


This instrument prepared by and
after recording return to:

Gene T. Price
Burr & Forman LLP
3100 SouthTrust Tower
420 North 20th Street
Birmingham, Alabama 35203


20051026000557980 1/10 \$38.00
Shelby Cnty Judge of Probate, AL
10/26/2005 04:23:33PM FILED/CERT

ROYALTY RIGHTS AGREEMENT

STATE OF ALABAMA)

COUNTY OF SHELBY)

THIS ROYALTY RIGHTS AGREEMENT (this "Agreement") is made and entered into as of the 25th day of October, 2005 by and between KODIAK MINING COMPANY, LLC, a Delaware limited liability company, whose address is 201 Tucker Road, Suite 101, Helena, Alabama 35080 (the "Grantor"), and TACOA MINERALS, LLC, an Alabama limited liability company, whose address is P. O. Box 382403, Birmingham, Alabama 35238 (the "Grantee").

RECITALS

On the date hereof the Grantor has acquired from the Grantee five (5) parcels of real estate in Shelby County, Alabama, more specifically described on Exhibit A, hereto (the "Real Property"). As part of the consideration for the acquisition of the Real Property, Grantor has agreed to pay to Grantee a royalty of \$1.50 per ton for all clean tons of coal mined and sold by Grantor from certain properties and through certain mine openings until Grantee has been paid a sum of \$6,000,000 in royalty payments (the "Royalty Payments"). In connection with the purchase of the Real Property, Grantor has agreed to encumber the Real Property as further set forth in Sections 1 and 5 below as to all fee owners taking title to the Real Property subsequent to Grantor and to record this instrument with the deed pursuant to which the Real Property is transferred to the Grantor by the Grantee.

NOW, THEREFORE, for and in consideration of the conveyance of the Real Property by Grantee to Grantor, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1. **GRANT OF RIGHTS.** Grantor does hereby irrevocably convey, grant, bargain, sell and transfer to Grantee the right to receive from any owner of fee simple title to the Real Property other than Grantor and from any Lessee of the Real Property who leases from Grantor that portion of the Real Property on which the existing mine openings are situated (the "Property Owner"), from time to time, whosoever it may be, a Royalty Payment in the amount of One and 50/100 Dollars (\$1.50) per ton for all clean tons of coal that are mined, stored, washed, transferred, loaded for transport or otherwise handled on the Real Property, until such time as the Grantee has received an aggregate of Six Million and No/100 Dollars (\$6,000,000.00) of Royalty

Payments, regardless of whether such Royalty Payments are made by the Grantor pursuant to the Asset Purchase and Sale Agreement among Grantor, Grantee and New Century Mining, Inc. dated October 25, 2005 or by any other Property Owner pursuant to the provisions of this Agreement (the "Encumbrance"); provided, however, that the Encumbrance shall not apply to any coal owned by Grantee that is brought onto the Real Property for any reason, and the Encumbrance shall not apply to the Grantor or to the Real Property so long as the Grantor is the owner thereof. The Royalty Payment shall be payable only upon the sale of such coal, or if the coal is not owned by the Property Owner, then at such time as the mining, storage, washing, transfer, loading or other handling that gives rise to the Royalty Payment is completed and payment therefor is received by the Property Owner.

TO HAVE AND TO HOLD the Encumbrance and all parts, rights, members and appurtenances thereof, to the use and benefit of the Grantee and the successors, successors in title and assigns of Grantee forever (the Grantee, or the Grantee's successors or assigns having the rights granted to the Grantee hereunder from time to time, being referred to as the "Holder"). The Encumbrance granted hereby shall run with the Real Property and shall encumber the Real Property until the full amount of the Royalty Payment required hereby has been paid.

2. RELEASE OF ENCUMBRANCE.

(a) Upon payment in full of the Royalty Payment required hereby, the Holder shall file an instrument in the form attached hereto as Exhibit B (the "Release of Encumbrance") acknowledging payment in full of the Royalty Payment and releasing the Real Property from the Encumbrance.

(b) If any party, including the Grantor, owning any interest in the Real Property, at any time, believes that the Royalty Payment has been paid in full, such person may give written notice (the "Notice") to the Holder stating that the Royalty Payment has been paid in full and requiring the Holder to record such Release of Encumbrance. Any Notice given hereunder shall be deemed given if delivered to the Holder at the Grantee's address specified above, or at such other address as any Holder shall notify the owner of the Real Property by written notice to the owner; provided, however, that if any amendment to this Agreement changing such address or any assignment of this agreement containing a new address for the Holder has been recorded in the real property records of Shelby County, Alabama where a deed conveying the Real Property would be recorded after the later of the date hereof or the date of any notification of a change of address, then the address of the Holder in the most recently recorded such document shall be the address for delivery of such Notice. If within fifteen (15) days after delivery of such notice to such address by hand delivery, certified mail or courier service, the Holder has not either responded to the owner of the Real Property claiming that the Royalty Payment has not been paid in full or filed a Release of Encumbrance, the Real Property owner may sign the Release of Encumbrance and file said Release of Encumbrance, along with a copy of the Notice in the real property records in Shelby County, Alabama where a deed conveying the Real Property would be filed.

(c) Upon receipt of each payment on the Royalty Payment (including payments by the Grantor), the Holder shall sign a receipt for the amount of such payment. Notwithstanding paragraphs (a) and (b) above, if at any time the owner of any portion of the Real

Property (including the Grantor) has in its possession receipts signed by Holders aggregating \$6,000,000, such owner may immediately file the Release of Encumbrance without notice to the Holder along with a copy of all such receipts.

(d) Upon filing of the Release of Encumbrance as provided herein, the Encumbrance will be fully and finally released, and neither the Grantee nor any Holder shall have any further rights in the Real Property.

(e) Notwithstanding any other term of this Agreement, the Encumbrance will expire by its terms and neither the Grantee nor any subsequent Holder shall have any rights hereunder after December 31, 2025.

3. **AUDIT AND INSPECTION.** The Holder shall have the right, from time to time, as is reasonable, to audit the books and records of the Property Owner to the extent necessary or appropriate to verify the Royalty Payments payable hereunder. If in any such audit the Holder, or its agents, discover that the amounts reported by the Property Owner are less than the amounts actually due to the Holder, the Property Owner shall immediately pay any such additional Royalty Payments to the Holder. If Royalty Payments actually due are five percent (5%) or more in excess of the amount reported, the Property Owner shall, in addition to paying the additional Royalty Payments due, pay to the Holder all costs incurred by the Holder in conducting such audit.

4. **REPORTS AND MANNER OF PAYMENT.** The Property Owner shall report to the Holder on a monthly basis the amount of coal on which Royalty Payments are payable to the Holder for the preceding month (the "Report"). The Report shall be due on a monthly basis by the tenth day of the month in each month following the month for which Royalty Payments are due. The Report, together with a payment of the Royalty Payments due, shall be sent to Holder at the Grantee's address above, or at such other address as the Holder shall notify the Property Owner in writing.

5. **SECURITY INTEREST.** In addition to the rights granted herein, the Grantor hereby grants to the Holder a security interest in all of the coal that is mined, stored, washed, transferred, loaded for transport or otherwise handled on the Real Property and all proceeds from the sale of such coal to secure payment to the Holder of the Royalty Payments payable hereunder, but only to the extent of the Holder's interest in such coal or such proceeds; provided, however, that such security interest shall not attach until such time as the Property Owner is a person other than the Grantor. The owner of the coal subject to such security interest shall be free to sell such coal free of the lien created hereby, but upon such sale, the lien shall attach to the proceeds of such sale to the extent of the Royalty Payments then due and the Holder's interest therein. All Property Owners subsequent to the Grantor take the Real Property subject to this notice of such security interest, and by taking title to the Real Property, each such Property Owner acknowledges such security interest and agrees to take all steps necessary or appropriate to perfect such security interest, including the execution of security agreements, financing statements, and any other documents reasonably necessary to perfect such security interests.

6. **MISCELLANEOUS.** This Agreement shall be binding upon and shall inure to the benefit of the Grantor, the Grantee, and their respective successors and assigns and

subsequent owners of the Real Property or any part thereof. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed as of the day and year first above written.

KODIAK MINING COMPANY, LLC

By: *Jimmie R. Ryan*
Its: *Manager*

TACOA MINERALS, LLC

By: *Jimmie R. Ryan*
Its: *Manager*

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, Ellen C. Prescott, 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 such instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 25th day of October, 2005.

Ellen C. Prescott
NOTARY PUBLIC

[SEAL]

My Commission Expires: 2/3/08

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STATE OF ALABAMA)

COUNTY OF Jefferson)

I, Ellen C. Prescott, a Notary Public in and for said County in said State, hereby certify that Jerry C. Whitt, whose name as Manager of TACOA MINERALS, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 25th day of october, 2005.

Ellen C. Prescott
NOTARY PUBLIC

[SEAL]

My Commission Expires: 2/3/08

EXHIBIT A

Description of Real Property

PARCEL I

A tract of land, situated in the East half of the Northeast 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 II

Commence at the Southeast corner of Section 20, Township 21 South, Range 4 West; thence run Northwesterly 292.73 feet 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 1,198.36 feet 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 933.19 feet 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 1,361.87 feet 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 1,127.39 feet 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 208.38 feet; 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

193.10 feet; thence turn a deflection angle to the right of 2 degrees 11 minutes 48 seconds and run Northeasterly along the West line of said tract 191.47 feet thence turn a deflection angle to the right of 6 degrees 59 minutes 06 seconds and run Northeasterly 490.22 feet; thence turn a deflection angle to the right of 86 degrees 36 minutes 15 seconds and run Southeasterly 100 feet to the East right-of-way line of Southern Railroad Company; thence run Northeasterly along said East right-of-way line of Southern Railway Company 547.31 feet to the point of beginning.

PARCEL III

A tract of land lying in the Northwest quarter of the Southwest quarter and the Northeast quarter of the Southwest quarter of Section 28, Township 21 South, Range 4 West, more particularly described as follows:

Commence at the Southwest corner of the Southwest quarter of the Southwest quarter of Section 28, Township 21 South, Range 4 West; Thence run North along the West line of said Section 28 a distance of 1760.98 feet; thence turn right 90 degrees 0 minutes 00 seconds and run Easterly 1274.44 feet to the point of beginning; thence turn left 78 degrees 39 minutes 30 seconds and run Northeasterly 219.49 feet; thence turn right 89 degrees 59 minute 56 seconds and run Southeasterly 87.15 feet; thence turn right 90 degrees 00 minutes 00 seconds and run Southwesterly 219.49 feet; thence turn right 90 degrees 00 minutes 19 seconds and run Northwesterly 87.15 feet to the point of beginning.

PARCEL IV

A tract of land, situated in the Southeast quarter of the Northwest quarter of Section 28, Township 21 South, Range 4 West more particularly described as follows:

Commence at the Southwest corner of Section 28, Township 21 South, Range 4 West; thence run North along the West line of said Section 28 a distance of 3388.73 feet; thence turn right 90 degrees and run Easterly a distance of 1942.04 feet to the point of beginning; thence turn left 48 degrees 49 minutes 55 seconds and run Northeasterly a distance of 189.06 feet; thence turn right 72 degrees 12 minutes 18 seconds and run Southeasterly a distance of 203.99 feet; thence turn right 90 degrees 42 minutes 46 seconds and run Southwesterly a distance of 200.80 feet; thence turn right 93 degrees 52 minutes 03 seconds and run Northwesterly a distance of 260.10 feet to the point of beginning.

PARCEL V

A tract of land lying in the Southeast quarter of the Southeast quarter of Section 20, Township 21 South, Range 4 West and also in the West half of the Southwest quarter of Section 21, Township 21 South, Range 4 West more particularly described as follows:

Commence at the Southwest corner of the Southwest quarter of the Southwest quarter of Section 21, Township 21 South, Range 4 West; thence run North along the West line of said Section 21, 890.01 feet to the point of beginning; thence turn left 88 degrees 31 minutes 17 seconds and run Westerly 103.06 feet to a point on the Westerly right of way of Southern Railroad; thence turn right 107 degrees 37 minutes 39 seconds and run Northeasterly along said right of way 708.44 feet; thence turn 90 degrees and run Southeasterly 184.26 feet; thence turn right 30 degrees 13 minutes 17 seconds and run Southeasterly 226.97 feet; thence turn right 33 degrees 50 minutes 13 seconds and run Southeasterly 144.96 feet; thence



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turn left 0 degrees 19 minutes 22 seconds and run Southeasterly 192.25 feet; thence turn right 107 degrees 11 minutes 36 seconds and run Northwesterly 96.36 feet; thence turn left 45 degrees 53 minutes 31 seconds and run Southwesterly 217.55 feet; thence turn right 37 degrees 20 minutes 08 seconds and run Westerly 220.97 feet to the point of beginning.

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EXHIBIT B

This instrument prepared by and
after recording return to:

RELEASE OF ENCUMBRANCE

STATE OF _____)

COUNTY OF _____)

This Release of Encumbrance is executed as of this _____ day of _____ and filed pursuant to the terms of that certain Royalty Rights Agreement (the "Royalty Rights Agreement") dated as of October 25, 2005 between Kodiak Mining Company, LLC (the "Grantor") and Tacoa Minerals, LLC (the "Grantee") and recorded in the office of the Judge of Probate of Shelby County, Alabama on _____, 2005 at map book _____, page _____. Capitalized terms used herein and not otherwise defined are used as defined in the Royalty Rights Agreement.

The undersigned hereby certifies that the Royalty Payment required by the Royalty Rights Agreement has been paid in full, and the Real Property is no longer encumbered by the Encumbrance.

[TO BE INCLUDED IF RELEASE OF ENCUMBRANCE IS FILED BY ANY PERSON OTHER THAN THE HOLDER UNLESS RECEIPTS ARE ATTACHED] [The undersigned hereby certifies under penalty of perjury that the attached Notice was delivered to the address required by the Royalty Rights Agreement for delivery of a Notice on _____, 2____, and that such Notice was delivered in the manner required by the Royalty Rights Agreement, and that on the date hereof (which is at least 15 days after the date of the delivery of the Notice), no response has been received.]

[TO BE INCLUDED IF RELEASE OF ENCUMBRANCE IS FILED BY ANY PERSON OTHER THAN THE HOLDER IF RECEIPTS FOR THE ROYALTY PAYMENT ARE ATTACHED] [The undersigned hereby certifies under penalty of perjury that the attached receipts are, to the best knowledge of the undersigned, true copies of receipts signed by the Holder for Royalty Payments aggregating \$6,000,000.]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed as of the day and year first above written.

By: _____
Its: _____

STATE OF ALABAMA)
COUNTY OF _____)

I, _____, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of _____, a[n] _____, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said _____.

Given under my hand and seal, this _____ day of _____, _____.

NOTARY PUBLIC

[SEAL]

My Commission Expires: _____