 20, 2003
Member, Pennsylvania Association of Notaries

EXHIBIT A

PARCEL I

All that part of W 1/2 of Section 14, lying south of Norfolk Southern Railroad Right of Way, Township 21 South, Range 4 West.

Mineral and mining rights excepted.

PARCEL II

A tract of land, MINERALS AND MINING RIGHTS EXCEPTED, situated in the East half of the North-East quarter of Section 29, Township 21 South, Range 4 West of the Huntsville Principal Meridian, Shelby County, Alabama being more particularly described as follows:

Commence at the northeast corner of Section 29, Township 21 South, Range 4 West; thence in a Westerly direction along the north boundary of said Section 180.22 feet; thence turning an angle of 50 degrees 31 minutes 33 seconds to the left in a southwesterly direction, 482.08 feet to the point of beginning of tract herein described; thence turning an angle of 93 degrees 21 minutes 45 seconds to the left in a southeasterly direction, 96.69 feet; thence turning an angle of 61 degrees 53 minutes 18 seconds to the right in a southwesterly direction, 323.04 feet; thence turning an angle of 16 degrees 19 minutes 28 seconds to the right in a southwesterly direction, 801.74 feet; thence turning an angle of 20 degrees 57 minutes 16 seconds to the right in a southwesterly direction, 303.15 feet; thence turning an angle of 55 degrees 21 minutes 07 seconds to the right in a northwesterly direction 258.54 feet; thence turning an angle of 91 degrees 40 minutes 24 seconds to the right in a northeasterly direction, 535.80 feet; thence turning an angle of 7 degrees 42 minutes 34 seconds to the right in a northeasterly direction 122.28 feet; thence turning on an angle of 10 degrees 18 minutes 36 seconds to the right in a northeasterly direction, 193.10 feet; thence turning an angle of 2 degrees 11 minutes 48 seconds to the right in a northeasterly direction, 191.47 feet; thence turning an angle of 6 degrees 59 minutes 06 seconds to the right in a northeasterly direction, 490.22 feet; thence turning an angle of 86 degrees 36 minutes 15 seconds to the right in a southeasterly direction, 121.64 feet to the point of beginning.

PARCEL III

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

Land owned by USX Corporation: The lands described below are lands where USX Corporation owns the indicated interests which are leased to the Whitt Group for the mining of coal:

Group I : Fee interests (all interests in surface and minerals).

1. TOWNSHIP 21 SOUTH, RANGE 4 WEST

Section	Description	Acres
10	The Southeast quarter.	160.00
11	The East half of the section.	320.00
	The Southwest quarter.	160.00
	The Southeast quarter of the Northwest quarter.	40.00
12	The entire section.	640.00
13	The North half of the Northwest quarter.	80.00
14	The North half of the Northeast quarter.	80.00
15	The West half of the Northeast quarter.	80.00
	The Southeast quarter of the Northeast quarter.	40.00
	The Southeast quarter.	160.00
	The Northeast quarter of the Southwest quarter.	40.00
	The Northwest quarter.	160.00
20	The Northeast quarter of the Southeast quarter.	40.00
	The portion of the Southeast quarter of the Southeast quarter lying south and west of a line from the southeast corner of the quarter to the mid point of the west line of the quarter section and lying west of the railroad right of way.	30.75
21	The entire section except for the Northwest quarter of the Northwest quarter.	600.00
22	The entire section except for the Southeast quarter of the Southeast quarter.	600.00
27	The North half of the Northwest quarter.	80.00
	The Southwest quarter of the Northwest quarter.	40.00
28	The entire section.	640.00
29	That portion of the East half of the Northeast quarter lying south and east of the property conveyed to Oak Mountain Energy by deeds dated August 24, 1996 and May 30, 1997.	57.11
a.	Total Acres : Group I	4,047.86

Group II : Minerals and mining rights only (no interests in surface).

2. TOWNSHIP 21 SOUTH, RANGE 4 WEST -

A tract of land comprising 13.14 acres described as follows: Commence at the northeast corner of Section 29, Township 21 South, Range 4 West; thence in a westerly direction along the north boundary of said Section, 180.22 feet; thence turning an angle of 50 degrees 31 minutes, 33 seconds to the left in a southwesterly direction, 482.08 feet to the point of beginning of tract herein described; thence turning an angle of 93 degrees 21 minutes, 45 seconds to the left in a southeasterly direction, 96.69 feet; thence turning an angle of 61 degrees 53 minutes 18 seconds to the right in a southwesterly direction, 323.04 feet; thence turning an angle of 16 degrees 19 minutes 28 seconds to the right in a southwesterly direction, 801.74 feet; thence turning an angle of 20 degrees 57 minutes 16 seconds to the right in a southwesterly direction, 303.15 feet; thence turning an angle of 55 degrees 21 minutes 07 seconds to the right in a northwesterly direction, 258.54 feet; thence turning an angle of 91 degrees 40 minutes 24 seconds to the right in a northeasterly direction, 535.80 feet; thence turning an angle of 7 degrees 42 minutes 34 seconds to the

right in a northeasterly direction, 122.28 feet; thence turning an angle of 10 degrees 18 minutes 36 seconds to the right in a northeasterly direction, 193.10 feet; thence turning an angle of 2 degrees 11 minutes 48 seconds to the right in a northeasterly direction, 191.47 feet; thence turning an angle of 6 degrees 59 minutes 06 seconds to the right in a northeasterly direction, 490.22 feet; thence turning an angle of 86 degrees 36 minutes 15 seconds to the right in a southeasterly direction, 121.64 feet to the point of beginning.

A tract of land comprising approximately 58 acres described as follows: 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 South-East quarter of the South-East quarter of said Section 20, to the east right-of-way 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 South-West quarter of the South-East quarter of the South-East quarter of said Section 20; thence run southwesterly 932 feet, more or less, to the southwest corner of the South-East quarter of the South-West quarter of the South-East quarter of said Section 20, said point also being on the south line of said Section 20, 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 South-West quarter of the South-West quarter of the North-West quarter of the North-East quarter of said Section 29, said point also being on the south line of the North half of the North-East quarter of said Section 29; thence run easterly 1,459 feet, more or less, along the south line of said North half the North-East quarter of said section 29, 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.

Total Acres : Group II

71.14

Inst # 2000-13916

04/28/2000-13916
04:30 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
030 CJ1 3081.00