

20070222000082480 1/35 \$94.00
 Shelby Cnty Judge of Probate, AL
 02/22/2007 01:04:02PM FILED/CERT

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
 William S. Wright (205) 251-8100

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

William S. Wright
 P. O. Box 306
 Birmingham, AL 35201-0306

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
 Tacoa Minerals, LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 5308 Kenley Way Birmingham AL 35242 USA

1d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any
 LLC Alabama NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
 Madison Management, LLC, as Agent

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 711 Fifth Avenue, 5th Floor New York NY 10022 USA

4. This FINANCING STATEMENT covers the following collateral:
 Given as additional security in connection with \$9,950,000 real estate mortgage recorded contemporaneously herewith.

All now existing or hereafter arising or acquired property and assets of the Debtor, including, without limitation, all accounts, general intangibles, chattel paper, documents, instruments, letters of credit, letter-of-credit rights, investment property, supporting obligations, deposit accounts, inventory, equipment and other goods, and all products and proceeds of all of the foregoing and including all of the types and items of property described on Exhibit A hereto.

All other fixtures and real and personal property described in the Future Advance Mortgage, Assignment of Rents & Leases and Security Agreement from Debtor to Secured Party dated as of February 20, 2007 attached hereto as Exhibit B, which relates to the Land and Coal Lease Land defined therein, which Land and Coal Lease Land also are described in Exhibits C and D hereto.

5. ALTERNATIVE DESIGNATION [if applicable]: LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA
 Filed with: AL - Shelby County, Probate Office F#184910
 A#285702



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UCC FINANCING STATEMENT ADDITIONAL PARTY

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

19. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

19a. ORGANIZATION'S NAME
 Tacoa Minerals, LLC

OR

19b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX

20. MISCELLANEOUS:

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21. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (21a or 21b) - do not abbreviate or combine names

21a. ORGANIZATION'S NAME

OR

21b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

21c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

21d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 21e. TYPE OF ORGANIZATION 21f. JURISDICTION OF ORGANIZATION 21g. ORGANIZATIONAL ID #, if any NONE

22. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (22a or 22b) - do not abbreviate or combine names

22a. ORGANIZATION'S NAME

OR

22b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

22c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

22d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 22e. TYPE OF ORGANIZATION 22f. JURISDICTION OF ORGANIZATION 22g. ORGANIZATIONAL ID #, if any NONE

23. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (23a or 23b) - do not abbreviate or combine names

23a. ORGANIZATION'S NAME

OR

23b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

23c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

23d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 23e. TYPE OF ORGANIZATION 23f. JURISDICTION OF ORGANIZATION 23g. ORGANIZATIONAL ID #, if any NONE

24. ADDITIONAL SECURED PARTY'S NAME (or Name of TOTAL ASSIGNEE) - insert only one name (24a or 24b)

24a. ORGANIZATION'S NAME
 Del Mar OnShore Partners, L.P., as Lender

OR

24b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

24c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 711 Fifth Avenue, 5th Floor New York NY 10022 USA

25. ADDITIONAL SECURED PARTY'S NAME (or Name of TOTAL ASSIGNEE) - insert only one name (25a or 25b)

25a. ORGANIZATION'S NAME

OR

25b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

25c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY



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UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME Taco Minerals, LLC			
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

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11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME						
OR	11b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
11c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any		
					<input type="checkbox"/> NONE	

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME						
OR	12b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
12c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

See Exhibits C and D attached hereto.

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

Debtor

17. Check only if applicable and check only one box.

Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.

- Debtor is a TRANSMITTING UTILITY
- Filed in connection with a Manufactured-Home Transaction — effective 30 years
- Filed in connection with a Public-Finance Transaction — effective 30 years

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EXHIBIT A
TO
UCC FINANCING STATEMENT

DEBTOR: TACOA MINERALS, LLC

SECURED PARTY: MADISON MANAGEMENT, LLC, AS AGENT and
DEL MAR ONSHORE PARTNERS, L.P., AS LENDER

The collateral consists of all now existing or hereafter arising or acquired property and assets of the Debtor and includes all of the following property and interests in property of Debtor, whether now owned or hereafter acquired or arising, and wherever located (collectively, the "Collateral"):

1. all rights of the Debtor to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card (all of the foregoing being referred to herein collectively as the "Accounts") (except as set forth below);

2. all general intangibles, and including, without limitation, all of Debtor's now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, servicemarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing and all applications, registrations and recordings relating to any of the foregoing as may be filed in the United States Copyright Office, the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country, together with all rights and privileges arising under applicable law with respect to Debtor's use of any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or servicemark, or the license of any trademark or servicemark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; software and contract rights relating to computer software programs, in whatever form created or maintained (all of the foregoing being referred to herein collectively as the "Intellectual Property"); and all of Debtor's now owned and hereafter acquired mineral leases and/or licenses (including without limitation the Coal Mining Lease, dated as of September 6, 2005, by and between Debtor and RGGS Land & Minerals, Ltd., L.P. ("RGGS"), and any and all amendments thereto and replacements therefore, the Coal Mining Lease, dated as of February 20, 2007, by and between Debtor and RGGS, and any and all amendments thereto and replacements therefore, the Coal Fines and GOB Recovery Lease, dated as of September 6, 2005, by and between Debtor and United States Steel Corporation ("USS"), and any and all amendments thereto and replacements therefor, and all

minerals, coal, gravel or other materials extracted pursuant to such Leases, whether or not produced or processed, and the Royalty Rights Agreement, dated as of October 25, 2005 by and between Debtor and Kodiak Mining Co., LLC), and any and all amendments thereto and replacements therefore, together with all rights and remedies thereunder and with respect thereto, including, without limitation, all royalties, fees and other income payable thereunder;

3. all goods, including, without limitation, all now owned and hereafter existing or acquired (a) goods, wherever located, which (i) are leased by Debtor as lessor; (ii) are held by Debtor for sale or lease or to be furnished under a contract of service; (iii) are furnished by Debtor under a contract of service; (iv) consist of raw materials, work in process, finished goods or materials used or consumed in its business, including, without limitation, all minerals in whatever form, which have been extracted from the real property and include, without limitation, coal, fly ash, bottom ash or other ash, methane, sulfur, sulfur dioxide, and other by-products resulting from the processing of coal mined by Debtor and other minerals and chemicals from the mining or processing of coal, or (v) cast iron fittings, paints, belts, and hoses, bolts and nuts, wire and wire products, welding supplies, tools, steel, rope, timber, railroad spikes, railroad car parts and railroad crane parts, bag house parts, pump parts, compressor parts, electrical parts, bearings, drills, bits and accessories and other parts and supplies, and (b) equipment of any kind or description, wherever located, including machinery, data processing and computer equipment and computer hardware and software, whether owned or licensed, and including embedded software, vehicles (titled or untitled), tools, dies, jigs, furniture, trade fixtures and fixtures, all attachments, components, parts, accessories and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, all existing and fixture leasehold interests in equipment and fixtures (except as set forth below);

4. all fixtures and real property, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, all metals and minerals which have been extracted therefrom wherever located;

5. all chattel paper (including all tangible and electronic chattel paper);

6. all instruments (including all promissory notes);

7. all documents;

8. all deposit accounts;

9. all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;

10. all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of other Collateral, including (a) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the other Collateral; (b) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party; (c) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, other Collateral, including returned, repossessed and

reclaimed goods; and (d) deposits by and property of account debtors or other persons securing the obligations of account debtors;

11. all investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and all monies, credit balances, deposits and other property of Debtor now or hereafter held or received by or in transit to Secured Party, its affiliates or any other party for whom Secured Party is acting as agent or at any other depository or other institution from or for the account of Debtor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

12. all commercial tort claims;

13. to the extent not otherwise described above, (i) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (ii) all payment intangibles of Debtor; (iii) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to Debtor or otherwise in favor of or delivered to Debtor in connection with any Account; or (iv) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to Debtor, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by Debtor or to or for the benefit of any third person (including loans or advances to any affiliates or subsidiaries of Debtor) or otherwise associated with any Accounts, Inventory or general intangibles of Debtor (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to Debtor in connection with the termination of any employee benefit plan and any other amounts payable to Debtor from any employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which Debtor is a beneficiary);

14. all books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to any of the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Debtor with respect to the foregoing maintained with or by any other person); and

15. all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.



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EXHIBIT B

See following attached Mortgage

EXHIBIT B

THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO:

William S. Wright
Balch & Bingham LLP
1901 6th Avenue North, Suite 2600
P.O. Box 306
Birmingham, AL 35201
(205) 251-8100



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FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FINANCING STATEMENT (ALABAMA)

STATE OF ALABAMA

COUNTY OF SHELBY

THIS FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FINANCING STATEMENT (this "**Mortgage**") made this 20th day of February, 2007, is from **TACOA MINERALS, L.L.C.**, an Alabama limited liability company, as Mortgagor (hereinafter, the "**Mortgagor**"), in favor of **MADISON MANAGEMENT, LLC**, an Alabama limited liability company, as Mortgagee (referred to herein as "**Mortgagee**") in its capacity as agent for and on behalf of **DEL MAR ONSHORE PARTNERS, L.P.** (referred to herein as "**Lender**"), its and their successors and assigns, and any subsequent holder or beneficiary of any of the Loan Documents (defined hereinafter) or assignee of this Mortgage (referred to herein as "**Creditor**").

All capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to such terms in the Loan Agreement described below.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

THIS MORTGAGE COVERS AMONG OTHER THINGS, CERTAIN LEASES, LICENSES AND RIGHTS TO REMOVE COAL FROM PROPERTY SITUATED IN THE SECTIONS, TOWNSHIPS AND RANGES IN SHELBY AND BIBB COUNTIES, ALABAMA, DESCRIBED ON EXHIBIT B HERETO IN ADDITION TO THE FEE LAND DESCRIBED HEREIN, SUCH ADDITIONAL PROPERTY BEING DESCRIBED IN THE "CONTRACTS" DEFINED HEREIN.

WITNESSETH:

WHEREAS, Mortgagor, Mortgagee, Lender, and New Century Mining, Inc. have entered into a certain Term Loan and Security Agreement dated as of even date herewith, as the same may be amended or modified from time to time (the "**Loan Agreement**"), providing, subject to the terms and conditions thereof, for a loan or other extension of credit to be made by the Lender to the Mortgagor in the principal sum of up to NINE MILLION NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$9,950,000.00), or so much thereof as may from time to time be disbursed thereunder (the "**Loan**"), as evidenced by one or more Promissory Notes, payable to Lender with interest thereon as provided therein (collectively, the "**Note**"); and

WHEREAS, Lender named in the Loan Agreement appointed Mortgagee as collateral agent and administrative agent and Mortgagee accepted such appointment; and

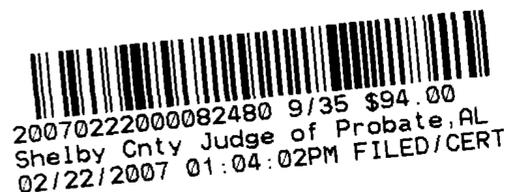
NOW, THEREFORE, for and in consideration of the foregoing recitals, and for a sufficient consideration received, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby mortgage, grant, bargain, sell, assign, transfer, and convey unto Creditor, its successors and assigns, and grant a security interest to Creditor and its successors and assigns, the following described real and personal property, rights, titles, interests, and estates (hereinafter sometimes referred to collectively as the "**Mortgaged Properties**"):

(a) All rights, titles, interests, and estates now owned or hereafter acquired by Mortgagor in and to: (i) all that tract or parcel or parcels of land and estates particularly described on Exhibit A-1 (the "**Fee Land**"); (ii) all buildings,

structures, and improvements of every nature whatsoever now or hereafter situated on the Fee Land, and all fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Fee Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "**Improvements**"); (iii) all accounts, general intangibles, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements; (iv) together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Mortgagor of, in and to the same, including but not limited to (A) all rents, royalties, profits, issues and revenues of the Fee Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created, and (B) all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Fee Land and Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Fee Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Creditor hereby is authorized on behalf of and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Creditor may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released; (v) any and all licenses, development permits, building permits, utility supply agreements, sewer and water discharge permits and agreements, and other licenses, permits and agreements relating to the use, development, construction, occupancy and operation of the Fee Land and Improvements, whether now or hereafter issued or executed, and all modifications, amendments, replacements or re-issuances of the foregoing; and (vi) all cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (i), (ii), (iii), (iv) or (v) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (i), (ii), (iii), (iv) or (v) above;

(b) All of Mortgagor's: (i) coal, mineral, mining or other leases, licenses, agreements, contracts and contract rights, including without limitation (A) the Coal Mining Lease (also entitled "Coal Recovery Lease") between RGGGS Land and Minerals, Ltd., L.P. and Mortgagor dated as of September 6, 2005, and any and all amendments thereto and replacements therefor, the Coal Fines and GOB Recovery Lease between United States Steel Corporation and Borrower dated as of September 6, 2005 and any and all amendments thereto and replacements therefor, and the Coal Mining Lease between RGGGS Land and Minerals, Ltd., L.P. and Mortgagor dated as of February 20, 2007 and all amendments thereto and replacements therefor (the leases referred to in this clause (b)(i)(A) are referred to collectively herein as the "**Coal Leases**" and the land to which the Coal Leases relate is situated in the Sections, Townships and Ranges in the counties in Alabama described on **Exhibit B** hereto and is referred to herein as the "**Coal Lease Land**"); and (B) the Royalty Rights Agreement between Borrower and Kodiak Mining Company, LLC dated as of October 25, 2005 and any and all amendments thereto and replacements therefor, the Coal Washing Agreement between Borrower and Kodiak Mining Company, LLC dated as of October 25, 2005 and any and all amendments thereto and replacements therefor, and the Loadout Agreement between Borrower and Kodiak Mining Company, LLC dated as of October 25, 2005 and any and all amendments thereto and replacements therefor (the aforesaid agreements referred to in this clause (b)(i)(B) are referred to herein as the "**Kodiak Agreements**", or together with the Coal Leases and all other leases, licenses, agreements, contracts and contract rights referred to in this paragraph (b)(i) are referred to herein as the "**Contracts**"); (ii) goods, inventory, minerals, coal, gravel or other materials extracted pursuant to the Coal Leases, whether or not produced or processed (collectively, the "**Extracted Materials**"); and (iii) all rights, titles, interests, estates, powers and privileges in, to or under the foregoing, the Coal Lease Land, the Contracts or the Coal Leases;

(c) All tenements, hereditaments, appurtenances, and properties in anywise appertaining, belonging, affixed, or incidental to the properties, rights, titles, interests, and estates described or referred to in subparagraphs (a) and (b) above, which are now owned or which may hereafter be acquired by Mortgagor, including, without limitation, any and



all property, real or personal, now owned or hereafter acquired and situated upon, used, held for use, or useful in connection with the operating, working, or development of any or properties and including any and all mining machinery, buildings, structures, washers, stockpiles, settling ponds, loading and unloading facilities, scales, samplers, storage and disposal facilities, pipelines, wells, fields separators, liquid extraction plants, plant compressors, pumps, field gathering systems, tank and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, towers, surface leases, rights-of-way, easements, permits, and servitudes, together with all additions, substitutions, replacements, accessions, and attachments to any and all of the foregoing properties, rights, titles, interests, and estates described or referred to in paragraphs (a) and (b) above;

(d) Any property that may from time to time hereafter by delivery or by writing of any kind be subjected to the lien or security interests hereof by Mortgagor or by anyone on Mortgagor's behalf; and Creditor is hereby authorized to receive the same at any time as additional security hereunder;

(e) All rights, interest, dividends, proceeds, products, rents, royalties, revenues, issues, profits and other income of Mortgagor from or related to the Land, the Contracts, the Extracted Materials or any of the other property, leases contacts, rights or interests described in the foregoing granting paragraphs, including without limitation the product of sale, lease, license, exchange or other disposition of any of the Mortgaged Properties or arising under any contract, license, lease or agreement relating to any of the Mortgaged Properties, paid or accruing before or after the filing of any petition by or against the Mortgagor under the United States Bankruptcy Code, and all instruments delivered to Creditor in substitution for or in addition to any such property; provided, however, that the grant of proceeds and revenues arising from or relating to the Kodiak Contracts shall be limited to 75% thereof, and shall be subject to the release provisions of the Loan Agreement;

provided, however, that the maximum principal amount of indebtedness secured hereby shall not exceed a principal amount of NINE MILLION NINE HUNDRED FIFTY THOUSAND AND NO/100 Dollars (\$9,950,000.00) (the "**Secured Amount**"). It is understood and agreed that the limitation to the Secured Amount relates only to principal, and the limitation shall not apply to interest, expenses, prepayment premiums, indemnities (including environmental indemnities) and other obligations which are in addition to principal, and all of such sums shall be secured hereby in addition to the Secured Amount. In addition, unless Creditor otherwise elects, any partial releases or application of proceeds of partial releases shall not reduce the Secured Amount. In no event shall the limitation on the principal amount of indebtedness secured hereby limit or impair the security interests and liens of Creditor in property of Mortgagor as provided under the Loan Documents.

TO HAVE AND TO HOLD the Mortgaged Properties and all parts thereof unto the Creditor, its successors and assigns forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Mortgagor shall properly pay, or cause to be properly paid, to Creditor and perform, or cause to be performed, all of the Secured Obligations (defined hereinafter), and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Creditor on account of Mortgagor, including, but not limited to, attorneys' fees, and shall pay any and all other indebtedness payable with respect to the Secured Obligations, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Loan Agreement, in the Note, and in the other Loan Documents expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, and (ii) the Creditor shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan Agreement, the Note, any other Loan Document, then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold, assigned, transferred, and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AND the Mortgagor further represents, warrants, covenants and agrees with Creditor as follows:



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**ARTICLE I
SECURED OBLIGATIONS**

1.01 Obligations Secured by Mortgage. The foregoing conveyance is made to secure and enforce the following (hereinafter sometimes referred to collectively as the "**Secured Obligations**"): (a) the payment and performance of the Obligations, together with the obligations to pay all other amounts which may be due and owing from time to time under the Loan Documents, and all other indebtedness, obligations and liabilities of the Mortgagor to the Lender or the Creditor (including obligations of performance) of every kind whatsoever, arising directly between the Mortgagor and Lender and Creditor or acquired outright, as a participation or as collateral security from another person by Lender or Creditor, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how or when they arise (including those arising after the filing of a petition by or against the Mortgagor under the Bankruptcy Code, even if such obligations do not accrue because of the automatic stay under the Bankruptcy Code or otherwise) or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, general partner, drawer, tort-feasor, account party with respect to a letter-of-credit, indemnitor or otherwise; (b) the observance and performance of all of the provisions of this Mortgage, the Loan Agreement, and the Note, and any other note, security agreement, guaranty agreement, mortgage and all other documents or instruments heretofore, now or hereafter executed or delivered in connection with the transactions contemplated hereby or thereby (hereinafter sometimes referred to collectively as the "**Loan Documents**"); (c) the payment of all sums advanced in the future, if any, and all sums paid by Creditor in exercising any of its rights, powers or remedies under this Mortgage or any other Loan Documents, and all interest (including post-bankruptcy petition interest) on such sums provided for herein or therein; and (d) all renewals, extensions, modifications and amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

1.02 Waiver. Except as provided in the Loan Agreement, Mortgagor specifically waives and relinquishes any and all rights the Mortgagor may now or hereafter have to any notice, notification or information from the Creditor, other than as specifically provided herein (including presentment, protest, notices of dishonor, intention to accelerate and acceleration).

**ARTICLE II
GENERAL**

2.01 Performance of Mortgage and other Loan Documents. The Mortgagor, to the full extent applicable, shall perform, observe and comply with all provisions hereof and of the other Loan Documents, and shall duly and punctually pay to the Creditor all sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage and of the other Loan Documents, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

2.02 Warranty of Title. Mortgagor hereby warrants that, except for those matters described on **Exhibit C** hereto (the "**Permitted Exceptions**"), it is lawfully seized of an indefeasible estate in fee simple in the Fee Land and owns all other rights, titles, estates or interests in the other Mortgaged Properties, and has good and absolute title to all existing personal property hereby granted as security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Creditor, its successors and assigns, against the lawful claims of all persons whomsoever.

2.03 Future Advances, Revolving and Open-End Loans, and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Loan and the other Secured Obligations, but also future advances and any and all other indebtedness, obligations and liabilities, direct or contingent, of the Mortgagor to the Creditor in connection with the Secured Obligations, 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 Mortgaged Properties are located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the other Secured Obligations may, if provided in the applicable Loan Documents, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

2.04 Monthly Tax Deposit. If required by Creditor, Mortgagor shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Properties, if any and as may be estimated by Creditor, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Creditor. Mortgagor agrees to pay Creditor the amount of any deficiency necessary to enable Creditor to pay such taxes when due. Such sums may be applied by the Creditor to the reduction of the indebtedness secured hereby in any manner selected by Creditor if an Event of Default shall occur under this Mortgage or any of the other Loan Documents, but, unless otherwise agreed by the Creditor in writing, no application of tax deposits to the Note or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan or any such other obligations.

2.05 Other Taxes, Utilities and Liens.

(a) The Mortgagor shall pay or cause to be paid promptly, when and as due, and, if requested, will exhibit promptly to the Creditor receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Properties or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Properties or arising in respect of the occupancy, use or possession thereof, or upon the interest of the Creditor in the Mortgaged Properties (other than any of the same for which provision has been made in Paragraph 2.04 of this Article II), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Properties.

(b) The Mortgagor promptly shall pay or shall cause to be paid and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Properties.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Mortgagor immediately shall pay any increased taxes if allowed by law, and if Mortgagor fails to pay such additional taxes, or if Mortgagor is prohibited from paying such taxes, or if Creditor in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Creditor.

2.06 Insurance.

(a) If required by the Creditor, the Mortgagor shall procure for or cause to be procured, deliver to, and maintain or cause to be maintained for the benefit of the Creditor during the term of this Mortgage insurance policies in such amounts as the Creditor shall reasonably require, insuring the Mortgaged Properties against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Creditor may require. The form of such policies and the companies issuing them shall be acceptable to the Creditor, and, unless otherwise agreed by the Creditor in writing, shall provide for coverage without coinsurance or deductibles. All hazard policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Creditor, as mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Creditor shall be delivered to the Creditor. If required by the Creditor, the Mortgagor shall deliver or caused to be delivered to the Creditor receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Properties or portions thereof in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) The Creditor hereby is authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Properties, and to collect and receive the proceeds from any such policy or policies. Each insurance company hereby is authorized and directed to make payment for all such losses directly to the Creditor instead of to the Mortgagor and Creditor jointly. After deducting from said insurance proceeds any expenses incurred by Creditor in the collection or handling of said funds, the Creditor may apply the net proceeds, at its option, either toward repairing or restoring the improvements on the Mortgaged Properties, or as a credit on any portion of the Mortgagor's indebtedness selected by Creditor, whether then matured or to mature in the future, or at the option of the Creditor, such sums either wholly or in part may be used to repair such improvements, or to build new improvements in their place or for any other purpose and in a manner satisfactory to the Creditor, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Creditor shall not be liable to Mortgagor or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) If required by the Creditor, the Mortgagor shall pay or cause to be paid on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Paragraph 2.04 hereof, one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 2.06. Such amount shall be used by Creditor to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Creditor, and no interest shall be payable in respect thereof. Upon demand of the Creditor, the Mortgagor agrees to deliver or cause to be delivered to the Creditor such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Mortgagor with Creditor pursuant to this Paragraph 2.06 to enable the Creditor to pay such insurance premiums when due. In the event of an Event of Default hereunder, under the Note or any other Loan Documents, the Creditor may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Creditor, but, unless otherwise agreed by the Creditor in writing, no application of insurance proceeds to the Loan or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan or any such other obligations.

2.07 Condemnation. If all or any part of the Mortgaged Properties shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Creditor become immediately due and payable. The Creditor shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Creditor, which, after deducting therefrom all its expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Creditor shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Creditor may require. The Mortgagor promptly shall notify the Creditor in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. The Creditor shall be entitled to retain, at the expense of the Mortgagor, its own legal counsel in connection with any such proceedings or threatened proceedings. Creditor shall be under no obligation to the Mortgagor or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

2.08 Care of the Property.

(a) The Mortgagor will preserve and maintain, or cause to be preserved and maintained, the Mortgaged Properties in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Properties or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Properties shall be removed, demolished or substantially altered without the prior written consent of the Creditor. The Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Properties, not exceeding in value at the time of disposition thereof Twenty-Five Thousand Dollars (\$25,000.00) for any single transaction, or a total of One Hundred Thousand Dollars (\$100,000.00) in any one year, upon replacing the same with, or substituting for the same, free and clear of all liens and security interests except those created by the Loan Documents, other furniture, furnishings, equipment, tools, appliances, machinery or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Mortgaged Properties, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.

(c) If the Mortgaged Properties or any part thereof are damaged by fire or any other cause, the Mortgagor shall give immediate written notice of the same to the Creditor.

(d) The Creditor hereby is authorized to enter upon and inspect the Mortgaged Properties, and to inspect the Mortgagor's or Mortgagor's agent's, with respect to the ownership, use, management and operation of the Mortgaged Properties, at any time during normal business hours.

(e) If all or any part of the Mortgaged Properties shall be damaged by fire or other casualty, the Mortgagor promptly shall restore the Mortgaged Properties to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Properties shall be physically damaged through condemnation, the Mortgagor promptly shall restore, repair or alter the remaining property in a manner satisfactory to the Creditor.

2.09 Further Assurances; After-Acquired Property.

(a) At any time, and from time to time, upon request by the Creditor, the Mortgagor, at Mortgagor's expense, will make, execute and deliver or cause to be made, executed and delivered to the Creditor and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Creditor any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Creditor, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Mortgagor under the Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Properties, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor so to do, the Creditor may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Creditor the agent and attorney-in-fact of the Mortgagor so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Creditor has given value under applicable Loan Documents) attached to and/or used in the operation of the Mortgaged Properties or any part thereof.

(b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 2.09, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Properties at any time acquired by the Mortgagor by whatsoever means, including that in the event the Mortgagor is the owner of an estate or interest in the Mortgaged Properties or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Mortgagor obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Mortgagor or the Creditor or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Creditor's making the Loan and other extensions of credit as aforesaid, and to secure the Loan and other indebtedness and obligations set forth above, Mortgagor hereby grants, bargains, sells, assigns, transfers and conveys to Creditor, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

2.10 Additional Security. Except as excluded in the Loan Agreement, the Creditor also shall have and hereby is granted a security interest in all monies, securities and other property of the Mortgagor, now or hereafter assigned, held, received, or coming into the possession, control, or custody of the Creditor by or for the account of the Mortgagor (including indebtedness due from the Creditor to the Mortgagor, and any and all claims of Mortgagor against Creditor, at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, the Creditor may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Loan or other Secured Obligations, and in such manner as the Creditor may determine, any such monies, securities or other property held or controlled by the Creditor. No such application of funds shall, unless otherwise expressly agreed by the Creditor in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such other Secured Obligations.

2.11 Leases Affecting the Land and Improvements. The Mortgagor shall comply with and observe its obligations as landlord or tenant under all leases affecting the Land and Improvements or any part thereof. If requested by Creditor, Mortgagor shall furnish Creditor with executed copies of all leases now or hereafter existing on any of the Land and Improvements; and all such leases now or hereafter entered into will be in form and substance subject to the approval of Creditor. Mortgagor shall not accept payment of rent under any such leases more than one (1) month in advance without the express written consent of Creditor. If requested by the Creditor, the Mortgagor shall execute and deliver to Creditor, as additional security, such other documents as may be requested by Creditor to evidence further the assignment to Creditor hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of any of the Land and Improvements from time to



time accruing. The Mortgagor shall not cancel, surrender or modify any lease affecting the Land and Improvements or any part thereof without the written consent of the Creditor.

2.12 Expenses. The Mortgagor shall pay or reimburse the Creditor for all reasonable attorneys' fees, costs and expenses incurred by the Creditor in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents, or as may otherwise be provided by law, or incurred by Creditor in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Creditor is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, any of the other Loan Documents, Mortgagor or the Mortgaged Properties, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Properties, any environmental condition of or affecting the Mortgaged Properties, or any action to protect the security hereof; and any such amounts paid or incurred by the Creditor shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

2.13 Performance by Creditor of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Properties, or otherwise described in Paragraphs 2.04 and 2.05 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, or of any of the other Loan Documents, then the Creditor, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Creditor in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Creditor with interest thereon calculated in the manner set forth in the applicable Loan Document(s), and at the default interest rate specified therein, or, if no default interest rate is specified, then at the rate set forth therein, plus two percentage points (2%). The Creditor shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Creditor hereby is empowered to enter and to authorize others to enter upon the Mortgaged Properties or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor for trespass or otherwise.

2.14 Books and Records. The Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Properties and shall furnish same to the Creditor or its agent as provided in the Loan Agreement.

2.15 Estoppel Affidavits. The Mortgagor within ten (10) days after written request from the Creditor shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and other Secured Obligations and whether or not any offsets or defenses exist against any principal and interest.

2.16 Alienation or Sale of Mortgaged Property. Except as provided in the Loan Agreement, the Mortgagor shall not sell, assign, mortgage, encumber, grant a security interest in or otherwise convey all or any part of the Mortgaged Properties without obtaining the express written consent of the Creditor at least thirty (30) days prior to such conveyance. If Mortgagor should sell, assign, mortgage, encumber, grant a security interest in or convey all, or any part, of the Mortgaged Properties without such consent by Creditor, then, in such event, the entire balance of the indebtedness secured by this Mortgage and all interest accrued thereon (or such parts as Creditor may elect) shall without notice become due and payable forthwith at the option of the Creditor.

2.17 Environmental and Compliance Matters Affecting the Land. Mortgagor represents, warrants and covenants as follows:

(a) Except as disclosed in the Loan Agreement, no Hazardous Materials (hereinafter defined) have been, are, or will be, while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Land. As used herein, the term "**Hazardous Materials**" includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("**CERCLA**") (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act ("**RCRA**") (42 U.S.C. Sections 6901, *et seq.*), the Clean Water Act (33 U.S.C. Sections 1251, *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act (15 U.S.C. Sections 2601, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications

promulgated pursuant thereto, and in the rules and regulations of the Mine Safety and Health Administration ("MSHA") pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

- (b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Land;
- (c) Except as disclosed in the Loan Agreement, all of the Land complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;
- (d) Except as disclosed in the Loan Agreement, there are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Land;
- (e) The Mortgagor promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Land or any part thereof.
- (f) Mortgagor shall give immediate oral and written notice to Creditor of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 2.17, or of any notice of other claim relating to the environmental or physical condition of the Land, or of its discovery of any matter which would make the representations, warranties and/or covenants herein concerning the Land to be inaccurate or misleading in any respect.

Mortgagor agrees to and do hereby indemnify and hold Creditor harmless from all loss, cost, damage, claim and expense incurred by Creditor on account of (i) the violation of any representation or warranty set forth in this Paragraph 2.17, (ii) Mortgagor's failure to perform any obligations of this Paragraph 2.17, (iii) Mortgagor's or the Land's failure to fully comply with all environmental laws, rules and regulations, with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Land. This indemnification shall survive the payment of the Loan, the exercise of any right or remedy under any Loan Document, and any subsequent sale or transfer of the Land, and all similar or related events or occurrences. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or placed on the Land after the acquisition of title to the Land by Creditor through foreclosure or deed in lieu of foreclosure or purchase from a third party after the indebtedness secured hereby has been paid in full.

2.18 Inspection Rights and Easements. In addition to other inspection rights of Creditor, the Mortgagor shall and hereby do grant and convey to the Creditor, its agents, representatives, contractors, and employees, to be exercised by Creditor following an Event of Default hereunder or under any of the other Loan Documents, an easement and license to enter on the Mortgaged Properties at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing (herein "Inspections"), as the Creditor, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Properties, to make an inventory of the Mortgaged Properties, and to determine whether the ownership, use and operation of the Mortgaged Properties are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health laws, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to the Creditor, the Creditor shall have no obligation to perform any such Inspections, or to take any remedial action. All the costs and expenses incurred by the Creditor with respect to any Inspections which the Creditor may conduct or take pursuant to this Paragraph 2.18, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid or cause to be repaid by the Mortgagor, with interest, and shall be secured by this Mortgage and the other Loan Documents.

2.19 Use, Governmental Compliance, etc. The Mortgagor shall: (a) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with the environmental laws, rules and regulations referenced in Paragraph 2.17(a) hereof or as otherwise may be applicable to the Land from time to time, (ii) the use of the Mortgaged Properties and the conduct of any business or activity on the Mortgaged Properties, and (iii) the construction, completion and occupancy of the improvements constructed or to be constructed on the Mortgaged Properties, including all required zoning, building, land use, environmental, wetlands, coastal development, endangered species, cultural resources, storm water discharge, liquor, occupancy, fire and utility approvals; (b) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Properties or any business or activity conducted thereon; and (c) not permit any act to be done on the Mortgaged Properties in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto. For the purposes hereof, (a) a "Governmental Authority" means any national, state, county, municipal or other government,



domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof having jurisdiction over or with respect to all or any part of the Mortgaged Properties, and (b) "Governmental Requirements" means all laws, rules, regulations, ordinances, judgments, decrees, codes, order, injunctions, notices and demand letters of any Governmental Authority.

2.20 Environmental Matters Affecting the Mineral Properties. To the full extent permitted by applicable law, Mortgagor agrees to defend, indemnify, and hold harmless Creditor and its respective directors, officers, employees, attorneys, and agents ("**Indemnified Parties**") from and against any and all loss, cost, expense, or liability (including attorneys' fees and court costs) incurred by any Indemnified Party in connection with or otherwise arising out of any and all claims or proceedings (whether brought by a private party, governmental agency, or otherwise) for bodily injury, property damage, abatement, remediation, environmental damage, or impairment or any other injury or damage resulting from or relating to any hazardous or toxic substance or contaminated material located upon, or otherwise relating to the Mineral Properties (whether or not the release of such materials was caused by Mortgagor, a tenant or subtenant of Mortgagor, a prior owner, a tenant or subtenant of any prior owner, or any other party and whether or not the alleged liability is attributable to the handling, storage, generation, transportation, or disposal of such substance or the mere presence of the substance on the Mineral Properties), which any Indemnified Party may incur due to the making of any of the indebtedness included within the Secured Obligations, the exercise of any of its rights under this Mortgage, or otherwise, but excluding any loss, cost, expense, or liability due to any Indemnified Party's gross negligence or willful misconduct. For the purposes of the indemnity contained in this paragraph, hazardous or toxic substances or contaminated material include, but are not limited to, asbestos and those substances within the scope of all federal, state, and local environmental laws and ordinances, including the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Superfund Amendment and Reauthorization Act, as same may be amended from time to time. The provisions of this paragraph shall survive, and shall not in any manner or to any extent be extinguished, diminished, novated or affected by, any foreclosure of the liens created by this Mortgage, any conveyance in lieu of foreclosure, the repayment of the Indebtedness, and the discharge and release of this Mortgage.

ARTICLE III ASSIGNMENT OF RENTS AND LEASES

3.01 Assignment of Rents and Leases. Mortgagor, in consideration of the Creditor's making the Loan and other extensions of credit secured hereby, and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Creditor on account of Mortgagor, including but not limited to attorneys' fees, and any and all other indebtedness secured hereby, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and in the other Loan Documents, does hereby sell, assign and transfer unto the Creditor all Contracts and all other leases, licenses, contracts, agreements, subleases and lease guaranties of or relating to all or part of the Mortgaged Properties, whether now existing or hereafter created or arising, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Properties or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Creditor under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to the Creditor, and the Mortgagor does hereby appoint irrevocably the Creditor its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Properties as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Properties to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Properties, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Creditor would have upon taking possession of the Mortgaged Properties pursuant to the provisions hereinafter set forth:

(a) The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Properties for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Properties has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Mortgagor. The Mortgagor waives any right of setoff against any person in possession of any portion of the Mortgaged Properties. Except for Permitted Liens, if any, the Mortgagor agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Properties.

(b) Nothing herein contained shall be construed as constituting the Creditor as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Properties or portions thereof by the Creditor pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Creditor, no liability shall be asserted or enforced against the Creditor, all such liability being expressly waived and released by the Mortgagor.

(c) It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagor shall have the right to collect the rents so long as there exists no Event of Default under this Mortgage, and provided further, that Mortgagor's right to collect such rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Creditor.

(d) The Creditor shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Properties, and the Mortgagor shall and do hereby agree to indemnify and hold the Creditor harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should the Creditor incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Creditor in connection with any one or more of said leases, subleases or agreements, the Mortgagor agrees to reimburse the Creditor for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Mortgagor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

(e) The Mortgagor does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Properties to pay all unpaid rental agreed upon in any lease, sublease or tenancy to the Creditor upon receipt of demand from said Creditor to pay the same.

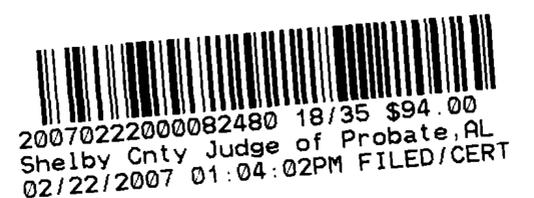
(f) Upon the occurrence of any Event of Default, as described in Paragraph 5.01 of this Mortgage, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Properties, Creditor shall have all rights and remedies set forth in Article V or elsewhere in this Mortgage.

3.02 Survival. Each of the provisions of this Article III shall be deemed a covenant running with the land and shall be binding upon Mortgagor, its successors, and assigns; and shall inure to the benefit of the Creditor, its successors, and assigns.

ARTICLE IV SECURITY AGREEMENT

4.01 Grant of Security Interest. Mortgagor (the "debtor" for purposes of the Uniform Commercial Code), in consideration of Lender's (the "secured party" for purposes of the Uniform Commercial Code is Creditor) making the Loan and other credit extensions included within the Secured Obligations, and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender or Creditor on account of Mortgagor, including but not limited to attorneys' fees, and any and all other indebtedness secured hereby, and further to secure the performance of the covenants, conditions and agreements herein set forth and set forth in the Loan Agreement, the Note and in the other Loan Documents, does hereby assign and grant to Creditor title to and a security interest in such portions of the Mortgaged Properties the security interest in and disposition of which is governed by the Uniform Commercial Code (the "Collateral").

4.02 Definitions and Interpretation of Uniform Commercial Code. All terms used herein which are defined in the Alabama Uniform Commercial Code (the "Uniform Commercial Code") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein. References herein to the Uniform Commercial Code shall mean the Alabama Uniform Commercial Code as existing on the date of this Mortgage and as revised and amended from time to time. Anything to the contrary herein notwithstanding, rights and remedies of the debtor and secured party under the Uniform Commercial Code shall be deemed to mean such rights and remedies existing under the Uniform Commercial Code as in effect on the date such rights or remedies are enforced; provided, that no such interpretation shall have the effect of invalidating any security interest created hereunder. No reference herein to rights or remedies existing under the Uniform Commercial Code on the date of this Mortgage, which may not exist or which



may be modified under later revisions or amendments to the Uniform Commercial Code, shall have the effect of invalidating this Mortgage or any security interest created hereunder.

4.03 Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth in the Loan Agreement, and except for the financing statements executed by Mortgagor and Creditor. The Mortgagor promises to pay or cause to be paid to the Creditor the fees incurred in filing any financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

4.04 Representations, Warranties, and Covenants of Mortgagor (Collateral). Except as provided in the Loan Agreement, with respect to the Collateral, Mortgagor, as debtor (and in this Article IV and otherwise herein called "**Debtor**"), represents and warrants to, and covenants and agrees with, Creditor, its successors and assigns, as secured party (and in this Article IV and otherwise herein called "**Secured Party**"), that:

(a) To the extent permitted by law, Debtor expressly waives any notice of sale or other disposition of the Collateral and any other right or remedies of a debtor or formalities prescribed by law relative to the sale or disposition of the Collateral or the exercise of any other right or remedy of Secured Party existing after default hereunder, and to the extent any such notice is required and cannot be waived, Debtor agrees that if such notice is mailed, postage prepaid, to Debtor at Debtor's address set out herein at least ten (10) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice.

(b) Following the occurrence of any default hereunder or an Event of Default, Secured Party is expressly granted the right, at its option, to transfer at any time to itself or to its nominee the Collateral, or any part thereof, to receive the monies, income, proceeds, or benefits attributable or accruing thereto, and to hold the same as security for the Indebtedness or to apply it on the principal and interest or other amounts owing on any of the Indebtedness, whether or not then due, in such order or manner as Secured Party may elect. All rights to marshalling of assets of Debtor, including any such right with respect to the Collateral, are hereby waived.

(c) All recitals in any instrument of assignment or any other instrument executed by Secured Party incident to the sale, transfer, assignment, or other disposition or utilization of the Collateral, or any part thereof, hereunder shall, in the absence of manifest error, be prima facie evidence of the matter stated therein. No other proof shall be required to establish full legal propriety of the sale or other action or of any fact, condition, or thing incident thereto; and all prerequisites of such sale or other action and of any fact, condition, or thing incident thereto shall be presumed conclusively to have been performed or to have occurred.

(d) All expenses of preparing for sale, or other use or disposition, selling or otherwise using or disposing of the Collateral, and the like which are incurred or paid by Secured Party as authorized or permitted hereunder, including all reasonable attorneys' fees, legal expenses, and costs shall be added to the Secured Obligations and the Debtor shall be liable therefor.

(e) Should Secured Party elect to exercise its rights under the applicable Uniform Commercial Code as to part of the Collateral, such election shall not preclude Secured Party or the Creditor from exercising any other rights and remedies granted by this instrument as to the remainder of the Collateral.

(f) Any copy of this instrument may also serve as a financing statement under the applicable Uniform Commercial Code between the Debtor, whose present address is Mortgagor's address listed herein, and Secured Party, whose present address is the Creditor's address listed herein.

(g) So long as any amount remains unpaid on any of the Secured Obligations, Debtor will not execute, and there will not be filed in any public office, any financing statement or statements affecting the Collateral other than financing statements in favor of Secured Party hereunder, unless the prior written specific consent and approval of Secured Party shall have first been obtained.

(h) Secured Party is authorized to file, in any jurisdiction where Secured Party deems it necessary, a financing statement or statements covering the Collateral, and Debtor will pay the cost of filing or recording this instrument and any financing statements, in all public offices at any time and from time to time whenever filing or recording of any financing statement or of this instrument is reasonably deemed by Secured Party to be necessary or desirable.

(i) Debtor's legal name is Mortgagor's name as set forth in the first paragraph of this Mortgage; Debtor's state of incorporation or registration (if Debtor was created by such state filing) is the state identified in the certificate of the

Debtor's legal name and location delivered to Creditor in connection with the execution of the Loan Documents, the office where Debtor keeps Debtor's accounting records concerning the Collateral covered by this Security Agreement is Mortgagor's address listed herein.

(j) So long as any amount remains unpaid on any of the Secured Obligations, Debtor will not, without the prior written consent of Secured Party, change its location, change its form of organization or ownership, merge or reform into another entity, move the Collateral to any other location, or file any release, amendment, partial release or termination statement with respect to any of the Collateral.

(k) Whenever any of the Collateral is in the possession or control of the Creditor, whether for perfection, enforcement or otherwise, Debtor agrees to the Creditor's unrestricted use and operation of the Collateral. Debtor waives any rights it may have to require the Creditor to keep all nonfungible Collateral segregated or separately identifiable and agrees that the Creditor may commingle any and all of the Collateral with its own property without any liability to Debtor for so doing.

(l) At the request of Creditor, Debtor shall give the Creditor a certification, in written or other record form, attesting that Debtor has not changed any of the following without the prior written consent of the Creditor: Debtors legal name, the state of Debtor's incorporation or registration, Debtor's chief executive office, or Debtor's principal place of business.

(m) In any disposition of the Collateral by the Creditor, the Creditor may (1) comply with any applicable state or federal law requirements, and (2) in its sole discretion, disclaim any warranties of title or the like. No such actions by the Creditor shall be considered to adversely affect the commercial reasonableness of any such disposition of the Collateral.

(n) The Collateral is used or bought primarily for business purposes.

(o) If the Loan is a construction loan, the Collateral is being acquired and/or installed with the proceeds of the Note which Creditor may disburse directly to the seller, contractor, or subcontractor.

(p) If certificates of title are issued or outstanding with respect to any of the Collateral, the Mortgagor shall cause the Creditor's interest to be properly noted thereon.

4.05 Assignment of Liabilities. If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Creditor transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Creditor's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Creditor retains any of such indebtedness or instruments, Creditor shall continue to have the rights and remedies herein set forth with respect thereto.

4.06 No Obligation of Creditor Under Assigned Contracts. Unless an Event of Default occurs, and Creditor exercises its remedies, the Creditor shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any contracts or agreements relating to the Mortgaged Properties, and the Mortgagor shall and does hereby agree to indemnify and hold the Creditor harmless of and from any and all liability, loss or damage which it may or might incur under any such contracts or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or agreements. Should the Creditor incur any such liability, loss or damage, under said contracts or agreements or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Creditor in connection with any one or more of said contracts or agreements, the Mortgagor agrees to reimburse the Creditor for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Mortgagor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

4.07 Default (Security Agreement). Upon the occurrence of any Event of Default, as described in Paragraph 5.01 of this Mortgage, the Creditor shall have all rights and remedies set forth in Article V or elsewhere in this Mortgage.

4.08 Other Filings. Portions of the Collateral consist of: (i) the Extracted Materials and the proceeds and accounts resulting from the sale thereof and (ii) goods which are or will become fixtures attached to the Land, and

Debtor hereby agrees that this instrument shall be filed in the Real Property Records and the Uniform Commercial Code Records of the County in which the Land and the Coal Lease Land are located. The name of the record owner of the Mortgaged Properties is the party named herein as the Mortgagor. Nothing herein contained shall impair or limit the effectiveness of this document as a security agreement or financing statement.

ARTICLE V EVENTS OF DEFAULT AND REMEDIES

5.01 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall have the same meaning as contained in the Loan Agreement. In addition, the term "Event of Default" shall include the occurrence of a default under any lease or other instrument securing the Loan hereby.

5.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness secured hereby (or such parts as Creditor may elect) with interest accrued thereon (or such parts as Creditor may elect) shall, at the option of the Creditor, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Creditor to exercise such option when entitled to do so shall not be considered as a waiver of such right.

5.03 Right of Creditor to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, the Mortgagor, upon demand of the Creditor, shall forthwith surrender to the Creditor the actual possession of the Mortgaged Properties, and if and to the extent permitted by law, the Creditor or its agents may enter and take and maintain possession of all the Mortgaged Properties, together with all the documents, books, records, papers and accounts of the Mortgagor or then owner of the Mortgaged Properties relating thereto, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Creditor, as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Properties (or any portion thereof selected by Creditor) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Properties (or any portion thereof selected by Creditor) insured; (iii) manage and operate the Mortgaged Properties (or any portion thereof selected by Creditor) and exercise all the rights and powers of the Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Creditor, all as the Creditor from time to time may determine to be to its best advantage; and the Creditor may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Properties (or any portion thereof selected by Creditor), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Properties (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Creditor may determine to pay, (ee) other proper charges upon the Mortgaged Properties or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Creditor, Creditor shall apply the remainder of the moneys so received by the Creditor, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph 2.04; third to the payment of any other sums required to be paid by Mortgagor under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under other Loan Documents, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

(c) Whenever all such Events of Default have been cured and satisfied, the Creditor may, at its option, surrender possession of the Mortgaged Properties to the Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Properties as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

5.04 Receiver.

(a) If an Event of Default shall have occurred and be continuing, the Creditor, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness 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 Mortgaged Properties and to collect the rents, profits, issues, royalties and revenues thereof.

(b) The Mortgagor shall pay to the Creditor upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 5.04; and all such expenses shall be secured by this Mortgage.

5.05 Creditor's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Creditor may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any other Loan Document; and (d) to pursue any other remedy available to Creditor, all as the Creditor may elect.

5.06 Rights of a Secured Party. Upon the occurrence of an Event of Default, the Creditor, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

(a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Mortgagor and without any liability for rent, storage, utilities or other sums;

(b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Creditor shall give to Mortgagor at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral;

(c) The right to require Mortgagor, upon request of Creditor, to assemble and make the Collateral available to Creditor at a place reasonably convenient to Mortgagor and Creditor; and

(d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Creditor upon default, Mortgagor does hereby irrevocably appoint Creditor attorney-in-fact for Mortgagor with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Mortgagor could do, and to sell, assign, and transfer any collateral to Creditor or any other party.

5.07 Power of Sale. If an Event of Default shall have occurred, Creditor may sell the Mortgaged Properties to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Properties are 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, Creditor or any person conducting the sale for Creditor is authorized to execute to the purchaser at said sale a deed to the Mortgaged Properties so purchased. Creditor may bid at said sale and purchase the Mortgaged Properties, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Properties may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Creditor may elect. The provisions of Paragraph 5.06 of this Mortgage shall apply with respect to Creditor's enforcement of rights or interests in personal property which constitutes Mortgaged Properties hereunder.

5.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 5.07, any sale pursuant to Paragraph 5.06, any proceeds of Coal collected by Creditor, and any other sums received shall be applied by Creditor to the payment or prepayment of the Secured Obligations as follows:

(a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Properties (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, or the other Loan Documents, as applicable, which Creditor may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Creditor;

(c) Third, to the payment of the indebtedness secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, or the other Loan Documents, as applicable, whether or not all of such indebtedness is then due;

(d) Fourth, the balance, if any, shall be paid as provided by law.

5.09 Creditor's Option on Foreclosure. At the option of the Creditor, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Creditor exercises its option to foreclose this Mortgage in equity, Creditor may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Properties, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Mortgagor a defense to any proceedings instituted by the Creditor to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Properties.

5.10 Waiver of Exemption. Mortgagor 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 Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Properties be set off against any part of the indebtedness secured hereby.

5.11 Suits to Protect the Mortgaged Properties. The Creditor shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Properties by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Properties and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Creditor.

5.12 Mortgagor to Pay the Note on any Default in Payment; Application of Moneys by Creditor. If default shall occur in the payment of any amount due under this Mortgage, the Note, any of the other Loan Documents, or if any other Event of Default shall occur under this Mortgage, then, upon demand of the Creditor, the Mortgagor shall pay to the Creditor the whole amount due and payable under the Note and under all other Loan Documents; and in case the Mortgagor shall fail to pay the same forthwith upon such demand, the Creditor shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Creditor's agents and attorneys.

5.13 Delay or Omission No Waiver. No delay or omission of the Creditor or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, or any of the other Loan Documents, to the Creditor may be exercised from time to time and as often as may be deemed expedient by the Creditor.

5.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, or under any of the other Loan Documents, shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Creditor (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, or in any of the other Loan Documents; (d) releases any part of the Mortgaged Properties from this Mortgage

or otherwise changes any of the terms of this Mortgage, the Note, or any of the other Loan Documents; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Properties; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, or the other Loan Documents, of the Mortgagor or any subsequent purchaser of the Mortgaged Properties or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Creditor from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Creditor shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Properties, the Creditor, without notice to any person, corporation or other entity (except notice as may be required by applicable law) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Properties or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

5.15 Discontinuance of Proceedings — Position of Parties Restored. In case the Creditor shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Creditor, then and in every such case the Mortgagor and the Creditor shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Creditor shall continue as if no such proceeding had been taken.

5.16 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Creditor by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, or any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute.

5.17 Additional Agreements of Mortgagor. Mortgagor further agrees as follows:

(a) Actions of Creditor With Respect to Secured Obligations. Creditor is authorized, without notice or demand and without affecting this Mortgage, from time to time to (i) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Note or any other Secured Obligations of Mortgagor, or any part thereof, including increase or decrease of the rate of interest thereof; (ii) take and hold security for the payment of the Note or any Secured Obligations of Mortgagor, and exchange, enforce, waive and release any such security; and (iii) apply such security and direct the order or manner of sale thereof as Creditor in its discretion may determine. Creditor may without notice assign this Mortgage in whole or in part.

(b) Waiver of Mortgagor; No Right of Subrogation. Mortgagor waives any right to require Creditor to (i) proceed against Guarantor or other person or entity whatsoever; (ii) proceed against or exhaust any security held from Guarantor; (iii) pursue any other remedy in Creditor's power whatsoever. Mortgagor waives any defense arising by reason of any disability or other defense of Guarantor or by reason of the cessation from any cause whatsoever of the liability of Guarantor. Until the Note and all other Secured Obligations of Mortgagor to Creditor shall have been paid in full, Mortgagor shall have no right of subrogation, and waives any right to enforce any remedy which Creditor now has or may hereafter have against Mortgagor, and waives the benefit of, and any right to participate in any security now or hereafter held by Creditor. Mortgagor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and of the existence, creation, or incurring of new or additional indebtedness.

(c) Other Security or Collateral of Creditor. It is the intent hereof that this Mortgage shall be and remain unaffected, (i) by the existence or non-existence, validity or invalidity of any pledge, assignment or conveyance given as security for the Note or other Secured Obligations of Guarantor or (ii) by any understanding or agreement that any other person, firm or corporation was or is to execute any other instrument, or the Note or notes evidencing any indebtedness of Mortgagor, or any part thereof; or (iii) by resort on the part of the Creditor to any other security or remedy for the collection of any indebtedness of Guarantor; or (iv) by the bankruptcy of Guarantor and in case of any such bankruptcy, by failure of Creditor to file claim against such bankrupt's estate, for the amount of such bankrupt's liability to Creditor.

(d) Mortgage Independent of Obligations of Guarantor. This Mortgage is independent of the obligations of Guarantor, and Creditor may exercise its rights under this Mortgage whether or not action is brought against Guarantor

or any other person or entity liable for the indebtedness secured hereby or any part thereof; and Mortgagor waives the benefit of any statute of limitations or other defenses affecting this Mortgage or the enforcement thereof.

**ARTICLE VI
MISCELLANEOUS**

6.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Mortgagor, or by or on behalf of Creditor shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, the Mortgagor shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of the Creditor.

6.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof. "Herein," "hereby," "hereunder," "hereof," and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

6.03 Gender; Number. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

6.04 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, or in any of the other Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, and in the other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

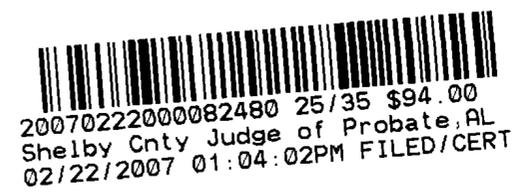
6.05 Loan Documents. Wherever reference is made herein to this Mortgage, the Note, or the other Loan Documents, such reference shall include all renewals, extensions, modifications and refinancings thereof.

6.06 Instrument Under Seal. 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.

6.07 Addresses and Other Information. 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 Mortgagor:	Tacoa Minerals, LLC
	Address of Mortgagor:	5308 Kenley Way Birmingham, AL 35242
(b)	Name of Creditor (Secured Party):	Madison Management, LLC
	Address of Creditor:	<u>711 5th Ave. - Fifth Floor</u> <u>NY, NY 10022</u>
(c)	Record Owner of Land described on <u>Exhibit A</u> hereto:	Mortgagor
(d)	Mortgagor's Organizational ID Number	N/A

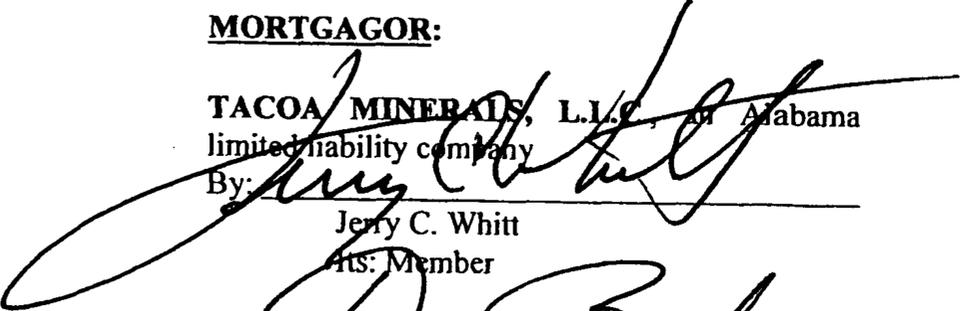
6.08 Applicable Law. This Mortgage shall be governed in all respects by the laws of the State of Alabama.



IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed and effective as of the day and year first above written, although actually executed on the date or dates reflected below.

MORTGAGOR:

TACOA MINERALS, L.L.C., an Alabama
limited liability company

By: 

Jerry C. Whitt
Its: Member

By: 

Darryl Bookout
Its: Member



STATE OF ALABAMA

SHELBY COUNTY

I, Renea C. Lamb, a notary public in and for said county in said state, hereby certify that Jerry C. Whitt, whose name as Member of **TACOA MINERALS, L.L.C.**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 20th day of Feb., 2007.

Renea C. Lamb
Notary Public

[Notarial Seal]

My commission expires: 12/29/2009

STATE OF ALABAMA

SHELBY COUNTY

I, Renea C. Lamb a notary public in and for said county in said state, hereby certify that Daryn Bookout, whose name as Member of **TACOA MINERALS, L.L.C.**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 20th day of Feb., 2007.

Renea C. Lamb
Notary Public

[Notarial Seal]

My commission expires: 12/29/2009

EXHIBIT A

Description of Fee Land

Parcel 1:

A tract of land, situated in the Northeast quarter and also in the East half of the Northwest quarter of Section 22, Township 21 South, Range 4 West more particularly described as follows:

Commence at the Northeast corner of Section 22, Township 21, South, Range 4 West; thence run Westerly along a straight line which is the North line of said Section 22, 1457.97 feet; thence turn left 90 degrees 00 minutes 19 seconds and run Southerly along a straight line 730.86 feet to the point of beginning; thence turn left 55 degrees 21 minutes 55 seconds and run Southeasterly along a straight line 199.96 feet; thence turn right 9 degrees 05 minutes 07 seconds and run Southeasterly along a straight line 190.73 feet to the centerline of a road; thence turn right 81 degrees 40 minutes 50 seconds and run Southwesterly along a straight line and along the centerline of said road 336.14 feet to the beginning of the arc of a curve tangent to straight line, said arc turning to the left, having a radius of 269.77 feet and being subtended by central angle of 43 degrees 09 minutes 15 seconds; thence in a Southwesterly direction along said arc which is the centerline of said road 203.19 feet; thence in a Southerly direction along said centerline and along a straight line tangent to said arc 94.79 feet to the beginning of the arc of a curve tangent to said straight line, said arc turning to the right, having a radius of 552.51 feet and being subtended by a central angle of 58 degrees 56 minutes 00 seconds; thence in a Southwesterly direction along said arc which is the centerline of said road 568.30 feet; thence in a Southwesterly direction along said road and along a straight line tangent to said arc 160.32 feet; thence turn right 78 degrees 15 minutes 52 seconds and run Northwesterly along a straight line 296.04 feet; thence turn left 62 degrees 53 minutes 50 seconds and run Southwesterly along a straight line 440.45 feet; thence turn right 22 degrees 46 minutes 07 seconds and run Westerly along a straight line 261.82 feet; thence turn right 46 degrees 40 minutes 01 seconds and run Northwesterly along a straight line 184.45 feet; thence turn right 28 degrees 41 minutes 00 seconds and run Northwesterly along a straight line 355.92 feet; thence turn right 0 degrees 49 minutes 02 seconds and run Northwesterly along a straight line 333.68 feet; thence turn right 40 degrees 15 minutes 31 seconds and run Northeasterly along a straight line 279.31 feet; thence turn right 14 degrees 59 minutes 29 seconds and run Northeasterly along a straight line 134.55 feet; thence turn right 25 degrees 52 minutes 33 seconds and run Northeasterly along a straight line 119.99 feet; thence turn right 12 degrees 47 minutes 52 seconds and run Northeasterly along a straight line 225.96 feet; thence turn left 5 degrees 57 minutes 24 seconds and run Northeasterly along a straight line 266.84 feet; thence turn right 60 degrees 56 minutes 19 seconds and run Southeasterly along a straight line 201.82 feet; thence turn left 20 degrees 50 minutes 53 seconds and run Southeasterly along a straight line 212.82 feet; thence turn left 67 degrees 55 minutes 36 seconds and run Northeasterly along a straight line 442.38 feet to the point of beginning.

Parcel 2:

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

Commence at the Southeast corner of Section 21, Township 21 South, Range 4 West; thence run Westerly along the South line of said Section 21, 1875.40 feet; thence turn right an angle of 90 degrees and run Northerly and at right angles to said South line 978.69 feet to the point of beginning; thence turn left an angle of 86 degrees 42 minutes 02 seconds and run Westerly 333.28 feet; thence turn right an angle of 76 degrees 00 minutes 24 seconds and run Northwesterly 444.58 feet; thence turn right an angle of 78 degrees 53 minutes 05 seconds and run Northeasterly 230.20 feet; thence turn left an angle of 26 degrees 45 minutes 26 seconds and run Northeasterly 400.06 feet; thence right an angle of 31 degrees 49 minutes and run Northeasterly 266.25 feet; thence turn right an angle of 52 degrees 51 minutes 13 seconds and run Southeasterly 128.05 feet; thence turn right an angle of 64 degrees 49 minutes 30 seconds and run Southwesterly 675.16 feet; thence turn left an angle of 21 degrees 27 minutes 52 seconds and run

Southeasterly 360.58 feet; thence turn right an angle 123 degrees 39 minutes 23 seconds and run
Northwesterly 408.55 feet to the point of beginning.



EXHIBIT B

DESCRIPTION OF COAL LEASE LAND

1. The September 6, 2005 RGGGS Coal Lease relates to land situated in Sections 21, 22, 28, 29, 30 and 31 of Township 21 South Range 4 West in Shelby County, Alabama.
2. The September 6, 2005 U.S. Steel Coal Lease relates to land situated in Sections 15, 20, 21, 22, 23, 28, 29, 31, 32, 34 and 35 of Township 21 South, Range 4 West and Section 3 of Township 22 South, Range 4 West in Shelby County, Alabama.
3. The February 20, 2007 RGGGS Coal Lease relates to land situated in Sections 21, 28, 29, 32, 33 and 34 of Township 21 South, Range 4 West in Shelby and Bibb Counties, Alabama, and grants to Mortgagor, among other things, underground mining rights with respect to the Upper Thompson Seam.

Exhibit C
Permitted Liens

- Item 1. General and special taxes for the current year and subsequent years.
- Item 2. [Intentionally Omitted]
- Item 3. [Intentionally Omitted]
- Item 4. Encroachments, variations in area or in measurements, boundary line disputes, roadways and matters not of record, including lack of access, which would be disclosed by accurate survey and inspection of the property.
- Item 5. Easements or other uses of subject property not visible from the surface, or easements or claims of easements, not shown by the public records.
- Item 6. Rights or claims of parties in possession not shown by public records.
- Item 7. This policy does not insure title to land comprising the shores or bottoms of navigable waters or to artificial accretions or fills.
- Item 8. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges, immunities and release of damages relating thereto, as recorded in Instrument #2004-14856, Instrument #2004-14857, Instrument #2004-67584 and Instrument #2005-354.
- Item 9. Agreement with respect to surface and subsurface uses between United States Steel Corporation and RGGGS Land and Minerals, Ltd., L.P., as recorded in Instrument #2004-14860 and Instrument #2004-14861.
- Item 10. Non-exclusive easements reserved by United States Steel Corporation and also conditions, restrictions, reservations and limitations as set out in Instrument #2004-67584 and Instrument #2005-354.
- Item 11. Hunting Agreement dated May 8th, 1996, between USX Corporation and State of Alabama Department of Conservation and Natural Resources.
- Item 12. Terms and conditions of that Coal Seam Gas Lease, dated April 9, 2002, between

United States Steel Corporation and Geomet, Inc., as set out in Memorandum of Lease recorded in Instrument #2002-29918 and notice of extension in Instrument #2004-22412 and Fourth Amendment recorded in Instrument #2005-26637 and Instrument #2005-26638.

- Item 13. Memorandum of Lease as recorded in Instrument #2005-55795 together with assumption of Coal Mining Lease recorded in Instrument #2005-55796.
- Item 14. Agreement for easement for overhead electrical transmission line and rights of ingress and egress in Instrument #2005-64630.
- Item 15. Mortgage executed by Tocoa Minerals, LLC. to Capital Partners Leasing, Inc., in the amount of \$2,000,000.00, dated 06/30/05, filed 07/07/05, recorded in Instrument #2005-34019 along with UCC in Instrument #2005-34020, and last transferred and assigned to CIII Capital Management by instrument dated 07/03/06, filed 08/18/06, and recorded in Instrument #2006-40645 and Assignment of UCC in Instrument #2006-41396.


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EXHIBIT C

Description of Fee Land

Parcel 1:

A tract of land, situated in the Northeast quarter and also in the East half of the Northwest quarter of Section 22, Township 21 South, Range 4 West more particularly described as follows:

Commence at the Northeast corner of Section 22, Township 21, South, Range 4 West; thence run Westerly along a straight line which is the North line of said Section 22, 1457.97 feet; thence turn left 90 degrees 00 minutes 19 seconds and run Southerly along a straight line 730.86 feet to the point of beginning; thence turn left 55 degrees 21 minutes 55 seconds and run Southeasterly along a straight line 199.96 feet; thence turn right 9 degrees 05 minutes 07 seconds and run Southeasterly along a straight line 190.73 feet to the centerline of a road; thence turn right 81 degrees 40 minutes 50 seconds and run Southwesterly along a straight line and along the centerline of said road 336.14 feet to the beginning of the arc of a curve tangent to straight line, said arc turning to the left, having a radius of 269.77 feet and being subtended by central angle of 43 degrees 09 minutes 15 seconds; thence in a Southwesterly direction along said arc which is the centerline of said road 203.19 feet; thence in a Southerly direction along said centerline and along a straight line tangent to said arc 94.79 feet to the beginning of the arc of a curve tangent to said straight line, said arc turning to the right, having a radius of 552.51 feet and being subtended by a central angle of 58 degrees 56 minutes 00 seconds; thence in a Southwesterly direction along said arc which is the centerline of said road 568.30 feet; thence in a Southwesterly direction along said road and along a straight line tangent to said arc 160.32 feet; thence turn right 78 degrees 15 minutes 52 seconds and run Northwesterly along a straight line 296.04 feet; thence turn left 62 degrees 53 minutes 50 seconds and run Southwesterly along a straight line 440.45 feet; thence turn right 22 degrees 46 minutes 07 seconds and run Westerly along a straight line 261.82 feet; thence turn right 46 degrees 40 minutes 01 seconds and run Northwesterly along a straight line 184.45 feet; thence turn right 28 degrees 41 minutes 00 seconds and run Northwesterly along a straight line 355.92 feet; thence turn right 0 degrees 49 minutes 02 seconds and run Northwesterly along a straight line 333.68 feet; thence turn right 40 degrees 15 minutes 31 seconds and run Northeasterly along a straight line 279.31 feet; thence turn right 14 degrees 59 minutes 29 seconds and run Northeasterly along a straight line 134.55 feet; thence turn right 25 degrees 52 minutes 33 seconds and run Northeasterly along a straight line 119.99 feet; thence turn right 12 degrees 47 minutes 52 seconds and run Northeasterly along a straight line 225.96 feet; thence turn left 5 degrees 57 minutes 24 seconds and run Northeasterly along a straight line 266.84 feet; thence turn right 60 degrees 56 minutes 19 seconds and run Southeasterly along a straight line 201.82 feet; thence turn left 20 degrees 50 minutes 53 seconds and run Southeasterly along a straight line 212.82 feet; thence turn left 67 degrees 55 minutes 36 seconds and run Northeasterly along a straight line 442.38 feet to the point of beginning.


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Parcel 2:

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

Commence at the Southeast corner of Section 21, Township 21 South, Range 4 West; thence run Westerly along the South line of said Section 21, 1875.40 feet; thence turn right an angle of 90 degrees and run Northerly and at right angles to said South line 978.69 feet to the point of beginning; thence turn left an angle of 86 degrees 42 minutes 02 seconds and run Westerly 333.28 feet; thence turn right an angle of 76 degrees 00 minutes 24 seconds and run Northwesterly 444.58 feet; thence turn right an angle of 78 degrees 53 minutes 05 seconds and run Northeasterly 230.20 feet; thence turn left an angle of 26 degrees 45 minutes 26 seconds and run Northeasterly 400.06 feet; thence right an angle of 31 degrees 49 minutes and run Northeasterly 266.25 feet; thence turn right an angle of 52 degrees 51 minutes 13 seconds and run Southeasterly 128.05 feet; thence turn right an angle of 64 degrees 49 minutes 30 seconds and run Southwesterly 675.16 feet; thence turn left an angle of 21 degrees 27 minutes 52 seconds and run Southeasterly 360.58 feet; thence turn right an angle 123 degrees 39 minutes 23 seconds and run Northwesterly 408.55 feet to the point of beginning.


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EXHIBIT D

Description of Coal Lease Land

1. The September 6, 2005 RGGGS Coal Lease relates to land situated in Sections 21, 22, 28, 29, 30 and 31 of Township 21 South Range 4 West in Shelby County, Alabama.
2. The September 6, 2005 U.S. Steel Coal Lease relates to land situated in Sections 15, 20, 21, 22, 23, 28, 29, 31, 32, 34 and 35 of Township 21 South, Range 4 West and Section 3 of Township 22 South, Range 4 West in Shelby County, Alabama.
3. The February 20, 2007 RGGGS Coal Lease relates to land situated in Sections 21, 28, 29, 32, 33 and 34 of Township 21 South, Range 4 West in Shelby and Bibb Counties, Alabama, and grants to Mortgagor, among other things, underground mining rights with respect to the Upper Thompson Seam.



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