

This Instrument Prepared By:

Allen D. Cope  
Burr & Forman LLP  
420 North 20th Street, Suite 3100  
Birmingham, Alabama 35203

**ASSIGNMENT AND ASSUMPTION OF COAL MINING LEASE**

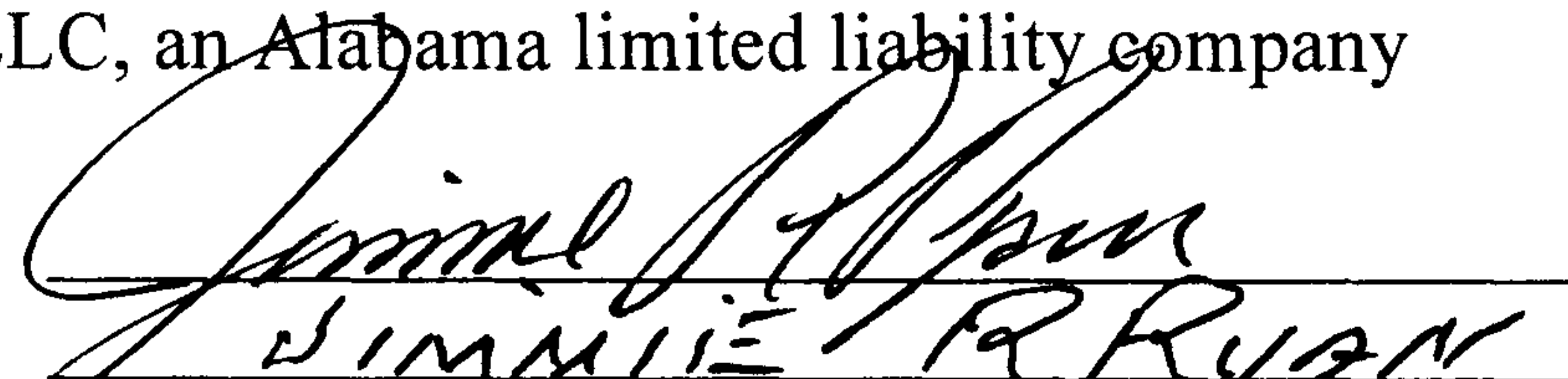
For and in consideration of the sum of Three Hundred Thousand 00/100 Dollars (\$300,000.00), in hand paid, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, R & S Coal, LLC, an Alabama limited liability company ("Assignor"), hereby sells, transfers, conveys, assigns and sets over unto Kodiak Mining Company, LLC, a Delaware limited liability company ("Assignee"), all of Assignor's right, title and interest in and to that certain Coal Mining Lease by and between RGGS Land and Minerals LTD., L.P., a Delaware limited liability partnership ("RGGS"), and Assignor dated April 28, 2005 and the Memorandum of Lease (the "Memorandum") dated April 28, (as such Coal Mining Lease may have been supplemented, modified, or amended, the "Lease"), to mine and remove coal by underground mining methods from the Coke Seam of Coal located in Shelby and Bibb Counties, Alabama and described in detail in the Lease, a copy of which Memorandum, is attached hereto as Exhibit A. Assignee hereby accepts the foregoing assignment as of the date hereof and hereby assumes the performance of all the terms, covenants and conditions of the Lease to be performed from and after the date hereof. Assignee hereby agrees to indemnify and hold harmless the Assignor in connection with any claim, liability, loss or damage (including attorney's fees) relating to or arising from a failure to perform under the Lease by Assignee after the date hereof. Assignee acknowledge that Assignor may, at its option, record this document in the records where the Memorandum of Lease is recorded.

IN WITNESS WHEREOF, the parties have duly executed this Assignment and Assumption of Coal Mining Lease as of the 25th day of October, 2005

ASSIGNOR:

R & S COAL, LLC, an Alabama limited liability company

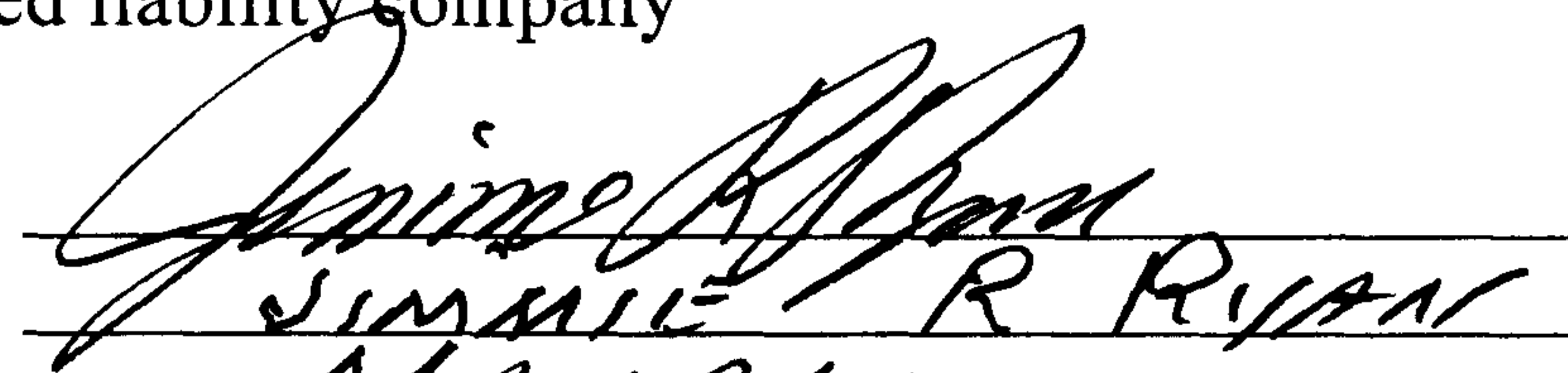
By:  
Name:  
Its:

  
JIMMIE R RYAN  
MANAGER

ASSIGNEE:

KODIAK MINING COMPANY, LLC  
a Delaware limited liability company

By:  
Name:  
Its:

  
JIMMIE R RYAN  
MANAGER



20051026000557960 2/5 \$323.00  
Shelby Cnty Judge of Probate, AL  
10/26/2005 04:23:31PM FILED/CERT

STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jimmie R. Ryan, whose name as Manager of **R & S Coal, LLC**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said company as of the day the same bears date. Given under my hand this 25th day of October, 2005.


Ellen C. Prescott  
Notary Public  
My Commission Expires: 2/3/08

STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jimmie R. Ryan, whose name as Manager of **Kodiak Mining Company, LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said company as of the day the same bears date. Given under my hand this 25th day of October, 2005.

Ellen C. Prescott  
Notary Public  
My Commission Expires: 2/3/08

  
20051026000557960 3/5 \$323.00  
Shelby Cnty Judge of Probate, AL  
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**EXHIBIT "A"**


TO ASSIGNMENT AND ASSUMPTION OF LEASE

MEMORANDUM OF LEASE

STATE OF

COUNTY OF

\*  
\*  
\*

  
20051026000557960 4/5 \$323.00  
Shelby Cnty Judge of Probate, AL  
10/26/2005 04:23:31PM FILED/CERT

**MEMORANDUM OF LEASE**

KNOW ALL MEN BY THESE PRESENTS, that R & S Coal, LLC (the "Lessee"), an Alabama limited liability company, by virtue of a Coal Mining Lease dated APRIL 28, 2005 (the "Lease") did lease certain rights to mine coal by underground mining methods as may exist in certain lands located in Shelby and Bibb Counties, Alabama described in Exhibit "A" and shown on map marked Exhibit "B", both attached hereto and made a part of this Memorandum of Lease, from RGGS LAND & MINERALS, LTD., L.P., a Delaware limited liability company, successors to United States Steel Corporation who was successor by conversion to United States Steel LLC and remote successor to USX Corporation. The Lease provides for a term of five (5) years with provisions for up to three (3) extended terms of five (5) years each for a total term of twenty (20) years.

This Memorandum of Lease is placed of record by Lessor and Lessee to serve as notice of the execution and existence of said Lease, and is in no way to supersede, abrogate, change or modify any of the terms, conditions, rights or obligations of any of the parties, all of which are set forth in detail in said Lease. The terms and conditions of said Lease are made a part hereof by reference for all purposes, to be the same effect as though written in extenso herein.

This is the 28<sup>th</sup> day of APRIL, 2005.

**LESSOR: RGGS LAND & MINERALS, LTD., L.P.**

By: Gordy Oil Company, a Texas corporation  
Its: General Partner

By: 

Russell D. Gordy, President

Date: 4/27/05

**LESSEE: R & S COAL, LLC**

By: 

Its: MANAGER

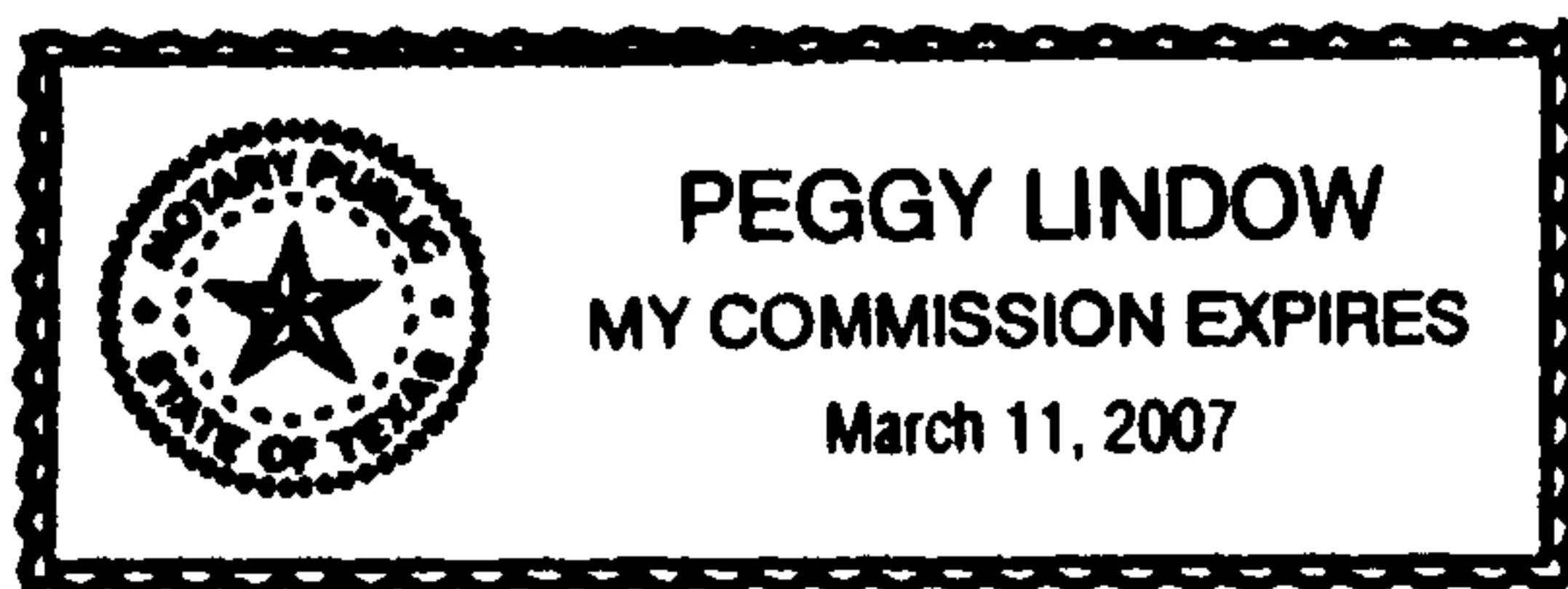
Date: 4-28-05



STATE OF TEXAS \*  
\*  
COUNTY OF HARRIS \*

I, Peggy Lindow, a Notary Public, in and for said County in said State, hereby certify that Russell D. Gordy, whose name as President of Gordy Oil Company, a Texas Corporation, general partner of RGGGS Land & Minerals, Ltd., L.P., a Delaware Limited Partnership, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand and seal this 27th day of April, 2005.



Peggy Lindow  
Notary Public  
State of Texas  
County of Harris  
My Commission Expires 3-11-07

STATE OF ALABAMA \*  
\*  
COUNTY OF JEFFERSON \*

Before me, the undersigned, a Notary Public in and for said County and State, on this 28th day of APRIL, 2005, personally appeared JIMMIE R. RYAN, known to me to be the identical person who subscribed the name of RT'S COAL LLC to the foregoing instrument as its officer and acknowledged to me that he executed the same as his free and voluntary act and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal this 28th day of APRIL, 2005.

Carolyn J. Gubler  
Notary Public  
State of ALABAMA  
County of JEFFERSON  
My Commission Expires 11-16-08