

## COLLATERAL ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT made this 24 day of April, 2000 THE WHITT GROUP OF WEST VIRGINIA INC., a West Virginia corporation having an address at 330 Ridgewood Drive, Beaver, West Virginia 25813 and 1051 Oak Mountain Drive, Pelham, Alabama 35214 ("Whitt Group") and NEW CENTURY MINING, INC., a West Virginia corporation having an address at 330 Ridgewood Drive, Beaver, West Virginia 25813 and 1051 Oak Mountain Drive, Pelham, Alabama 35214 ("New Century") (Whitt Group and New Century are hereinafter jointly and severally referred to as "Mortgagor" or "Borrower") for consideration paid and in order to secure the indebtedness and obligation hereinafter set out, does hereby grant, bargain, sell, convey, transfer, assign and set-over unto SPRAGUE ENERGY CORP., a Delaware corporation having an address at Two International Drive, Suite 200, Portsmouth, New Hampshire 03801-6809 (hereinafter called "Mortgagee" or "Lender").

1. Grant of Assignment. This ASSIGNMENT is granted pursuant to the terms, provisions and conditions of the agreement captioned "Consolidated Loan Agreement" dated as of even date herewith between Borrower and Lender. Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

Borrower, for good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, transfers and assigns to Lender, and grants to Lender a continuing pledge of and security interest in, the entire present and future interest of Borrower in, to and under: (a) all leases, subleases, rental agreements or other occupancy agreements ("Leases") now or hereafter in existence, with respect to all or any portion of the real property located and known as the Oak Mountain Mine, the Gholson Mine and the Kodiak Mine located in Shelby and Bibb Counties in the State of Alabama ("Property"); (b) all rents, income and profits of any kind arising from such interests in the Leases and any renewals or extensions thereof for the use and occupation of all or any portion of the Property; (c) all guaranties of and security for the Leases; and (d) all proceeds of the foregoing.

Borrower is the owner of the Property. A legal description of the Property is annexed hereto as Exhibit A. Exhibit B which is annexed hereto identifies the Leases which are presently in effect.

2. Obligations Secured. THIS ASSIGNMENT is made for the purpose of securing the "Obligations" as follows:

A. The payment of the principal sum, interest at variable rates, charges and indebtedness evidenced by a certain bridge promissory note ("Bridge Loan Note") dated as of even date herewith, including any extensions, renewals, replacements, modifications and amendments thereof, in the original amount of ONE MILLION ONE HUNDRED FIFTEEN THOUSAND DOLLARS (\$1,115,000) given by Borrower to the order of Lender;

B. The payment of the principal sum, interest at variable rates, charges and indebtedness evidenced by a certain term promissory note ("Term Loan Note") dated as of even date herewith,

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including any extensions, renewals, replacements, modifications and amendments thereof, in the original amount of NINE HUNDRED SEVENTY NINE THOUSAND DOLLARS (\$979,000) given by Borrower to the order of Lender;

C. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Borrower under and pursuant to this Assignment, the Mortgage or the Loan Agreement and also by Borrower under and pursuant to each of the other Loan Documents referred to in, or executed in connection with, the Loan Agreement;

D. The payment of all reasonable costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender's rights or remedies under this Assignment, the Mortgage, the other Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and

E. The payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation express or implied upon the generality of the foregoing, each liability and obligation of Borrower under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

3. Warranties and Representations. BORROWER WARRANTS AND REPRESENTS that it is and shall be in the future the sole owner of the entire interests described in Section 1 above and that no rent reserved in the Leases has been or will be in the future otherwise assigned or anticipated, and that no rent for any period subsequent to the date of this Assignment will be collected more than one (1) month in advance except for security deposits and last month's rents taken in the usual course of business pursuant to Approved Leases.

BORROWER FURTHER WARRANTS AND REPRESENTS that as of the date hereof: (a) the Leases identified on Exhibit B hereto are in full force and effect and true and complete copies thereof together with all amendments and modifications have been previously delivered to Lender; (b) no default exists on the part of any of the lessees or tenants or of Borrower as lessor in the performance on the part of either of the terms, covenants, provisions or agreements in the Leases contained; (c) Borrower knows of no condition which with the giving of notice or the passage of time or both would constitute a default on the part of any of the lessees or Borrower under the Leases; and (d) no security deposit or advance rental payment has been made by any lessee under the Leases except as may be shown on Exhibit B, or as may be specifically designated in the copies of the Leases previously furnished to Lender.

4. Covenants. Except as may be otherwise provided for or permitted by the Loan Agreement, BORROWER COVENANTS with Lender: (i) to observe and perform all the obligations imposed upon the lessor under every such Lease and not to do or permit to be done



anything to impair the security thereof; (ii) not to collect any of the rent, income and profits arising or accruing under the Leases or from the Property more than one (1) month in advance of the time when the same shall become due; (iii) not to execute any other assignment of lessor's interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property; (iv) not to alter, modify or change the terms of the Leases, or cancel or terminate the same, or accept a surrender thereof without the prior written consent of Lender in each instance; (v) not to subordinate any Lease to any mortgage or other encumbrance, or permit, consent or agree to such subordination, without Lender's prior written consent in each instance; (vi) not to convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any Lease or of any interest therein so as to affect directly or indirectly a merger of the estates and rights, or a termination or diminution of the obligations, of any lessee thereunder; (vii) not to alter, modify or change the terms of any guaranty of any Lease, or any security for any Lease, or cancel or terminate any such guaranty, or release or reduce any such security, without the prior written consent of Lender in each instance; not to consent to any assignment of or subleasing under any such Lease, unless in accordance with its terms, without the prior written consent of Lender in each instance; (viii) not to enter into any future Leases of all or any part of the Property without Lender's prior written consent in each instance; at Lender's request, furnish to Lender true and complete copies of all Leases and amendments thereto; and (ix) at Lender's further request (and in confirmation of the assignment and transfer already made herein of future Leases) to assign and transfer to Lender any and all subsequent Leases upon all or any part of the Property and to execute and deliver at the request of Lender all such further assurances and assignments in the Property as Lender in good faith shall from time to time require.

5. Further Terms, Covenants and Conditions. THIS ASSIGNMENT is made on the following terms, covenants and conditions:

5.1 Prior to Default. So long as (i) no Event of Default (as defined in the Loan Agreement) exists and (ii) no default has occurred and is continuing uncured beyond the applicable notice and grace period, if any, in the performance of any obligation, covenant or agreement herein, or in the other Loan Documents, or in the Leases, contained and on the part of Borrower to be performed (collectively, a "Continuing Default"): Borrower shall have the right and license to manage and operate the Property and to collect at the time of, but not more than one (1) month prior to, the date provided for the payment thereof, all rents, income and profits arising under the Leases or from the premises described therein and, subject to the provisions of the other Loan Documents, to retain, use and enjoy the same.

5.2 After Default. At any time when a Continuing Default exists, Lender, without in any way waiving such default, may at its option, without notice, and without regard to the adequacy of the security for the Obligations secured hereby and by the Mortgage revoke the right and license granted above to Borrower and:

- (i) Authorize and direct the lessees named in any existing Leases or any other or future lessees or occupants of the Property, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and the Mortgage and that a

Continuing Default exists thereunder, to pay over to Lender all rents, income and profits arising or accruing under the Leases or from the Property and to continue to do so until otherwise notified in writing by Lender. Borrower agrees that every lessee and occupant shall have the right to rely upon any such statement and request by Lender that lessee or occupant shall pay such rents to Lender without any obligation or right to inquire as to whether such Continuing Default actually exists notwithstanding any notice from or claim of Borrower to the contrary and that Borrower shall have no right or claim against lessees or occupants for any such rent so paid by lessees or occupants to Lender after such notice to the lessee or occupant by Lender;

(ii) Either in person or by agent, with or without bringing any action or proceedings, or by a receiver appointed by a court, take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper and, either with or without taking possession of the Property in its own name, demand, sue for, or otherwise collect and receive, all rents, income and profits of the Property, including those past due and unpaid, with full power to make from time to time all improvements, alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Lender; and

(iii) Apply such rents, income and profits to the payment of: (a) all reasonable expenses of managing the Property including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as Lender may deem necessary or desirable, and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for all insurance which Lender may deem necessary or desirable, the payment or refund of security deposits, or interest thereon, and the cost of all improvements, alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) all sums which Borrower is responsible to pay under the Mortgage, and the principal sum, interest and indebtedness secured hereby and by the Mortgage, and all other Obligations together with all reasonable costs and reasonable attorneys' fees, in such order of priority as to any of the items mentioned in this clause (iii), as Lender in its sole discretion may determine, any statute, law, custom, or use to the contrary notwithstanding.

The exercise by Lender of the option granted it in this Section 5.2 and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver by Lender of any Default under the other Loan Documents, or the Leases, or this Assignment.

5.3 Continuing Effect. Upon payment in full to Lender of the principal sum, interest, indebtedness and other Obligations secured hereby and by the Mortgage, this Assignment shall become and be void and of no effect, but the affidavit of any officer, agent, or attorney of Lender made in good faith showing any part of said principal, interest, indebtedness or other

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Obligations to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The discharge of record of the Mortgage dated as of even date given by Borrower to Lender shall constitute a discharge of this Assignment and a release of Lender's interest in the Leases and rents assigned hereby and the reassignment thereof (without recourse to Lender) to Borrower and all those claiming of record by, through or under Borrower.

5.4 No Waiver; Concurrent Rights. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Lender of its rights and remedies hereunder or any one or more of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms of any of the other Loan Documents. The right of Lender to collect said principal sums, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

5.5 No Liability. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after default or from any other act or omission of Lender in managing the Property after default unless such loss is caused by the gross negligence or willful misconduct of Lender. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, under any ground lease, or under or by reason of this Assignment, and Borrower shall, and does hereby agree to, indemnify Lender for, and to defend and hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any ground lease. Should Lender incur any such liability under the Leases or under or by reason of this Assignment, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and by the Mortgage and by the other collateral for the Obligations and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do, Lender may, at its option, declare all sums secured hereby immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any ground lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by tenants or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of said Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Notwithstanding the foregoing, Lender shall not be indemnified on account of, or exculpated from acts of, its own gross negligence or willful misconduct.

5.6 Effect of Foreclosure Deed. Unless Lender otherwise elects in the instance of a Lease which is subordinate to the Mortgage and is thus terminated by the foreclosure, upon the

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issuance of any deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of Borrower in and to the Leases shall, by virtue of this instrument and such deed or deeds, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Borrower. Borrower hereby irrevocably appoints Lender and its successors and assigns as its agent and attorney in fact to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds as may be necessary or desirable for such purpose.

5.7 Upon Termination of Lease in Bankruptcy. In the event any lessee under any of the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Borrower covenants and agrees that, if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender, in each instance, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Borrower and Lender. Borrower hereby assigns any such payment to Lender and further covenants and agrees that upon the request of Lender after an Event of Default, Borrower will duly endorse to the order of Lender any such check, the proceeds of which will be applied to the indebtedness secured by this Assignment. Borrower hereby irrevocably appoints Lender and its successors and assigns as its attorney-in-fact to so endorse any such checks if Borrower does not do so.

5.8 Rights Contained in Mortgage. This Assignment is intended to be supplementary to, and not in substitution for, or in derogation of, any assignment of rents to secure the Obligations contained in the Mortgage or in any other Loan Document. In the event of any conflict between this Assignment and any of the other Loan Documents, Lender shall have the right from time to time to determine which provisions shall govern.

5.9 Notices. Any notice or communications in connection herewith shall be sufficiently given only if given in the manner provided for in the Loan Agreement.

IN WITNESS WHEREOF, the Borrower has caused this Assignment to be duly executed and delivered as a sealed instrument as of the day and date first above written.

BORROWER:

THE WHITT GROUP OF WEST VIRGINIA INC.

Attest:

Secretary

By:

Title:

And

NEW CENTURY MINING, INC

Attest:

Secretary

By:

Title:

STATE OF

Allegheny COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that JERRY C. WHITT, whose name as PRESIDENT of The Whitt Group of West Virginia Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

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

Notary Public

My Commission Expires:

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

STATE OF

Allegheny COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that JERRY C. WHITT whose name as PRESIDENT of New Century Mining, Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

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

Notary Public

My Commission Expires:

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

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**EXHIBIT A**  
**ANNEXED TO AND MADE A PART OF THE**  
**COLLATERAL ASSIGNMENT OF LEASES AND RENTS**

**PROPERTY DESCRIPTION**

[Attached hereto consisting of 2 Pages]



**EXHIBIT A**  
**Annexed To And Made A Part Of The**  
**Collateral Assignment of Leases and Rents**  
**Between**  
**Sprague Energy Corp.**  
**and**  
**THE WHITT GROUP OF WEST VIRGINIA INC.**  
**And**  
**NEW CENTURY MINING, INC.**  
**As Borrower**

**Land Description**

All of the following parcels of land, together with all improvements and structures thereon and all rights, privileges, tenements, hereditaments, appurtenances, easements and other interests therein, located in Shelby County, Alabama:

**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**  
**ANNEXED TO**  
**COLLATERAL ASSIGNMENT OF LEASES AND RENTS**

**LEASES PRESENTLY IN EFFECT**

1. Operating Agreement between The Whitt Group of West Virginia Inc. as "Owner" and New Century Mining, Inc. as "Operator", dated April \_\_\_, 2000.

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