

**EXHIBIT 34 ADDENDUM**  
**DIVISION OF WILDLIFE LEASE**

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### COAL MINING LEASE

THIS COAL MINING LEASE (hereinafter referred to as the "Lease"), made and entered into this 14th day of March, 2008 (hereinafter the "Effective Date"), by and between the **STATE OF COLORADO** acting by and through the **DEPARTMENT OF NATURAL RESOURCES**, for the use and benefit of the **DIVISION OF WILDLIFE and WILDLIFE COMMISSION**, whose address is 6060 Broadway, Denver Colorado 80216 (hereinafter referred to as "Lessor" or "State"), and **NEW ELK COAL COMPANY, LLC**, a Kansas limited liability company whose address is 136 West Main St., Trinidad, Colorado 81082 (hereinafter referred to as "Lessee").

WITNESSETH: Lessor, for and in consideration of:

- (i) Lessee's payment of the sum of One Dollar (\$1.00), receipt and sufficiency of which is hereby acknowledged;
- (ii) Lessee's agreement to annually pay rent in the amounts provided for in Section 1 below (hereinafter referred to as the "Annual Rent");
- (iii) Lessee's agreement to annually pay royalty in advance pursuant to Section 2 below (hereinafter referred to as the "Annual Advance Minimum Royalty");
- (iv) Lessee's agreement to pay production royalty pursuant to Section 3 below (hereinafter referred to as the "Production Royalty"); and
- (v) Lessee's agreement to pay a haulage royalty pursuant to Section 4 below (hereinafter referred to as the "Haulage Royalty"); and
- (vi) the terms, conditions and agreements herein, to be kept and performed by Lessee, its successors and assigns,

does hereby lease to Lessee the right and privilege of exploring and prospecting by underground methods only for, and mining of and taking of coal from all coal seams mineable only by underground mining methods, subject to the terms and conditions set forth herein, from beneath lands herein described, situated in the County of Las Animas, State of Colorado, to-wit:

#### Parcel 1:

All land lying within the boundaries of the permit area for the New Elk Mine as of June 1, 1997, as more specifically described in Exhibit A-1 attached hereto and shown as Parcel 1 on the plat attached hereto as Exhibit A-3 hereto

containing 3,997.8 acres, more or less;

and

## Parcel 2:

The southern portion of the land that is described by metes and bounds in Exhibit A-2 attached hereto, being that portion that lies in Sections 19, 30 and 31 in Township 33 South, Range 67 West, 6th P.M., Sections 6, 7, 8, 15, 16 17, 18, 19, 20, 21, 22, 28, 29 and 30 in Township 34 South, Range 67 West, 6th P.M., and in Sections 1, 2, 12, 13 and 24, in Township 34 South, Range 68 West, 6th P.M. and is shown as Parcel 2 on the plat attached Exhibit A-3 hereto

containing 11,555 acres, more or less

with Parcel 1 and Parcel 2 together referenced as the "Leased Premises" and containing a total of 15,552.8 acres, more or less. Lessor also grants to Lessee the following rights:

(a) The right to enter underground into and through the Leased Premises, at such points and in such manner as may be necessary or convenient for the purpose of mining all coal mineable by any underground mining method (*i.e.*, any method except the strip or surface mining method), subject to the provisions of Section 19 of this Lease; and

(b) The right to have and use the free and uninterrupted right-of-way under the Leased Premises, at such points and in such manner as may be necessary or convenient to the mining, removal, processing and marketing of said coal; and the right to transport under the Leased Premises any coal now or hereafter owned, leased or otherwise acquired by Lessee and located in the vicinity of the Leased Premises, subject to the Haulage Royalty with respect to removal of coal through the Leased Premises as described in Section 4; and

(c) The right to use only so much of the surface above Parcel 2 of the Leased Premises as may be reasonably required to re-open, use, maintain and remove two existing airshafts, to construct, use, maintain and remove additional airshafts, and to extend, maintain and remove power lines to airshafts pursuant to the terms and provisions of Section 10 of this Lease; and

(d) The right to reasonable ingress and egress to airshafts on existing roads, subject to the conditions and restrictions contained in Section 10 of this Lease.

The above-mentioned rights granted are subject to all existing easements and rights-of-way of third parties, and the rights of surface lessees, and further subject to the terms, conditions and agreements set out in this Lease. The above mentioned rights may be exercised in connection with mining or development on the Leased Premises, or with mining or development on adjacent lands so long as Lessee is not in default under the terms of this Lease and Lessee continues to pay to Lessor any and all royalties or rentals due under the terms of this Lease.

RESERVING, however, to the State:

- A. All rights and privileges of every kind and nature, except as are herein specifically granted.

- B. The right to use or lease the Leased Premises or any part thereof at any time for any purpose, including the right to explore and prospect said premises for minerals other than coal. The use and leasing of said premises shall be for purposes other than and not inconsistent with the rights and privileges herein specifically granted.
- C. The right to dispose of or lease the surface above the Leased Premises where Lessor is the surface owner.
- D. The right at all times during the life of this Lease to go upon the Leased Premises and every part thereof for the purpose of inspecting same, and the books of accounts and records of mineral workings therein, and of ascertaining whether or not said Lessee and those holding thereunder by and from it, are carrying out the terms, covenants and agreements of this Lease.
- E. The right at any time to grant a right-of-way upon, over or across all or any part of the Leased Premises as to which Lessor is the surface owner for any ditch, reservoir, railroad, communication system, electric powerline, pipeline, schoolhouse or other lawful purpose. Such grants shall be subordinate to the rights of Lessee, including the right to subside the surface of the Leased Premises, and shall provide that any and all damages caused to any structures or improvements placed upon the surface of the Leased Premises subsequent to the date hereof shall be repaired by and at the expense of the party to whom the easement or right-of-way was granted. If the grant of such rights shall unreasonably interfere with Lessee's rights hereunder, the implementation or effectiveness of the grant of such rights shall be delayed until such time as the interference with Lessee's rights is minimized.

TO HAVE AND TO HOLD the above described premises unto Lessee, its heirs, successors, assigns, or legal representatives for the term of 20 years from the Effective Date of this Lease (the "Primary Term"), and subject to automatic extension pursuant to Section 6 below for so as long as coal is being produced in paying quantities (as defined in Section 6, below) from the Leased Premises, subject to compliance with the royalties, rentals, and other terms, conditions, and agreements of this Lease.

1. ANNUAL RENT. Lessee shall, within thirty (30) days of the Effective Date of this Lease, pay the State an amount equal to \$3 per acre (which totals \$46,658.40) as the first year's Annual Rent. Thereafter, Lessee shall pay to Lessor Annual Rent of an equal amount (\$46,658.40), provided, however, that (A) Lessee's obligation to pay Annual Rent shall be suspended after the first year in which the Production Royalty received by Lessor (including Annual Advance Minimum Royalty credited against Production Royalty) exceeds the amount of the Annual Rent, but (B) Lessee's obligation to pay Annual Rent shall be reinstated for each year following a year in which the Production Royalty as described above does NOT exceed the amount of the Annual Rent. Annual Rent shall be due to Lessor on the annual anniversary of the Effective Date of this Lease. Once paid, all Annual Rent payments shall be retained by Lessor and shall not be repaid to Lessee under any circumstance.

2. ANNUAL ADVANCE MINIMUM ROYALTY. Lessee shall, within thirty (30) days of the Effective Date of this Lease, pay the State an amount equal to \$5 per acre (which totals \$77,764.00) as the first year's Annual Advance Minimum Royalty. Thereafter, except as may be modified below, Lessee shall pay to Lessor an Annual Advance Minimum Royalty of an equal amount (\$77,764.00) for so long as the Lease is in effect, including any extension of the Lease by production pursuant to Section 6 below. Said Annual Advance Minimum Royalty shall be due to Lessor on the annual anniversary of the Effective Date of this Lease. At the end of each 5 year period, commencing from the Effective Date, Lessor may reasonably change the rate or amount of the Annual Advance Minimum to be paid by Lessee; provided, however, any increase in the rate or amount of the Annual Advance Minimum Royalty shall not be greater than the increase, if any, between each such 5th year and each preceding year in the Producer Price Index, Table 5, Coal Mining, as first published by U.S. Department of Labor Bureau of Labor Statistics.

The Annual Advance Minimum Royalty shall be as minimum and advance royalty, without relation to whether or not coal is mined from the Leased Premises or the amount of coal mined from the Leased Premises. Annual Advance Minimum Royalty paid by Lessee shall be credited against the first Production Royalty due as herein provided for coal mined and sold from the Leased Premises. All Annual Advance Minimum Royalty payments shall be cumulative and carried forward from year to year in regard to crediting against Production Royalty. If this Lease is terminated in accordance with the terms hereof, all Annual Advance Minimum Royalty paid by Lessee to Lessor which has not been credited against Production Royalty shall be retained by Lessor and shall not be repaid to Lessee under any circumstances. In case of assignment of this Lease, all Annual Advance Minimum Royalty paid to Lessor and not credited against Production Royalty shall be carried forward and credited to the assignee.

3. PRODUCTION ROYALTY. During the term of this Lease, Lessor hereby reserves and Lessee agrees to pay to Lessor as Production Royalty the following:
- A. For coal removed by underground mining methods a sum equal to the following percentage of the Gross Sale Price (as herein defined) at the first point of sale for the term of this Lease, for each and every ton (2000 lbs.) of coal mined from the Leased Premises: (i) for coal mined from Parcel 1 of the Leased Premises eight and one-half percent (8.5%), and (ii) for coal mined from Parcel 2 of the Leased Premises eight percent (8%); or, in the event the coal mined by underground mining methods is sold on a captive market, a sum equal to the same respective percentages of the reasonable market value of coal of the same quality from the same general area and mined under the same general conditions, whichever is greater. In no case shall the Production Royalty to the Lessor be less than one dollar and thirty cents (\$1.30) per ton.
- B. For the purpose of this Lease, the "Gross Sale Price" shall be the "Average Gross Sales Price" per ton of coal actually mined, removed, sold and shipped from the Leased Premises during any month which shall be an amount equal to the total gross proceeds from all such sales of such coal during such month divided by the total number of tons of such coal, except that deductions shall be made from the

total gross proceeds for the following items to the extent included in such total gross proceeds: (i) transportation or delivery costs incurred by Lessee in transporting such coal from the Division of Reclamation Mining & Safety ("DRMS") permit boundary to point of sale; and (ii) any direct costs actually incurred in washing the coal, not to exceed \$2.50 per ton (such last deduction hereinafter called the "Washing Deduction").

- C. At any time during the term of this Lease, Lessor shall have the right to provide Lessee written notice that Lessor wishes to renegotiate the Washing Deduction. As soon as is reasonably practicable after Lessee's receipt of such notice, the parties in good faith shall renegotiate the Washing Deduction to reflect a deduction that is mutually acceptable to Lessor and Lessee. In the event Lessor and Lessee are unable to renegotiate the Washing Deduction, Lessor shall have the right to require the elimination of the Washing Deduction in the calculation of the Average Gross Sales Price.
- D. Lessee shall furnish proof of price received for all coal sold. The Production Royalty shall be due and payable to the Lessor on or before the last day of each calendar month during the term of this Lease for coal mined, removed, and sold by Lessee during the preceding calendar month, subject to reduction for the Annual Advance Minimum Royalty previously paid.
4. HAULAGE ROYALTY. Lessee agrees to pay a Haulage Royalty of five cents (\$0.05) for every ton of coal removed through the Leased Premises from any lands located adjacent to or in the vicinity of the Leased Premises. Haulage Royalty shall be due and payable to the Lessor quarterly, on or before 60 days following the last day of each calendar quarter during which coal from lands other than the Leased Premises is removed through the Leased Premises. No Haulage Royalty shall apply to coal mined from the Leased Premises for which a Production Royalty is paid. At the end of each 5-year period, commencing from the Effective Date, Lessor may reasonably change the rate or amount of the Haulage Royalty to be paid by Lessee; provided that any increase in the rate or amount of the Haulage Royalty shall not be greater than the increase, if any, in the average annual percentage change, taken over the preceding 5-year period, in the Producer Price Index, Table 5, Coal Mining, as first published by US. Department of Labor Bureau of Labor Statistics. Once paid, all Haulage Royalty shall be retained by Lessor and shall not be repaid to Lessee under any circumstance. Moreover, Haulage Royalty shall not be credited against the Annual Advance Minimum Royalty.
5. WEIGHT OF COAL. It is agreed that all coal mined and taken from the Leased Premises shall be weighed and the weight thereof shall be entered in due form in weight records kept for such purposes by Lessee. It is agreed that the term "ton" as used herein means 2000 pounds of merchantable coal as shown by miners' payroll check numbers or official railroad scale tickets, or by weight determined at the mine tipple, or by state certified scales; provided that if it is not possible to determine accurately the weight by such means Lessor may, by its duly authorized agent or agents, elect to compute a ton of coal at 27 cubic feet of coal in the solid or by the measurements of the space from which

the coal is mined, deducting therefrom all space occupied by slate or other impurities, and in such case the said computation shall be final and binding upon Lessee.

6. **EXTENSION BY PRODUCTION.** This Lease may not be held in perpetuity; however, this Lease shall automatically continue in effect subsequent to the Primary Term so long as coal is produced in paying quantities. The term "paying quantities" means an amount of production from the Leased Premises during the period between one annual anniversary of the Effective Date and the next succeeding annual anniversary that generates Production Royalty in an amount equal to or greater than the Annual Advance Minimum Royalty for such period as described in Section 2 above. However, if at any time after the expiration of the Primary Term there is a cessation of production for a period in excess of 180 consecutive days, then this Lease shall automatically be terminated, except as otherwise provided in Section 7 or unless otherwise agreed to in writing by Lessor. Lessee shall notify Lessor of each cessation of production, the reasons therefor, and the time period during which production will or did cease.
7. **OTHER EXTENSION.** In the event that, after the expiration of the Primary Term, Lessee desires to maintain this Lease in effect without production of coal in paying quantities, or to obtain a new lease from Lessor, in order to transport coal mined from lands adjacent to or in the vicinity of the Leased Premises underground through the Leased Premises, then Lessee shall provide written notice to Lessor. While extension of this Lease in the absence of production of coal in paying quantities will not be automatic, Lessor agrees that Lessee shall have the first right to obtain a lease granting the right to use the Leased Premises for underground haulage purposes. Any extension of this Lease or new lease that is granted for haulage purposes shall be on terms and conditions mutually agreeable to Lessor and Lessee.

If this Lease expires or is terminated pursuant to its terms, then Lessor is not obligated to issue a new lease or to renew this Lease for coal mining purposes. However, Lessee may renew this Lease or receive a new lease under the following conditions:

- A. Lessee shall furnish to Lessor satisfactory evidence of plans for mining during the term of the renewed lease or during the term of a new lease; and
- B. An extension of this Lease would, as determined by Lessor, be in the best interest of the State.

At the time of expiration of this Lease, the following may be considered in the determination of the conditions of an extension or a new lease: An advance minimum royalty, the amount to be negotiated at the time of this extension, will be due and payable annually commencing on the date this Lease is renewed or a new lease is executed and shall continue until the expiration of the new or renewed lease. This amount may be adjusted by Lessor at the end of each five-year period of the renewed or new lease as described in Section 2, above;

8. **PENALTIES.** A penalty in the amount of one percent (1%) shall be imposed for any payment not received within 30 days of the payment due date. Such penalty shall be

added to the amount past due for a total past due amount. An additional penalty of one percent (1%) shall be imposed on any amount of the total past due amount not received within 60 days of the original payment due date. Such penalties will continue to be imposed every 30 days until the total past due amount is fully paid.

9. ASSIGNMENT. The rights of either party hereunder may be assigned in whole or in part to an assignee that assumes in writing the obligations of the assigning party under this Lease. Any such assignment by the Lessee shall require written approval of the Lessor, not to be unreasonably withheld. In the event of assignment, the assigning party shall furnish to the other party a copy of the recorded assignment.
10. RE-OPENING, CONSTRUCTION AND USE OF AIRSHAFTS. The parties recognize that, in connection with Lessee's underground coal mining operations, Lessee shall need to re-open the two existing intake airshafts located in Apache Canyon and also will need to construct one or more exhaust airshafts and possibly additional intake airshafts. Lessee's construction of airshafts shall be subject to the following terms and provisions:
  - A. Lessee anticipates that only one exhaust airshaft will be needed overlying the Leased Premises, and Lessor and Lessee agree that such exhaust airshaft will be constructed at a location on Parcel 2 to be mutually agreed upon by Lessor and Lessee in Bingham Canyon or in the canyon in which the South Fork of the Purgatory River is located ("Purgatory River Canyon") that lies below the point at which the existing road in Bingham Canyon or Purgatory River Canyon is closed to public access. In the event that a second exhaust airshaft is required in connection with Lessee's underground coal mining operations, such airshaft shall also be located at a site to be mutually agreed upon by Lessor and Lessee.
  - B. In constructing an exhaust airshaft, Lessee shall endeavor to minimize the aesthetic impact of such airshaft (visual and noise) by (1) seeking to choose a site that is in proximity to an existing road and is set back in a side canyon, (2) attempting to minimize the footprint of the airshaft site, and (3) using the best technology available at the time the airshaft is constructed in order to limit the above-ground facilities associated with the airshaft as much as possible without impairing the functionality of the airshaft.
  - C. It is anticipated that power for the exhaust airshaft shall be obtained by having the utility company furnish a connection from the existing power line that is located in Bingham Canyon. Lessee agrees that the power line to the site of the exhaust airshaft shall be run underground from the point where it branches off from the existing power line in Bingham Canyon.
  - D. Lessor and Lessee acknowledge that the existing intake airshafts in Apache Canyon are located beyond the point at which the applicable road(s) are closed to public access. Lessor agrees to furnish Lessee with keys for locks to any gates on such roads in order to allow Lessee to have access for purposes of re-opening, using, and maintaining the airshafts. Lessee agrees that, unless otherwise instructed by Lessor, all gates shall be kept closed and locked by Lessee at all



times except when entering or exiting the property. Under no circumstances shall Lessee allow persons who are not employees, agents or contractors of Lessee to enter the portion of Lessor's land that is closed to public access as a result of the access rights granted to Lessee herein, unless otherwise directed by Lessor.

- E. In the event that an additional intake airshaft is required in connection with Lessee's operations, Lessee agrees to construct such airshaft within one-quarter mile of an existing road. If an intake airshaft is located at a point beyond which the applicable road is closed to public access, then the provisions of paragraph (D) above shall apply.
  - F. Unless otherwise agreed by Lessor, Lessee shall not engage in construction activity associated with intake airshafts or exhaust airshafts during the months of April, May, September, October, November and December ("Restricted Activity Months"); provided, however that if construction was commenced during a month when construction activity was not restricted but due to unforeseen circumstances was not completed before the beginning of the next Restricted Activity Month, Lessee may complete such construction.
  - G. During the Restricted Activity Months, Lessee will limit its routine inspections and routine maintenance of airshafts to the hours between 9:00 a.m. and 3:00 p.m.; provided, however, that Lessee may have access at other hours in the event of an emergency. The limitations established by this paragraph will not apply to inspection or maintenance activities conducted in months that are not Restricted Activity Months. Lessor and Lessee may agree to modify these limitations on an as-need basis.
  - H. All rock, soil, overburden, or other material produced during the re-opening of an existing intake airshaft or the construction of a new airshaft (either intake or exhaust) shall be removed through the underground workings of the mine and shall only be removed by overland transport if underground removal is not practical. Under no circumstances shall any such rock, soil, overburden, or other material be disposed of on the surface of the Leased Premises.
  - I. Once an airshaft is re-opened or constructed, the area of disturbance around such airshaft shall be reclaimed and revegetated as soon as reasonably possible, using only plant seeds that are of species native to the area from a list provided by Lessor.
11. EMERGENCY ACCESS. Notwithstanding any provision of this Lease to the contrary, in the event of an emergency relating to Lessee's underground mining operations or underground mining facilities on the Leased Premises, Lessee shall have such access across the surface overlying the Leased Premises as may be necessary. In the event emergency access is necessary, Lessee agrees to use existing roads to the extent possible. Lessee agrees to reclaim as soon as reasonably practicable (subject to the requirements of Section 16 of this Lease) any of the surface overlying the Leased Premises that is disturbed as a result of emergency access.

12. LESSEE'S EXISTING RIGHTS. Lessor and Lessee recognize the existence of (A) that certain Quitclaim Deed dated as of June 1, 1997 from North Central Energy, Inc. to Picketwire Processing, LLC, as modified by Quitclaim Deed from North Central Energy, Inc. to Picketwire Processing, LLC dated July 31, 2001 and recorded in Book 1008 at Page 1015 of the Las Animas County records, conveying the surface of 213.01 acres of land in Las Animas County, Colorado more particularly shown on Exhibit B attached hereto and the appurtenances thereon, which include stockpile coal and refuge and loadout facilities (the "New Elk Facility"), and (B) that certain Quitclaim Deed of Abandoned Underground Workings dated June 1, 1997 from North Central Energy, Inc. and Basin Resources, Inc. to Picketwire Processing, LLC recorded in Book 1006 at Page 685 of the Las Animas County records, conveying the mine workings underlying Parcel 1 of the Leased Premises (together, the "New Elk Mine Deeds"). Lessee has succeeded to the rights of Picketwire Processing, LLC under the New Elk Mine Deeds, and is the current holder of Mine Permit No. C-81-012 covering Parcel 1 of the Leased Premises. With respect to Parcel 1 of the Leased Premises, Lessor and Lessee recognize that ownership of the following (collectively the "Underground Mine Workings") was transferred in the deed recorded in Book 1006 at Page 685: the mine portals (to the extent not covered by the deed recorded in Book 1008 at Page 1015); all existing underground passages, pockets and spaces that were created during and/or as a result of prior mining of said Parcel 1 as more particularly shown on the plat attached hereto as Exhibit C; and all mine equipment and facilities for transporting coal located in such passages, pockets and spaces (including, without limitation, a continuous miner, a rock bolting machine, shuttle cars, conveyor belts, rails, locomotives; trolley wire, section exhaust fan, mine fan, feeder breaker, section transformer, rectifier, high voltage cables and low voltage cables). For definitions of the foregoing terms, see Exhibit D attached hereto. The parties further recognize that under and pursuant to the New Elk Mine Deeds, Lessee already has, and will continue to have following termination of this Lease, the right to use the New Elk Facility, the right to enter through the existing portals into and through Parcel 1 of the Leased Premises, and the right to transport through the mine workings underlying Parcel 1 of the Leased Premises any coal from the Leased Premises or other lands that is now or hereafter owned, leased or otherwise acquired by Lessee (provided that coal transported through the mine workings during the term of this Lease from land other than the Leased Premises shall be subject to the Haulage Royalty provided for in Section 4 hereof). For purposes of clarification, Lessee hereby agrees that it does not hold or claim title to the unmined coal remaining in Parcel 1 of the Leased Premises as of the Effective Date.
13. AGREEMENTS OUTSIDE THE TERMS OF THIS LEASE. No assignment of undivided interests or retention or reservation of overriding royalties will be recognized by Lessor; and the effect, if any, of any such assignments or reservations will be strictly and only as between the parties thereto, and outside the terms of this Lease, and no dispute between parties to any such assignment or reservation shall operate to relieve Lessee from performance of any terms or conditions hereof or to postpone the time therefor. Lessor will and shall at all times be entitled to look solely to Lessee or its successors and assigns as being solely responsible for the sending of all notices required by this Lease and for the performance of all terms and conditions hereof.

Copies of all instruments of every kind and nature whatsoever, including but not limited to sublease agreements, affecting this Lease shall be provided to Lessor.

14. **REPORTS AND RECORDS.** After Lessee has received the necessary permit from DRMS, it is agreed that on or before the last day of each month during the term of this Lease, Lessee shall submit a sworn, verified, written report to Lessor, in which report shall be entered and set down the exact amount in weight of all products and the assay thereof mined and removed from the Leased Premises during the preceding calendar month. Lessee agrees to keep and to have in possession complete and accurate books and records showing the production and disposition of any and all substances produced from the Leased Premises along with purchaser's support documentation and to permit Lessor, at all reasonable hours, to examine the same or to furnish copies of same to Lessor within 60 days following written request. All said books and records shall be retained by Lessee and made available to Lessor for a period of not less than 6 years at a location within Colorado. If any such examination shall reveal, or if either party shall discover any error or inaccuracy in its own or the other party's statement, payment, calculation, or determination, then proper adjustment or correction thereof shall be made as promptly as practicable thereafter, except that no adjustment or correction shall be made if more than 10 years have elapsed between the time the error or inaccuracy occurred and the discovery by either party of said error or inaccuracy.

Further, Lessee shall furnish annually a complete operations report to Lessor disclosing the number of tons and the assay thereof of all ores, minerals and other materials mined from the Leased Premises during the preceding year. Lessee shall also furnish in said report geologic interpretations and recoverable reserve calculations, and maps and cross sections showing location of any mineral bearing outcrops, drill holes, trenches, ore bodies and other prospecting and exploration activities, along with assays showing the amount of mineral contained in the ore. The records required to be maintained by Lessee and provided to Lessor upon request include logs of all strata penetrated and all geologic and hydrologic conditions encountered, and copies of in-hole surveys - this information to be collected and prepared under the supervision of a qualified geologist, geological engineer or mining engineer. Other qualified persons may collect and prepare this data, if agreed to in writing between Lessee and Lessor. Lessee shall submit, if required by Lessor, additional reports, records or documents regarding Lessee's operations. Except as otherwise limited in paragraph E on page 3 of this Lease, Lessee shall be liable and agrees to pay for all damages to the surface, livestock, growing crops, water wells, reservoirs, or other improvements caused by Lessee's operations on said lands; furthermore, Lessee shall be responsible for the eradication and control of noxious weeds on the Leased Premises as a result of Lessee's operations or subsidence. Further, it is understood that Lessee shall assume responsibility for all claims arising from damages to the surface above the Leased Premises caused by Lessee's operations. Lessee shall submit, if required by Lessor, such additional reports, records or documents regarding Lessee's operations on the Leased Premises as necessary for the purpose of determining compliance with lease provisions.

15. **OPERATION PLAN.** With respect to each plan of operations or mine plan affecting the captioned land that Lessee plans to submit to DRMS and/or the Mine Safety and Health

Administration (the "Approving Agency"), Lessee shall provide a copy of such proposed plan to Lessor at least 72 hours in advance of Lessee's submission of such proposed plan to the Approving Agency, in order that Lessor can review such proposed plan for surface impacts and comment on such impacts.

16. RECLAMATION. All plans for restoration and reclamation of the Leased Premises are subject to review and approval by Lessor to determine compliance with applicable State laws. In addition to being subject to Lessor's review, restoration and reclamation must meet all requirements of the Colorado Surface Coal Mining Reclamation Act. Variations from those requirements or from any approved plan, and any amendment to plans, are subject to Lessor's approval. In the event Lessor fails to respond within sixty (60) days following its receipt from Lessee of a plan for restoration and reclamation of the Leased Premises or of an amendment to an approved plan, Lessor shall be deemed to have approved such plan or amendment, as applicable. This Section 16 shall have application only when Lessor owns or controls the surface above the Leased Premises.
17. OTHER STATE AGENCIES. Instruments and documents required by other State agencies may satisfy certain requirements of this Lease. In the event that Lessee is required to file instruments and documents with other State agencies, such as DRMS, etc., Lessee shall notify Lessor of said filing and Lessor reserves the right to request and obtain copies of such instruments and documents from Lessee.
18. INSPECTION. It is agreed that during Lessee's normal business hours and at all times during the continuance of this Lease, Lessor or its duly authorized agent, is hereby authorized to check scales as to their accuracy, to go on any part of the Leased Premises to examine, inspect, survey and take measurements of the same and to examine and make extracts from or copies of all books and weight sheets and records which show in any way the coal output, coal values, payments and royalties from and of the Leased Premises, and that all conveniences necessary for said inspection, survey, or examination shall be furnished to Lessor. Lessor may require Lessee to provide all instruments and documents of any kind and nature whatever which affect Lessor's interests.
19. MINING METHODS. Only underground mining methods that are consistent with prevailing good mining practice shall be used by Lessee. Lessee may not mine by any strip or surface mining method. Further, this Lease does not give Lessee the right to construct a portal on the surface overlying the Leased Premises that is owned by Lessor for access to the coal leased hereunder. Lessee also agrees to reasonably protect the coal beds above and below the coal bed being mined through the underground mining operation.
20. NOTICES. Any notice required to be given to Lessee under the provisions of this Lease shall be sent by certified mail to the address set forth at the beginning of this Lease or to such other address as Lessee may indicate in writing to Lessor, and such service by mail shall be deemed sufficient and in full compliance with the terms of this Lease as of the date it is postmarked. Notice to Lessor shall be given in like manner and addressed to the Colorado Division of Wildlife's headquarters postal address.

21. EXPLORATION. An exploration Notice of Intent submitted to and approved by DRMS is required and must be obtained before any field work of any type or kind is undertaken. A restoration bond with DRMS is required in conjunction with this Notice of Intent. The bond required by DRMS for exploration activities shall be the sole bond required, unless a change in applicable laws, rules or regulations requires an increase in or additional bonding; in which case the appropriate bonding will be implemented. The proposed type and method of exploration shall be outlined on the application for an exploration permit.
- Lessee is required to keep an accurate log or record of all subsurface exploration. This exploration work shall be described by legal descriptions that include a survey corner established by an official USGS survey. All such logs and/or records may be requested by Lessor at any time, but Lessor agrees that during the term of this Lease all such information so supplied by Lessee shall remain confidential and unpublished insofar as it is consistent within the law.
22. PROTECTION AGAINST SURFACE DAMAGE. Lessee shall assume responsibility for all claims arising from damages to the surface caused by Lessee's operations. Except as otherwise limited in paragraph E on page 3 of this Lease, Lessee shall be liable and agrees to pay for all damages to the surface, livestock, growing crops, water wells, reservoirs or other improvements caused by Lessee's operations. Lessee shall be responsible for the eradication and control of noxious weeds on the Leased Premises as a result of Lessee's operations or subsidence.
23. LESSOR'S APPROVAL. Whenever approval by Lessor is required or contemplated by Lessee, approval must be in writing and shall be within the sole and absolute discretion of Lessor, except as otherwise specifically provided.
24. HOLD HARMLESS. Lessee shall indemnify Lessor against all liability and loss, and against all claims and actions, including the defense of such claims or actions, based upon or arising out of damage or injury, including death, to persons or property caused by or sustained in connection with this Lease or by conditions created thereby, or based upon any violation of any statute, ordinance, or regulation.
25. COAL MINE GAS. It is recognized that this Lease does not grant to Lessee the right to produce, save and/or sell methane gas or other volatile gas located within mineable coal measures or roofs and floors of mineable coal measures; however, Lessee has the right to remove such gas as a mining safety procedure prior to mining. Gas that is uneconomical to produce may be vented or flared provided that the venting or flaring complies with all federal, state and local requirements. Methane gas or other volatile gases produced by the oil and gas lessees from the mineable coal measures and from Roofs and Floors of mineable coal measures prior to mining shall be the property of the oil and gas lessee under the terms of the oil and gas lease, so long as the terms in this paragraph are consistent within the law. "Roof" means the rock immediately above and in contact with the mineable coal measure. "Floor" means the rock immediately below and in contact with the mineable coal measure.

26. WATER AND WATER RIGHTS. If Lessee initiates or establishes any water right where the point of diversion or groundwater withdrawal is on the Leased Premises and where the surface is owned by the State, such water right must be obtained in the name of and with the consent of the State acting by and through the Division of Wildlife.

Water rights and any improvement required to bring this water to the surface shall become the property of the State, without cost, upon expiration or upon termination of this Lease for any cause whatsoever.

Under no circumstance may ground water be withdrawn without first having secured the permission of Lessor and may not be withdrawn at a rate higher than necessary for the mining and/or processing of State minerals only. Additional payment shall be required for the use of any waters.

Lessee agrees that, unless the consent of the Lessor is first obtained in writing, it shall not discharge onto the surface overlying the Leased Premises any water that is drained or used or in connection with Lessee's mining operations.

27. LIENS AND CLAIMS. Lessee shall not suffer or permit to be enforced against the Leased Premises, or any part thereof, or any improvements thereon, any liens arising from, or any claim for damage growing out of the work of any construction, repair, restoration, replacement or improvement, or any other claims or demand howsoever the same may arise, but Lessee shall pay or cause to be paid all of said liens, claims, or demands before any action is brought to enforce the same against the Leased Premises or improvements. Lessee agrees to defend, indemnify and hold Lessor and the Leased Premises free and harmless from all liability for any and all such liens, claims, demands, and actions together with reasonable attorney fees and all costs and expenses in connection therewith.

Lessee shall, upon execution of this Lease at its cost, prepare a Notice, pursuant to C.R.S. § 38-22-105 and cause the same to be posted for the purpose of protecting Lessor against any liens or encumbrances upon the Leased Premises by reason of work, labor, services or materials contracted for or supplied to Lessee.

28. SURRENDER AND RELINQUISHMENT. Lessee may, at any time, surrender and cancel this Lease insofar as the same covers all or any portion of the lands herein leased and be relieved from further obligations or liability hereunder with respect to the lands so surrendered. Provided, however, that no partial surrender or cancellation of the Lease shall be for less than tracts of approximately 40 acres or governmental lot corresponding to a quarter-quarter section. However, partial surrender or cancellation of a portion of this Lease shall not reduce the amount of Annual Rent or Annual Advance Minimum Royalty due Lessor pursuant to Sections 1 and 2 above.

This surrender clause and option herein reserved to Lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law by Lessee, Lessor or any assignee of either to enforce this Lease, or any of its terms, express or implied, but in no case shall surrender be effective until Lessee

shall have completed reclamation of any disturbance caused by Lessee on the surface of the lands to be surrendered pursuant to the provisions of Section 16.

Notwithstanding the foregoing, no surrender and relinquishment of this Lease shall be effective unless and until all reports, documents and information of any kind required to be submitted to Lessor under this Lease, or to such state agencies as provided in this Lease have been submitted to Lessor or such state agency.

29. **RIGHT OF REMOVAL.** In the event this Lease is terminated by forfeiture, surrender or the expiration of its term, and all obligations of Lessee under this Lease are satisfied, all Lessee's improvements, equipment and man-made objects of any type shall be removed from the Leased Premises within 6 months from the date of such termination at Lessee's expense. Such removal is to be accomplished without unnecessary waste or damage to the Leased Premises and Lessee shall restore the surface of the Leased Premises to the same condition as immediately prior to the execution of this Lease.

However, six months following any termination of the Lease, any improvements or equipment remaining on the Leased Premises shall, at the sole discretion of Lessor, either be forfeited automatically to Lessor without compensation and without necessity of execution of additional documents or the Lessor may have such improvements or equipment removed and any expense incurred in such removal shall be paid from the Lessee's reclamation bond required by the Lease. This Section 29 shall have no application to the New Elk Facility referenced in Section 12 or to any improvements or equipment located in the Underground Mine Workings; provided, however, that Lessee agrees that no improvements, equipment or man-made objects may be left within the Underground Mine Workings in violation of applicable law or regulations.

30. **COMPLIANCE WITH LAW.** Lessee further covenants and agrees that, during the continuance of this Lease, Lessee shall comply fully with all the provisions, terms, and conditions of all laws, whether State or Federal, and orders issued thereunder, which may be in effect during the continuance hereof, which in any manner affect or control mining or other operations of Lessee, and Lessee further agrees that good mining methods shall be used at all times of active mining so long as said methods are consistent within the law.

31. **ARCHAEOLOGY.** It is contrary to state and federal law to excavate, appropriate or disturb any historical, prehistorical or archaeological site or resource on any lands administered by Lessor. Discovery of a suspected site or resource shall be immediately brought to the attention of Lessor and the state archaeologist or Lessee shall provide evidence that no significant archaeological sites exist on the Leased Premises which could be destroyed by Lessee's operations.

32. **DEFAULT AND FORFEITURE.** It is agreed that if for any reason Lessee shall fail to keep each and every one of the covenants and conditions herein, or breaches any condition hereof, and such default or breach continues for a period of 30 days after service of written notice thereof by certified mail upon Lessee, Lessor shall have the right to declare this Lease forfeited, and to enter onto the Leased Premises or any part thereof,

either with or without process of law, and to expel, remove and put out Lessee or any person occupying the Leased Premises, using such force as may be necessary to do so. In the event of the termination of this Lease by reason of breach of the covenants herein contained, Lessee shall surrender and peaceably deliver to Lessor the above-described premises, and such premises shall be in good mining condition. If, upon termination of this Lease for any reason, whether by surrender, forfeiture or expiration of term or otherwise, Lessee shall not have fully complied with the terms of the Lease, Lessor shall hold and retain possession of the property, improvements, and equipment of Lessee as security unto Lessor for the payment of rents and royalties due it, or to protect it against liens, or to indemnify it against any loss or damage sustained by it by reason of the default of Lessee, for which purpose Lessor is hereby given a lien upon all such property, improvements, and equipment, which lien shall attach as the same are placed upon the Leased Premises. In the event Lessor shall foreclose the lien in this article given to it by Lessee, Lessor may itself be a purchaser at any sale thereof under such foreclosure. The Lessee shall be guilty of an unlawful detainer under the statutes if the Lessee remains in possession of the Leased Premises following the termination of the Lease for any cause and the Lessee shall be subject to all the conditions and provisions thereof and to eviction and removal, forcibly or otherwise, with or without process of law, as above provided.

33. HEIRS AND SUCCESSORS IN INTEREST. The benefits, terms, and obligations of this Lease shall extend to and be binding upon the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

*[Signature pages follow]*



IN WITNESS WHEREOF, Lessor and Lessee have executed this Coal Mining Lease in counterpart as of the day and year first above written.

LESSOR:

STATE OF COLORADO

By: 

For the Director of the Division of Wildlife for  
the Executive Director of the Department of  
Natural Resources, and on behalf of the  
Colorado Wildlife Commission

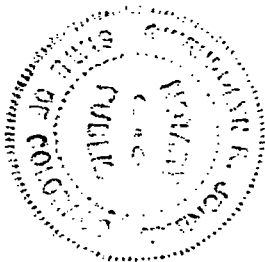
STATE OF COLORADO )  
COUNTY OF Adams ) ss.

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of March,  
2008 by Jeffrey M. Ver Steeg acting on behalf of the State of Colorado,  
Department of Natural Resources, benefiting the Division of Wildlife and the Colorado Wildlife  
Commission.

WITNESS my hand and official seal.

My commission expires: November 28, 2009

  
Notary Public



LESSEE:

NEW ELK COAL COMPANY LLC

By: Wayne Coverdale  
Name: Wayne Coverdale  
Title: President

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF Denver )

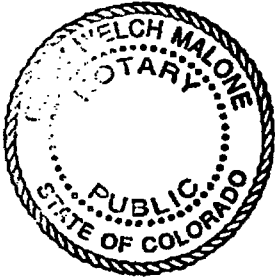
The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of March,  
2008 by Wayne Coverdale, as President of New Elk Coal  
Company LLC, a Kansas limited liability company.

WITNESS my hand and official seal.

My commission expires: 3.22.11

Andy Welch Malone  
Notary Public

Nrbw10372.c.doc



**EXHIBIT A-1****Leased Premises – Parcel 1**

The boundary of the New Elk coal mine permit number C-81-012 as of June 1, 1997 is described by metes and bounds as follows:

Beginning at Pt. 109 of the Terry Surveying Wash Plant Boundary Survey dated May 15, 1997; as filed with the Las Animas County Clerk and Recorder's Office in Book 964, Page 914 and correction in Book 966, Page 578; thence, traversing around the permit boundary for the following 43 courses:

- |    |         |     |  |
|----|---------|-----|--|
| 1  | S82.0°W | for | 1400', then  |
| 2  | S42.5°W | for | 2050', then  |
| 3  | S52.2°E | for | 900', then   |
| 4  | N35.0°E | for | 1200', then  |
| 5  | S86.0°E | for | 6700', then  |
| 6  | S6.0°E  | for | 1200', then  |
| 7  | N87.0°E | for | 1550', then  |
| 8  | S4.5°W  | for | 6000', then  |
| 9  | N85.0°W | for | 1000', then  |
| 10 | S1.7°W  | for | 900', then   |
| 11 | N85.5°W | for | 500', then   |
| 12 | S2.0°W  | for | 2100', then  |
| 13 | S84.0°E | for | 2800', then  |
| 14 | S6.5°W  | for | 1000', then  |
| 15 | S84.0°E | for | 600', then   |
| 16 | N6.5°E  | for | 1000', then  |
| 17 | S84.0°E | for | 8300', then  |
| 18 | N0.5°W  | for | 14150' to the intersection of the permit boundary with<br>the Maxwell Land Grant line, then continuing |
| 19 | N75.0°W | for | 2900', then  |
| 20 | N25.0°W | for | 3400', then  |
| 21 | N85.0°W | for | 2300', then  |
| 22 | S55.0°W | for | 1300', then  |
| 23 | N86.0°W | for | 600', then   |
| 24 | S58.0°W | for | 1025', then  |
| 25 | S26.0°E | for | 700', then   |
| 26 | S66.0°E | for | 1000', then  |
| 27 | S23.0°E | for | 600', then   |
| 28 | S64.0°W | for | 350', then   |
| 29 | N27.0°W | for | 250', then   |
| 30 | S63.0°W | for | 500', then   |
| 31 | N81.0°W | for | 1700', then  |
| 32 | S81.5°W | for | 1650', then  |
| 33 | N25.5°W | for | 200', then   |

- 34      S75.0°W    for    420', then
- 35      S7.0°W     for    1500', then
- 36      N86.0°E    for    900', then
- 37      N4.5°E     for    700', then
- 38      N90.0°E    for    800', then
- 39      S66.5°W    for    650', then
- 40      S4.5°W     for    400', then
- 41      N72.5°E    for    650', then
- 42      S12.0°E    for    500', then
- 43      S83.0°W    for    5900' returning to the point of beginning.

**EXHIBIT A-2**

**Legal Description - Certain Land Owned by Lessor**

*[See Attached]*

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## EXHIBIT "A"

A tract of land located in Las Animas County, Colorado, portions lying within the Beaubien and Miranda Grant, commonly known as the Maxwell Land Grant, located south of the north line of the Maxwell Grant, and other portions of land located between the Maxwell Grant north line and the centerline of Highway 12 as described in records in the office of the State Highway Department, Denver, Colorado, all in unsurveyed Townships 33 and 34 South, Ranges 67 and 68 West, 6th PM., TO WIT:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF THE MAXWELL LAND GRANT AND THE EASTERLY RIGHT OF WAY OF THE ABANDONED SOUTH FORK BRANCH OF THE COLORADO AND WYOMING RAILWAY, FROM WHICH POINT A 40# RAIL MARKED BM#7 BEARS S 72° 37' 34" E, 396.00 FEET;

THENCE SOUTHWESTERLY ALONG THE EASTERLY LINE OF THE ABANDONED SOUTH FORK BRANCH OF THE COLORADO AND WYOMING RAILWAY FOR THE FOLLOWING 22 COURSES AND DISTANCES:

1. S 61° 50' 48" W, 354.58 FEET TO A POINT OF CURVE;
2. ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2814.79 FEET, AN ARC DISTANCE OF 508.47 FEET. (THE CHORD OF SAID CURVE BEARS S 56° 40' 18" W, 507.78 FEET);
3. S 51° 29' 48" W, 3215.59 FEET TO A POINT OF CURVE;
4. THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2814.79 FEET, AN ARC DISTANCE OF 1246.20 FEET. (THE CHORD OF SAID CURVE BEARS S 38° 48' 48" W, 1236.04 FEET);
5. S 26° 07' 48" W, 793.70 FEET TO A POINT OF CURVE;
6. ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 2814.79 FEET, AN ARC DISTANCE OF 317.11 FEET. (THE CHORD OF SAID CURVE BEARS S 29° 14' 48" W, 316.95 FEET);
7. S 32° 21' 48" W, 980.70 FEET TO A POINT OF CURVE;
8. ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1959.86 FEET, AN ARC DISTANCE OF 803.85 FEET. (THE CHORD OF SAID CURVE BEARS S 44° 06' 48" W, 798.23 FEET);
9. S 55° 51' 48" W, 192.70 FEET TO A POINT OF CURVE;
10. S 54° 44' 19" W, 111.00 FEET TO A POINT;
11. ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 514.93 FEET, AN ARC DISTANCE OF 459.50 FEET. (THE CHORD OF SAID CURVE BEARS S 37° 53' 48" W, 454.58 FEET);
12. S 21° 03' 17" W, 111.00 FEET TO A POINT;
13. S 19° 55' 48" W, 3423.70 FEET TO A POINT OF CURVE;
14. ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1969.86 FEET, AN ARC DISTANCE OF 589.05 FEET. (THE CHORD OF SAID CURVE BEARS S 28° 29' 48" W, 586.86 FEET);
15. S 37° 03' 48" W, 1735.89 FEET TO A POINT OF CURVE;
16. ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1482.39 FEET, AN ARC DISTANCE OF 422.59 FEET. (THE CHORD OF SAID CURVE BEARS S 45° 13' 48" W, 421.16 FEET);
17. S 53° 23' 48" W, 148.13 FEET TO A POINT;
18. S 52° 16' 19" W, 111.00 FEET TO A POINT OF CURVE;
19. ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 514.93 FEET, AN ARC DISTANCE OF 336.57 FEET. (THE CHORD OF SAID CURVE BEARS S 39° 19' 18" W, 334.63 FEET);
20. S 26° 22' 17" W, 111.00 FEET TO A POINT;
21. S 25° 14' 48" W, 564.12 FEET TO A POINT;
22. ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1482.39 FEET, AN ARC DISTANCE OF 276.43 FEET, (THE CHORD OF SAID CURVE BEARS S 30° 29' 20" W, 276.03 FEET) TO A POINT MARKING THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO FRANK AND NORA R. PARSONS BY THE COLORADO FUEL AND IRON COMPANY 11 Y DEED DATED JANUARY 3, 1946 AND RECORDED IN BOOK 508, PAGE 314 OF THE LAS ANIMAS COUNTY RECORDS;

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THENCE LEAVING THE RAILROAD IN A SOUTHEASTERLY DIRECTION AND ALONG THE  
SOUTHERLY LINE OF SAID PARSONS TRACT FOR THE FOLLOWING 8 COURSES AND DISTANCES:

1. S 51° 43' 55" E, 110.03 FEET TO A POINT;
2. S 68° 59' 55" E, 790.07 FEET TO A POINT;
3. S 52° 00' 35" E, 791.25 FEET TO A POINT;
4. S 53° 19' 32" E, 189.37 FEET TO A POINT;
5. S 55° 44' 26" E, 2135.05 FEET TO A POINT;
6. S 56° 09' 25" E, 946.87 FEET TO A POINT;
7. S 57° 01' 23" E, 990.23 FEET TO A POINT;
8. S 52° 11' 35" E, 1227.34 FEET TO A POINT;

THENCE DEPARTING SAID SOUTHERLY LINE OF SAID PARSONS TRACT S 16° 12' 31" E, 272.87 FEET  
TO AN IRON PIN AT A FENCE CORNER;

THENCE SOUTHWESTERLY ALONG A FENCE ATOP THE RIDGE BETWEEN THE LORENCITO  
CANYON DRAINAGE AND THE SOUTH FORK OF THE PURGATOIRE RIVER FOR THE FOLLOWING 45  
COURSES AND DISTANCES;

1. S 71° 31' 30" W, 3268.19 FEET TO A POINT;
2. S 48° 56' 12" W, 528.47 FEET TO A POINT;
3. S 51° 36' 35" W, 769.27 FEET TO A POINT;
4. S 48° 08' 22" W, 268.32 FEET TO A POINT;
5. S 21° 17' 31" W, 559.85 FEET TO A POINT;
6. S 09° 57' 34" W, 862.72 FEET TO A POINT;
7. S 28° 10' 22" W, 379.00 FEET TO A POINT;
8. S 49° 37' 45" W, 610.66 FEET TO A POINT;
9. S 60° 04' 40" W, 882.10 FEET TO A POINT;
10. S 55° 13' 22" W, 152.29 FEET TO A POINT;
11. S 52° 00' 22" W, 363.43 FEET TO A POINT;
12. S 52° 46' 09" W, 639.49 FEET TO A POINT;
13. S 53° 17' 22" W, 1366.07 FEET TO A POINT;
14. S 43° 15' 42" W, 171.48 FEET TO A POINT;
15. S 12° 19' 04" W, 631.85 FEET TO A POINT;
16. S 31° 33' 07" W, 436.59 FEET TO A POINT;
17. S 39° 31' 07" W, 1237.00 FEET TO A POINT;
18. S 27° 29' 37" W, 121.44 FEET TO A POINT;
19. S 17° 59' 17" W, 324.20 FEET TO A POINT;
20. S 20° 47' 02" W, 341.63 FEET TO A POINT;
21. S 31° 24' 17" W, 294.82 FEET TO A POINT;
22. S 26° 05' 02" W, 309.86 FEET TO A POINT;
23. S 30° 31' 22" W, 246.11 FEET TO A POINT;
24. S 44° 55' 22" W, 175.88 FEET TO A POINT;
25. S 70° 04' 22" W, 558.90 FEET TO A POINT;
26. S 70° 38' 42" W, 535.77 FEET TO A POINT;
27. S 77° 00' 42" W, 294.61 FEET TO A POINT;
28. S 72° 48' 12" W, 297.28 FEET TO A POINT;
29. S 63° 30' 42" W, 256.80 FEET TO A POINT;
30. S 89° 29' 57" W, 226.00 FEET TO A POINT;
31. S 89° 14' 42" W, 563.22 FEET TO A POINT;
32. N 81° 42' 08" W, 230.33 FEET TO A POINT;
33. N 84° 00' 38" W, 156.27 FEET TO A POINT;
34. N 89° 21' 23" W, 398.83 FEET TO A POINT;
35. S 71° 41' 06" W, 851.93 FEET TO A POINT;
36. S 80° 54' 37" W, 424.35 FEET TO A POINT;

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37. N 79° 29' 43" W, 687.04 FEET TO A POINT;
38. N 80° 43' 43" W, 287.10 FEET TO A POINT;
39. N 66° 58' 58" W, 309.56 FEET TO A POINT;
40. S 85° 54' 12" W, 98.60 FEET TO A POINT;
41. S 66° 56' 47" W, 417.76 FEET TO A POINT;
42. S 74° 21' 27" W, 361.27 FEET TO A POINT;
43. N 76° 54' 33" W, 297.12 FEET TO A POINT;
44. N 78° 54' 33" W, 242.23 FEET TO A POINT;
45. N 83° 37' 18" W, 389.56 FEET TO A POINT;

THENCE LEAVING THE FENCE AND THE RIDGE BETWEEN THE LORENCIO CANYON DRAINAGE AND THE SOUTH FORK OF THE PURGATOIRE RIVER AND CROSSING GALLEGOS CANYON IN A WESTERLY DIRECTION FOR THE FOLLOWING 2 COURSES AND DISTANCES:

1. S 89° 19' 21" W, 3755.62 FEET TO A POINT;
2. N 86° 38' 20" W, 1685.57 FEET TO A POINT ON THE RIDGE BETWEEN GALLEGOS CANYON AND LEON CANYON;

THENCE ALONG THE TOP OF THE RIDGE BETWEEN GALLEGOS CANYON AND LEON CANYON IN A SOUTHWESTERLY DIRECTION FOR THE FOLLOWING 10 COURSES AND DISTANCES:

1. S 26° 26' 33" W, 2062.16 FEET TO A POINT;
2. S 70° 32' 45" W, 249.84 FEET TO A POINT;
3. S 62° 02' 30" W, 428.69 FEET TO A POINT;
4. S 60° 07' 30" W, 441.37 FEET TO A POINT;
5. S 48° 46' 32" W, 972.46 FEET TO A POINT;
6. S 76° 33' 58" W, 2241.47 FEET TO A POINT;
7. S 71° 04' 29" W, 768.28 FEET TO A POINT;
8. N 74° 46' 37" W, 1718.32 FEET TO A POINT;
9. S 83° 17' 22" W, 804.14 FEET TO A POINT;
10. S 82° 03' 58" W, 528.79 FEET TO A POINT AT THE HEAD OF LEON CANYON;

THENCE NORTHWESTERLY ATOP A RIDGE BETWEEN LEON CANYON AND DURAN CANYON FOR THE FOLLOWING 8 COURSES AND DISTANCES:

1. N 10° 05' 18" W, 1968.94 FEET TO A POINT;
2. N 04° 00' 28" W, 852.02 FEET TO A POINT;
3. N 34° 10' 46" E, 509.81 FEET TO A POINT;
4. N 37° 30' 09" W, 1283.65 FEET TO A POINT;
5. N 00° 39' 46" E, 524.64 FEET TO A POINT;
6. N 41° 44' 58" W, 253.13 FEET TO A POINT;
7. N 65° 08' 54" W, 348.43 FEET TO A POINT;
8. N 31° 58' 00" W, 1394.58 FEET TO A POINT;

THENCE LEAVING THE RIDGE AND CROSSING THE VALLEY OF THE SOUTH FORK OF THE PURGATOIRE RIVER AND IN A WESTERLY DIRECTION ATOP THE RIDGE NORTH OF THE TERCIO VALLEY FOR THE FOLLOWING 12 COURSES AND DISTANCES:

1. N 63° 10' 54" W, 4416.10 FEET TO A POINT;
2. N 68° 46' 28" W, 2516.89 FEET TO A POINT;
3. N 63° 38' 24" W, 1096.77 FEET TO A POINT;
4. N 50° 06' 55" W, 151.69 FEET TO A POINT;
5. N 15° 57' 42" W, 361.25 FEET TO A POINT;
6. N 84° 12' 16" W, 180.86 FEET TO A POINT;
7. N 29° 15' 11" W, 407.74 FEET TO A POINT;



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8. N 08° 48' 27" W. 324.73 FEET TO A POINT;
9. N 11° 56' 31" E. 251.99 FEET TO A POINT;
10. N 23° 39' 11" W. 1004.08 FEET TO A POINT;
11. N 19° 55' 06" E. 313.97 FEET TO A POINT;
12. N 49° 44' 04" W. 309.30 FEET TO A POINT;

THENCE LEAVING THE NORTH RIDGE OF THE TERCIO VALLEY AND RUNNING N. 02° 38' 47" W. CROSSING BANDARITO CANYON, LEFT HAND FORK AND THE MAIN FORK OF APACHE CANYON A DISTANCE OF 18,320.75 FEET TO A POINT ON THE NORTH RIDGE OF APACHE CANYON; THENCE N 89° 27' 54" E, 1799.66 FEET TO A POINT THENCE N 00° 02' 24" W, 5703.33 FEET TO A POINT; THENCE S 89° 57' 36" W, 1474.58 FEET TO A POINT, ATOP AND SOUTH OF BALL (STORZ) MEADOWS, THENCE ALONG THE EASTERLY LINE OF SAID BALL (STORZ) MEADOWS THE FOLLOWING 3 COURSES AND DISTANCES:

1. N 20° 23' 02" E, 846.63 FEET TO A POINT,
2. N 21° 54' 04" E, 625.63 FEET TO A POINT,
3. N 02° 12' 56" E, 1783.53 FEET TO THE POINT OF TERMINUS OF THE COLORADO & WYOMING RAILWAY COMPANY RIGHT OF WAY;

THENCE N 17° 34' 14" W, 113.23 FEET ON SAID TERMINAL OF THE COLORADO AND WYOMING RAILWAY COMPANY RIGHT OF WAY TO THE NORTHERLY LINE OF SAID RAILWAY;

THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID RAILWAY, THE FOLLOWING 7 COURSES:

1. N 74° 39' 01" E, 485.34 FEET TO A POINT,
2. N 89° 09' 56" E, 157.58 FEET TO A POINT,
3. N 72° 51' 54" E, 243.50 FEET TO A POINT OF CURVE,
4. ALONG AN ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 2014.79 FEET, AN ARC DISTANCE OF 665.68 FEET (THE CHORD OF SAID CURVE BEARS N 79° 24' 10" E, 663.81 FEET),
5. N 85° 56' 53" E, 545.14 FEET TO A POINT,
6. N 04° 03' 06" W, 50.00 FEET TO A POINT,
7. N 85° 56' 53" E, 225.00 FEET TO A POINT ON THE WESTERLY LINE OF A TRACT OF LAND CONVEYED FROM MARIA E. CHAVEZ, MARGARET SISNEROS AND HERMINE CHAVEZ TO CF & I BY DEED DATED AUGUST 16, 1951 AND RECORDED IN BOOK 578, PAGE 463 OF THE LAS ANIMAS COUNTY RECORDS;

THENCE ALONG THE WESTERLY AND NORTHERLY LINE OF SAID MARIA E. CHAVEZ TRACT, THE FOLLOWING 2 COURSES:

1. N 00° 54' 56" E, 135.68 FEET TO THE NORTHWEST CORNER THEREOF,
2. N 80° 54' 56" E, 134.04 FEET TO THE NORTHEAST CORNER OF SAID MARIA E. CHAVEZ TRACT, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO MARIA E. CHAVEZ, MARGARET SISNEROS AND HERMINE CHAVEZ BY THE COLORADO FUEL AND IRON CORPORATION BY DEED DATED AUGUST 16, 1951 AND RECORDED IN BOOK 578, PAGE 466 OF THE LAS ANIMAS COUNTY RECORDS;

THENCE ALONG THE SOUTH AND EAST BOUNDARIES OF SAID CHAVEZ TRACT, THE FOLLOWING 2 COURSES:

1. N 80° 54' 56" E, 203.00 FEET TO A POINT,
2. N 00° 52' 49" E, 284.96 FEET TO A POINT ON THE CENTERLINE OF COLORADO HIGHWAY 12;

THENCE IN AN EASTERLY DIRECTION ALONG THE CENTERLINE OF COLORADO STATE HIGHWAY 12, A DISTANCE OF 8 MILES MORE OR LESS TO A POINT WHERE SAID CENTERLINE OF COLORADO

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HIGHWAY 12 INTERSECTS THE NORTH LINE OF THE MAXWELL LAND GRANT; THENCE S 72° 20' 25" E ALONG THE NORTH LINE OF THE MAXWELL LAND GRANT, 7163.70 FEET TO A 40# RAIL MARKED MILE POST 30M; THENCE S 72° 37' 34" E CONTINUING ALONG SAID NORTH LINE OF THE MAXWELL LAND GRANT, 2428.21 FEET TO THE POINT OF BEGINNING.

PER SURVEY PLAT FILED 10/31/98 IN BOOK 966 PAGES 579-780-581.

**EXCEPTING THEREFROM THE FOLLOWING:**

1. All that part of Section 28, Township 33 South, Range 67 West, 6th PM being more or less the center 154.275 acres of said section known as the PAGNOTA TRACT and described in a Special Warranty Deed from Shurco Corporation to John E. Toupal, dated 2/1/96, and recorded in Bk. 932, pg. 412.
2. All that part of the E1/2E1/2, Section 29 and part of the W1/2W1/2, Section 28, Township 33 South, Range 67 West, 6th PM described as TRACT 1 in the Assignment of Causes of Action and Claims between Shurco Corporation and John Toupal, dated 7/12/96, and recorded in Bk. 932, pg. 407.
3. All that part lying between the north right of way of the Colorado and Wyoming Railroad and the Centerline of Colorado Highway 12 located in part of the E1/2SE1/4, Section 28, and part of the SW1/4, Section 27, Township 33 South, Range 67 West, 6th PM., described as TRACT 2 in the Assignment of Causes of Action and Claims between Shurco Corporation and John Toupal, dated 7/12/96, and recorded in Bk. 932, pg. 407.
4. A tract of land lying within the Maxwell Land Grant in unsurveyed Townships 33 and 34 South, Range 67 West, 6th PM., described as TRACT 3 in the Assignment of Causes of Action and Claims between Shurco Corporation and John Toupal, dated 7/12/96, as recorded in Bk. 932, pg. 408.
5. A tract of land lying within the Maxwell Land Grant in unsurveyed Townships 33 and 34 South, Range 67 West, 6th PM. Described as the WESTON CAMP TRACT in a Special Warranty Deed between Shurco Corporation and John Toupal, dated 2/1/96, as recorded in Bk. 932, pg. 413.
6. A tract of land lying within the Maxwell Land Grant in unsurveyed Township 33 South, Range 68 West, 6th PM, described as the LORENCITO COAL TRACT B in an unrecorded Quit Claim Deed between North Central Energy Company and Picketwire Processing (as shown on the survey plat recorded in Book 964, Page 914, correction recorded in Book 966, Page 578).
7. ADDITIONAL LANDS EXCEPTED IN TOWNSHIP 33 SOUTH, RANGE 67 WEST OF THE 6<sup>TH</sup> P.M., LAS ANIMAS COUNTY, COLORADO:

**SECTION 19: ALL THE FOLLOWING LYING SOUTH OF HIGHWAY 12 AS APPLICABLE:**

JIM AND ANN TATUM BOOK 892, PAGES 713-714-715;  
IRENE AND CANDELO CHACON RECEPTION NO. 414349;  
SALLY HURTADO BOOK 823, PAGE 765  
GEORGE CHAVEZ BOOK 575, PAGE 70  
DAISY CHAVEZ ASEVEDO ET AL, BOOK 926, PAGE 132  
EUGENE L. CHAVEZ, BOOK 864, PAGE 371  
EUGENE L. CHAVEZ AND VERNON CHAVEZ, BOOK 906, PAGE 519  
JOSE RUMALDO CHAVEZ ET AL, BOOK 806, PAGE 23

**SECTION 20: ALL THE FOLLOWING LYING SOUTH OF HIGHWAY 12 AS APPLICABLE:**

EUGENE L. CHAVEZ AND VERNON CHAVEZ BOOK 906, PAGE 519;  
MAXINE M. CHAVEZ SCOTT ET AL, BOOK 877, PAGE 665  
JOSE RUMALDO CHAVEZ ET AL, BOOK 806, PAGE 23

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ERNEST W. TRUJILLO ET AL, BOOK 865, PAGE 978  
ANDY AND ROSELLA MARTINEZ ET AL, BOOK 732, PAGE 184

SECTION 29: ALL LYING SOUTH OF HIGHWAY #12 SOUTH AS APPLICABLE:

DEAGUERO ESTATES MORE FULLY DESCRIBED IN BOOK 829, PAGE 151 AND BOOK 456, PAGE 456, AS CORRECTED BY BOOK 523, PAGE 370 AND BOOK 575, PAGE 288 & ANTONIO M. DEAGUERO LANDS AS DESCRIBED IN BOOK 189, PAGE 40, BOOK 192, PAGE 462, BOOK 192, PAGE 461, BOOK 196 PAGE 54 & 55, BOOK 352, PAGE 80, BOOK 357, PAGE 416, BOOK 573, PAGE 133, BOOK 592, PAGE 467, BOOK 593, PAGE 163 & 177 & 178, BOOK 626, PAGE 82 & BOOK 940, PAGE 818 & R.O.W. PER BOOK 737, PAGE 457, 465, 480 & BOOK 738, PAGE 482 TO COLORADO & WYOMING RAILWAY PER BOOK 576, PAGE 248 FROM COLORADO & WYOMING RAILWAY CO. TO TRINIDAD RAILWAY COMPANY IN BOOK 892, PAGE 428 & R.O.W. DEEDS TO CITY OF TRINIDAD PER BOOK 737, PAGE 457, 465 & 480 AND BOOK 738, PAGE 482; AND

GEORGE CHAVEZ TRACT, BOOK 666, PAGE 266.

8. ADDITIONAL LANDS EXCEPTED IN TOWNSHIP 33 SOUTH, RANGE 68 WEST OF THE 6TH P.M., LAS ANIMAS COUNTY, COLORADO.

SECTION 24: ALL THE FOLLOWING LYING SOUTH OF HIGHWAY 12

VIAPONDO BOOK 563, PAGE 223;  
PINKSTON BOOK 767, PAGE 613;  
ARMSTRONG BOOK 837, PAGE 563;  
FLOYD CHAVEZ BOOK 642, PAGE 497.

TOGETHER WITH AND NOT EXCEPTING THE FOLLOWING ACCESS/RIGHTS-OF-WAY CONVEYED:

1. TERCIO ROAD AND GALLEGOS CANYON:

Grantor conveys to Grantee the perpetual easements and rights-of-way for roadways described within Paragraphs One (1) and (3) of that Right-of-Way Deed that was recorded with the Clerk and Recorders Office for Las Animas County on 12/12/84 at Book 835, Page 288. Said easements and rights-of-way shall include and be subject to all other pertinent provisions of said Right-of-Way Deed.

2. TRACT #2 (SUB-STATION) ACCESS ROAD:

A surveyed right of way which is part of the plat recorded in Book 966, Pages 579-580-581, Las Animas County Clerk and Recorders Office, and more particularly described as follows:

A 40 foot wide access easement located in the SW1/4, Section 27, Township 33 South, Range 67 West, 6th PM, Las Animas County, Colorado, described as:

BEGINNING at a point on the centerline of Colorado Highway 12 from which the west 1/4 corner of Section 27 bears N 44°34'14" W, 2052.72 feet; THENCE along the centerline of a 40 foot access road being 20 feet each side of the following described centerline the following two courses:

1. S 45°36'59" W., 307.26 feet to a point; thence:
2. S 40°10'42" W., 95.52 feet to a point on the northerly right of way of the Colorado and Wyoming Railroad; said point being the point of terminus of the above described access easement.

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### 3. WESTON CAMP TRACT AND CHERRY CANYON ACCESS ROADS:

Weston Camp Tract Access Road: an existing unsurveyed road located in Townships 33 and 34 South, Range 67 West, 6th PM., on a parcel of land known as the "Weston Camp Tract", said parcel being that described in the Special Warranty Deed between Shurco Corporation and John Toupal dated 2/1/96 and recorded in the Clerk and Records Office at Book 932, Page 413, and BEGINS at a point near the City of Weston where the existing Road crosses the northeastern boundary of the Weston Camp Tract, and; THENCE runs southwesterly along and paralleling the South Fork of the Purgatoire River, and; THENCE ends at the western boundary of the Weston Camp Tract.

Cherry Canyon Access Road: A surveyed right of way which is part of the plat recorded in Book 966, Pages 579-580-581, Las Animas County Clerk and Records Office, and more particularly described as a 40 foot wide access easement located within the Maxwell Land Grant in unsurveyed Township 33 South, Range 67 West, 6th PM, described as follows:

BEGINNING at a point on the centerline of South Fork Canyon Road, from which BM NO.7 on the north line of the Maxwell Land Grant bears N 58°42'21" E, 3953.73 feet; THENCE along the centerline of a 40 foot access road being 20 feet each side of the following 22 courses:

1. N 84°28'45" W, 234.75 feet to a point;
2. N 47°13'35" W, 172.91 feet to a point;
3. N 11°06'27" E, 255.34 feet to a point;
4. N 64°09'00" W, 232.22 feet to a point;
5. N 88°09'27" W, 121.35 feet to a point;
6. N 73°44'49" W, 255.40 feet to a point;
7. S 69°20'37" W, 378.65 feet to a point;
8. N 66°42'55" W, 167.19 feet to a point;
9. N 78°34'53" W, 237.95 feet to a point;
10. N 56°14'43" W, 219.97 feet to a point;
11. N 73°49'21" W, 193.32 feet to a point;
12. N 83°00'14" W, 200.29 feet to a point;
13. N 59°07'13" W, 264.42 feet to a point;
14. N 61°05'35" W, 189.68 feet to a point;
15. S 87°33'09" W, 256.38 feet to point;
16. N 59°28'41" W, 296.98 feet to a point;
17. N 44°47'58" W, 338.14 feet to a point;
18. N 26°41'51" W, 196.72 feet to a point;
19. N 74°59'19" W, 227.93 feet to a point;
20. N 86°36'56" W, 209.94 feet to a point;
21. N 53°55'55" W, 210.97 feet to a point;
22. N 58°35'48" W, 118.47 feet to a point; said point being the point of terminus of the above described 40 foot wide access easement.

### 4. TRACT #3 ACCESS ROAD:

An existing unsurveyed road right-of-way 40 feet in width for an existing roadway which is located in unsurveyed Township 34 South, Range 67 West, on a parcel of land known as "Tract 3", said parcel being described in the survey conducted by Gary Terry Surveying (reference # 085A-93), recorded in Las Animas County, Colorado, Clerk and Records Office, at Book 932, Page 404 as Exhibit B to the Bargain and Sale Deed between Shurco Corporation, and John Toupal; and BEGINS at the end of the Weston Camp Access Road described above, and; THENCE runs southwesterly along and paralleling the South Fork of the Purgatoire River, and; THENCE ends at the southwestern boundary of Tract #3.

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5. ALAMOSITO CANYON ACCESS ROAD:

An existing unsurveyed road which is located in unsurveyed Township 34 South, Range 67 West, on a parcel of land known as "Tract 3", said parcel being described in the survey conducted by Gary Terry Surveying (reference # 035A-93), recorded in Las Animas County, Colorado, Clerk and Records Office, at Book 932, Page 404 as Exhibit B to the Bargain and Sale Deed between Shurco Corporation, and John Toupal; and BEGINS at the Tract #3 Access Road described above, and; THENCE runs westerly up the Alamosito Canyon, and; THENCE ends at the westerly boundary of Tract 3.

6. TORRES CANYON ACCESS ROAD:

An existing unsurveyed road which is located in unsurveyed Township 34 South, Range 67 West, on a parcel of land known as "Tract 3", said parcel being described in the survey conducted by Gary Terry Surveying (reference # 035A-93), recorded in Las Animas County, Colorado, Clerk and Records Office, at Book 932, Page 404 as Exhibit B to the Bargain and Sale Deed between Shurco Corporation, and John Toupal; and BEGINS at the Tract #3 Access Road described above, and; THENCE runs westerly up Torres Canyon, and; THENCE ends at the westerly boundary of Tract 3.

7. LORENCITO COAL TRACT ACCESS ROAD:

This access runs across Parcel B of the Lorencito Coal Tract (survey recorded in Book 964, Page 914, correction recorded in Book 966, Page 578) and was in an unrecorded Quit Claim Deed between North Central Energy, Inc. (Grantor) and Picketwire Processing, LLC. (Grantee) which reads:

"Reserving unto Grantor, an easement for ingress/egress to adjacent lands currently owned by Grantor, and for utility purposes, the exact size and location of which shall be determined by the Grantor and Grantee or their respective successors or assigns; provided, however, that the location of said easement shall not in any manner conflict or interfere with the coal processing and related operations of the Grantee, its successors or assigns on the lands granted herein; and provided further, that the Grantee, its successors and assigns, shall have no express or implied obligation to provide Grantor access across existing or future bridges on said lands."

A copy of the unrecorded Quit Claim Deed is attached for reference - Attachment 'A' and also shown on as shown on the survey plat recorded in Book 964, Page 914, correction recorded in Book 966, Page 578.

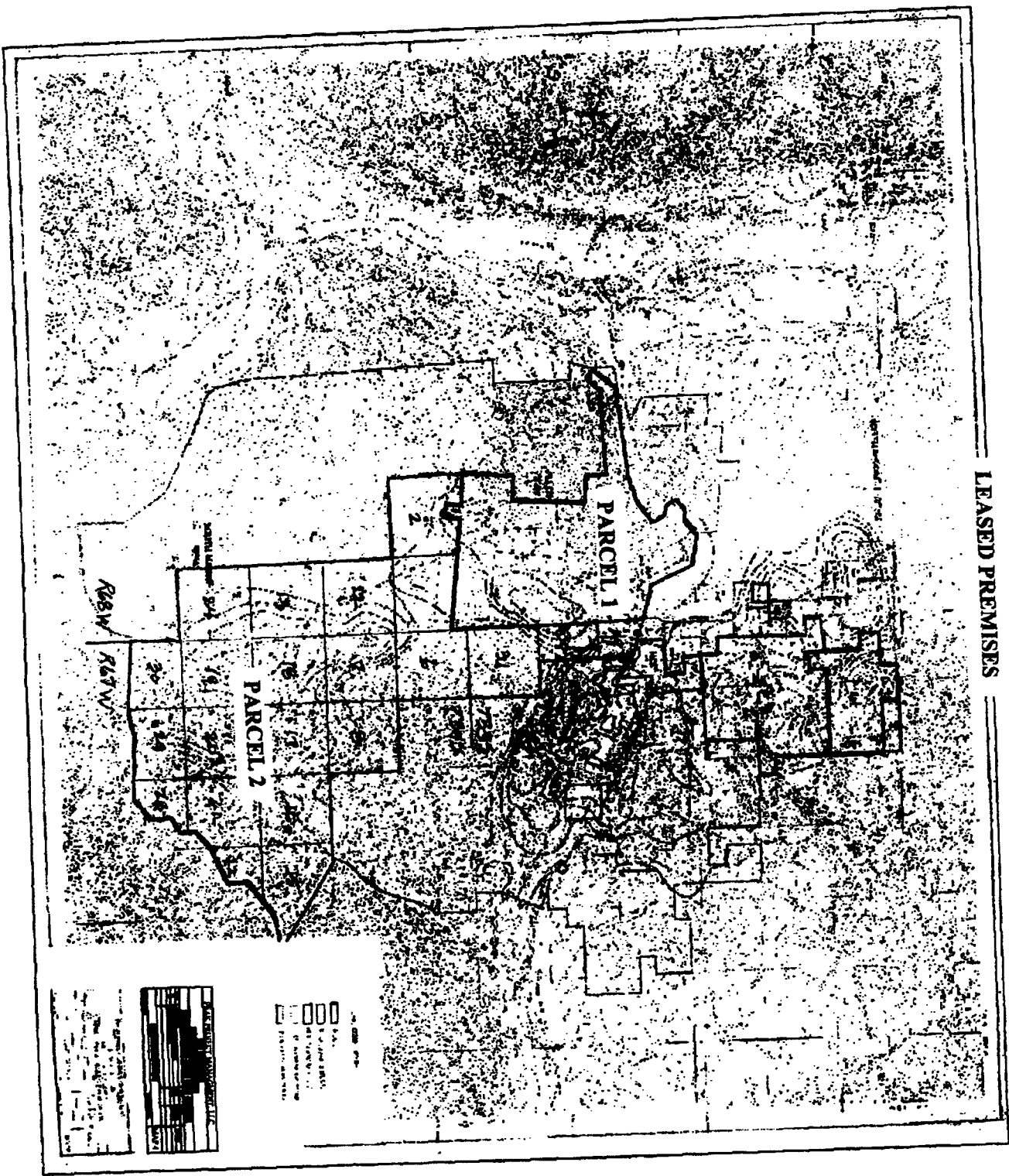
\\WORDPROC\GRANT\LANDS\MFC\EXHIBIT2.A

**EXHIBIT A-3**

**Plat Showing Parcel 1 and Parcel 2 of Leased Premises**

*[See Attached]*

LEASED PREMISES



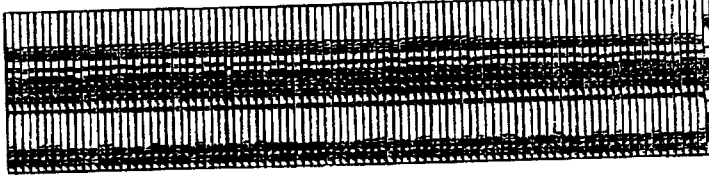
**EXHIBIT B**

**Survey Plat – New Elk Facility**

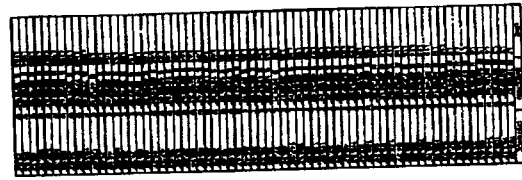
*[See Attached]*



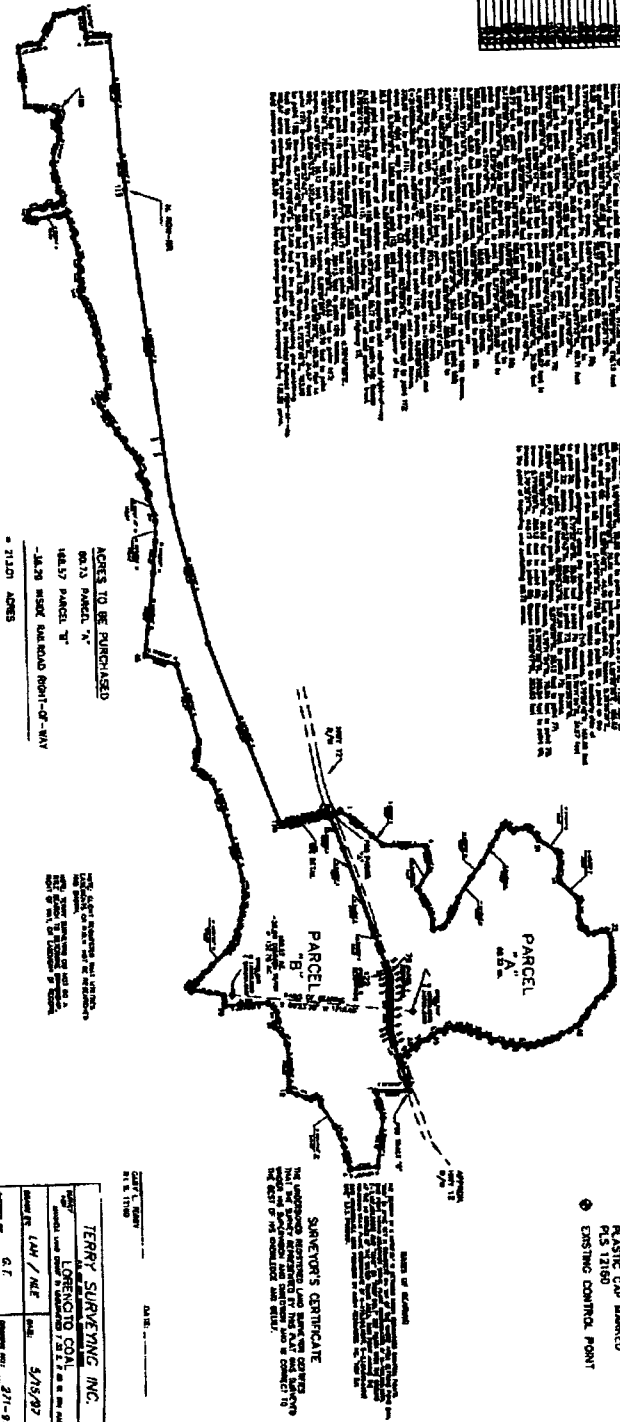
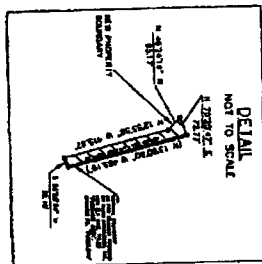
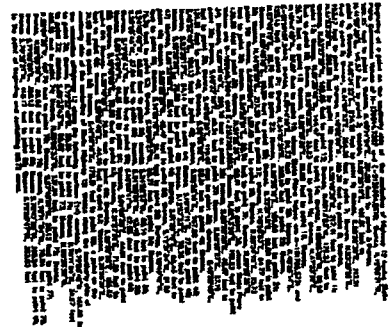
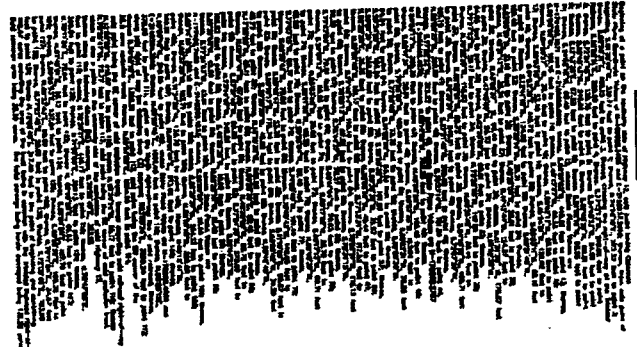
BOUNDARY FOR  
PARCEL "B"



BOUNDARY FOR  
PARCEL "A"



**LAND SURVEY PLAT**  
**LORENCITO COAL COMPANY - WASH PLANT PURCHASE AREA**  
A TRACT OF LAND LOCATED IN THE MAXWELL LAND GRANT IN  
UNSURVEYED TOWNSHIP 33 S, RANGE 68 W, OF THE 6TH P.M.,  
COUNTY OF LAS ANIMAS, STATE OF COLORADO.



ACRES TO BE PURCHASED  
0.13 PARCEL "A"  
14.17 PARCEL "B"  
14.30 WASH PLANT ROAD RIGHT-OF-WAY  
= 21.57 ACRES

THE LAND SURVEYING AND MAPPING  
COMPANY, INC. HAS BEEN  
HONORARILY ASSISTED BY  
THE COLORADO DEPARTMENT OF  
NATURAL RESOURCES AND  
THE COLORADO DEPARTMENT OF  
AGRICULTURE AND SOIL  
CONSERVATION.

DATE: 5/1/97  
BY: [Signature]

TERRY SURVEYING, INC.			
PROJECT	LORENCITO COAL	DATE	5/1/97
CLIENT	LAW / NE	BY	5/1/97
OWNER	G.T.	DATE	5/1/97
PROJECT NO.	1597-97	DATE	5/1/97

**LEGEND**

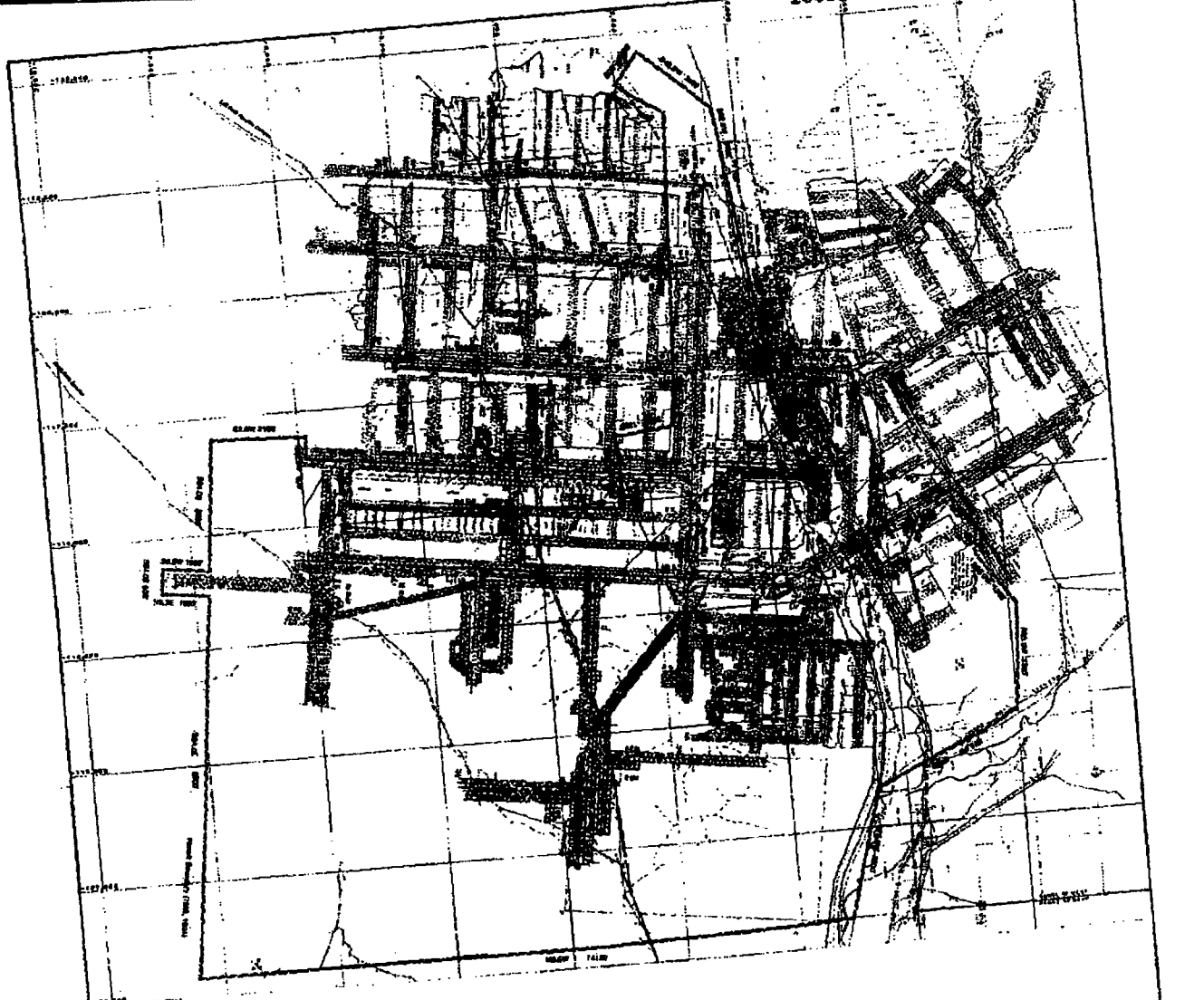
- PROPERTY CORNER NOT SET
- PROPERTY CORNER SET 1/2" REBAR WITH PLASTIC CAP MARKED PL 11110
- EXISTING CONTROL POINT



**EXHIBIT C**

**Plat Showing Extent of Existing Mine Workings in Parcel 1**

*[See Attached]*



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NEW ELK COAL COMPANY LLC	
NEW ELK MINE PLAN	
(with permit boundary)	
DATE	MAP 3

**EXHIBIT D****Definitions Relating to Underground Mine Workings****Facilities and Spaces****Definition****CROSSCUTS:**

A small passageway driven at right angles to the main entry to connect it with a parallel entry or air course.

**ENTRY:**

An under ground passage used for haulage or ventilation or as a manway.

**POCKET:**

Area where coal is dumped at the bottom of the belt that runs from the inside of the mine to the surface.

**PORTAL:**

An entrance to a mine. (This mine has two entry portals, one for rail and one for conveyor belt.)

**Equipment and Related Items****Definition****CONTINUOUS MINER:**

A mining machine designed to remove coal from the face and load that coal into shuttle cars or a conveyor.

**CONVEYOR BELT:**

A belt used to carry a load from a receiving point to a discharge point.

**FEEDER BREAKER:**

An electric powered machine that sets at the belt tail or side where the shuttle car dumps its load. The breaker has a chain conveyor and pickpoints to break any large pieces of coal.

**HIGH VOLTAGE CABLES:**

Electric cable that supplies power to all sections of the mine. High voltage is considered 1001 volts and higher. (At this mine 2/0 cable is used.)

**LOCOMOTIVES:**

Electric engine operated from current supplied by the rectifier through a trolley and tract. (At this mine locomotives are 10 ton or 20 ton.)

**LOW VOLTAGE CABLE:**

Electric cable that supplies power to all areas of the mine that require low voltage power of 0-600 volts.

**MINE FAN:**

A ventilator used to blow or exhaust the necessary air current to ventilate the mine workings.

<u>Equipment and Related Items</u>	<u>Definition</u>
RAILS:	Track that locomotives travel on.
RECTIFIER:	Equipment used to convert AC current to DC current (used to run 20 ton locomotives at this mine.)
ROCK BOLTING MACHINE:	An electric powered machine on rubber tires that drills holes in the roof to laminate the strata above the coal to form a beam for support.
SECTION EXHAUST FAN:	A ventilator used to ventilate the faces of a working section.
SECTION TRANSFORMER:	A transformer that reduces high voltage (1460 volts) to low voltage (480 volts) to power the equipment in a portion of the working area of a mine.
SHUTTLE CAR:	A vehicle on rubber tires used to transport coal from the continuous miner to a conveyor.
TROLLEY WIRE:	Bare electrical wire that supplies power to locomotives.

### QUITCLAIM DEED

THIS DEED, Made as of the 1<sup>st</sup> day of June, 1997, from North Central Energy, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Colorado ("Grantor"), and Picketwire Processing, LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of Colorado ("Grantee").

WITNESS, That the Grantor, for and in consideration of the sum of Ten dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has remised, released, leased, let and QUITCLAIMED, and by these presents does remise, release, lease, let and QUITCLAIM unto the Grantee, its successors and assigns forever, all right, title, and interest, claim and demand, if any, in the lands situate, lying and being in the County of Las Animas and State of Colorado, and described as follows:

That certain parcel identified as being within the "Surface Area Boundary (259 acres approx)" on that Map prepared by Basin Resources, Inc., and dated 11/4/96; less and except that certain parcel identified on said map as "Additional Surface Disturbance Area Excluded From Purchase (25.9 acres approx); for a total of 210.8 acres.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all plants, buildings, structures, erections, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) situated thereon or forming part thereof, and all the estate, right, title, interest and claim whatsoever, of the Grantor, either in law or equity, to the use, benefit and behoof of the Grantees, their heirs and assigns forever. The singular number shall include the plural, the plural the singular, and the use of any gender shall be applied to all genders.

RESERVING UNTO GRANTOR an easement for ingress/egress to adjacent lands currently owned by Grantor, and for utility purposes, the exact size and location of which shall be determined by the Grantor and Grantee or their respective successors or assigns; provided, however, that the location of said easement shall not in any manner conflict or interfere with the coal processing and related operations of Grantee, its successors or assigns on the lands granted herein, and provided further, that Grantee, its successors and assigns, shall have no express or implied obligation to provide Grantor access across existing or future bridges on said lands.

DW001540

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IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

GRANTOR:

NORTH CENTRAL ENERGY, INC.

By Paul G. Gemenick  
Title Pres

STATE OF Mont )  
COUNTY OF Silver Bow ) ss.  
)

Sworn to and subscribed under oath before me by He President as  
\_\_\_\_\_ of North Central Energy, Inc. this 21 day of January,  
1996.

My commission expires: 2-8-99

Notary Public

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Beginning at a point on the southerly side of the centerline of Highway 12 having State Plane Coordinate Values of N-179914.7337 and E-2155994.2610; thence, N.19°05'21"W., 102.35' feet to point 1; thence, N.40°14'04"E., 391.28 feet to point 2; thence, N.41°07'30"E., 141.57 feet to point 3; thence, N.02°38'19"E., 401.01 feet to point 4; thence, N.82°34'25"E., 234.22 feet to point 5; thence, S.56°28'30"E., 212.21 feet to point 6; thence, N.61°08'23"E., 264.26 feet to point 7; thence, N.83°39'26"E., 153.17 feet to point 8; thence, N.16°02'06"W., 109.32 feet to point 9; thence, N.61°53'28"W., 302.80 feet to point 10; thence, N.56°18'35"W., 217.41 feet to point 11; thence, N.53°27'29"W., 182.95 feet to point 12; thence, N.60°13'23"W., 179.23 feet to point 13; thence, N.61°35'48"W., 144.47 feet to point 14; thence, N.55°05'06"W., 90.63 feet to point 15; thence, N.03°16'58"E., 33.23 feet to point 16; thence, N.47°33'32"E., 55.75 feet to point 17; thence, N.05°30'36"E., 59.82 feet to point 18; thence, N.15°44'45"W., 97.07 feet to point 19, whose State Plane Values are N-181785.5731 and E-2156157.2447; thence, N.50°14'19"E., 54.73 feet to point 20; thence, N.48°59'14"E., 122.15 feet to point 21; thence, N.34°16'38"E., 200.10 feet to point 22; thence, N.67°40'19"E., 60.76 feet to point 23; thence, N.89°25'19"E., 104.00 feet to point 24; thence, S.80°40'10"E., 86.20 feet to point 25; thence, N.73°31'15"E., 50.60 feet to point 26; thence, N.44°01'55"E., 217.26 feet to point 27; thence, N.70°53'53"E., 54.77 feet to point 28; thence, S.85°39'04"E., 137.89 feet to point 29; thence, N.80°54'15"E., 95.73 feet to point 30; thence, N.34°33'51"E., 90.74 feet to point 31; thence, N.08°28'35"W., 130.39 feet to point 32; thence, N.24°52'36"E., 83.41 feet to point 33, whose State Plane Values are N-182548.7524 and E-2157201.1023; thence, N.82°13'50"E., 119.23 feet to point 34; thence, S.89°18'16"E., 266.76 feet to point 35; thence, S.83°20'38"E., 48.67 feet to point 36; thence, S.68°32'20"E., 49.24 feet to point 37; thence, S.50°26'27"E., 57.15 feet to point 38; thence, S.45°09'24"E., 119.07 feet to point 39; thence, S.49°33'40"E., 134.01 feet to point 40; thence, S.52°55'52"E., 83.81 feet to point 41; thence, S.46°52'40"E., 104.13 feet to point 42; thence, S.25°58'19"E., 147.92 feet to point 43; thence, S.23°36'17"E., 84.14 feet to point 44; thence, S.19°41'11"E., 77.56 feet to point 45; thence, S.15°20'20"E., 76.09 feet to point 46; thence, S.12°57'33"E., 70.33 feet to point 47; thence, S.06°33'09"E., 58.44 feet to point 48; thence, S.01°26'16"E., 58.43 feet to point 49; thence, S.06°33'25"W., 49.47 feet to point 50; thence, S.12°31'34"W., 51.93 feet to point 51; thence, S.14°01'10"W., 51.41 feet to point 52; thence, S.18°40'18"W., 75.76 feet to point 53; thence, S.19°05'23"W., 55.27 feet to point 54; thence, S.24°49'42"W., 68.02 feet to point 55; thence, S.24°52'23"W., 60.14 feet to point 56; thence, S.25°25'43"W., 37.04 feet to point 57; thence, S.24°58'04"W., 43.49 feet to point 58; thence, S.19°08'43"W., 38.83 feet to point 59; thence, S.15°08'41"W., 47.53 feet to point 60; thence, S.06°14'04"W., 44.21 feet to point 61; thence, S.01°00'38"E., 44.81 feet to point 62; thence, S.10°10'06"E., 58.20 feet to point 63; thence, S.21°27'21"E., 71.59 feet to point 64; thence, S.28°10'56"E., 76.60 feet to point 65; thence, S.28°39'25"E., 105.82 feet to point 66; thence, S.29°59'40"E., 44.10 feet to point 67; thence, S.36°55'37"E., 71.03 feet to point 68; thence, S.41°18'10"E., 172.81 feet to point 69, a point on the southerly side of the centerline of State Highway 12; thence along the southerly side of the centerline of Highway 12 along the following fourteen (14) courses, S.72°00'40"W., 193.90 feet to point 70; thence, S.77°22'49"W., 55.86 feet to point 71; thence, S.76°11'04"W., 34.67 feet to point 72; thence, S.86°33'43"W., 69.02 feet to point 73; thence, N.88°28'22"W., 105.36 feet to point 74; thence, N.88°06'53"W., 137.84 feet to point 75; thence, N.88°04'35"W., 107.79 feet to point 76; thence, S.87°46'01"W., 56.12 feet to point 77; thence, N.82°05'28"W., 56.63 feet to point 78; thence, N.76°11'04"W., 72.64 feet to point 79; thence, S.71°05'50"E., 380.13 feet to point 80; thence, S.70°47'08"W., 399.54 feet to point 81; thence, S.70°38'21"W., 418.17 feet to point 82; thence, S.70°58'47"W., 353.93 feet to the point of beginning and containing 80.73 acres.

DW001542

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DESCRIPTION FOR PARCEL B (PG. 1/2)

Beginning at a point on the southerly side of Highway 12, said point having Colorado State Plane Coordinate Values of N-180622.2405 and E-2158637.2066; thence, from said point beginning, S.01°29'46"W., 339.77 feet to point 1; thence, N.74°26'15"E., 273.32 feet to point 2; thence, S.82°20'31"E., 485.15 feet to point 3; thence, crossing the right-of-way of the Trinidad Railroad, S.05°03'51"E., 268.20 feet to point 4; thence, S.77°12'13"W., 240.08 feet to point 5; thence, S.72°54'48"W., 129.78 feet to point 6; thence S.64°40'23"W., 84.50 feet to point 7; thence, S.58°40'43"W., 249.69 feet to point 8; thence, S.62°48'58"W., 98.21 feet to point 9; thence, S.12°43'25"E., 87.93 feet to point 10; thence, S.21°02'16"W., 98.96 feet to point 11; thence, S.24°52'18"W., 83.40 feet to point 12, whose State Plane Values are N-179468.1971 and E-2158609.6816; thence, S.89°07'03"W., 445.82 feet to point 13; thence, S.66°06'58"W., 106.16 feet to point 14; thence, S.45°42'27"W., 96.53 feet to point 15; thence, S.84°58'27"W., 39.41 feet to point 16; thence, N.56°42'12"W., 53.56 feet to point 17; thence, S.85°03'56"W., 53.48 feet to point 18; thence, S.46°24'01"W., 122.02 feet to point 19; thence, S.01°53'39"E., 410.72 feet to point 20; thence, S.86°03'11"W., 99.18 feet to point 21; thence, S.12°41'19"W., 134.92 feet to point 22; thence, S.09°31'46"W., 152.48 feet to point 23; thence, S.35°29'14"W., 29.31 feet to point 24; thence, N.83°09'01"W., 23.16 feet to point 25; thence, N.49°25'00"W., 20.01 feet to point 26; thence, N.42°31'42"W., 35.34 feet to point 27; thence, N.41°47'44"W., 124.87 feet to point 28; thence, N.43°59'37"W., 99.44 feet to point 29; thence, N.41°51'25"W., 175.87 feet to point 30; thence, N.47°40'09"W., 56.73 feet to point 31; thence, N.55°52'35"W., 54.56 feet to point 32; thence, N.62°28'58"W., 55.01 feet to point 33; thence, N.72°27'22"W., 59.17 feet to point 34; thence, N.73°36'58"W., 112.20 feet to point 35; thence, N.76°32'39"W., 118.93 feet to point 36; thence, N.80°39'42"W., 88.44 feet to point 37; thence, N.88°02'01"W., 65.72 feet to point 38; thence, S.84°18'02"W., 108.71 feet to point 39; thence, S.76°39'21"W., 542.92 feet to point 40; thence, S.72°07'20"W., 451.15 feet to point 41; thence, S.37°21'49"W., 216.00 feet to point 42; thence, S.80°02'27"W., 269.87 feet to point 43; thence, S.75°27'14"W., 761.94 feet to point 44; thence, S.17°52'22"W., 312.22 feet to point 45, whose State Plane Values are N-178202.2707 and E-2154418.4979; thence, N.83°12'06"W., 793.50 feet to point 46; thence, N.83°53'17"W., 300.39 feet to point 47; thence, N.88°50'26"W., 195.48 feet to point 48; thence, S.83°11'34"W., 58.91 feet to point 49; thence, S.69°57'33"W., 163.04 feet to point 50; thence, S.79°56'09"W., 105.41 feet to point 51; thence, S.68°02'31"W., 79.55 feet to point 52; thence, S.77°59'45"W., 73.75 feet to point 53; thence, S.82°09'36"W., 94.24 feet to point 54; thence, S.61°22'00"W., 53.93 feet to point 55; thence, S.50°34'02"W., 124.24 feet to point 56; S.55°53'33"W., 161.89 feet to point 57; thence, S.59°01'31"W., 333.20 feet to point 58; thence, S.80°30'38"W., 75.97 feet to point 59; N.09°32'35"E., 39.36 feet to point 60; thence, N.32°56'52"W., 45.44 feet to point 61; thence, N.87°02'48"W., 151.17 feet to point 62; thence, S.77°13'34"W., 117.53 feet to point 63; thence, S.77°40'14"W., 116.10 feet to point 64; thence, S.78°59'21"W., 115.13 feet to point 65; thence, S.75°06'12"W., 87.52 feet to point 66; thence, S.78°34'15"W., 79.32 feet to point 67; thence, S.75°44'27"W., 75.27 feet to point 68; thence, S.71°47'04"W., 70.91 feet to point 69; thence, S.68°41'04"W., 79.63 feet to point 70; thence, S.57°07'13"W., 85.06 feet to point 71; thence, S.80°17'05"W., 55.70 feet to point 72; thence, N.66°03'48"W., 39.82 feet to point 73; thence, S.83°17'13"W., 59.71 feet to point 74; thence, S.86°11'00"W., 68.25 feet to point 75; thence, N.86°40'37"W., 66.59 feet to point 76; thence, N.89°26'04"W., 66.49 feet to point 77; thence, S.77°07'15"W., 65.37 feet to point 78; thence, S.74°58'40"W., 161.44 feet to point 79; thence, S.83°35'43"W., 79.83 feet to point 80; thence, S.70°45'43"W., 149.05 feet to point 81; thence, S.50°46'47"W., 23.32 feet to point 82; thence, S.11°10'56"E., 99.67 feet to point 83; thence, S.10°16'17"E., 176.74 feet to point 84; thence, S.03°05'42"W., 39.29 feet

to point 85; thence, S.38°38'26"W., 49.58 feet to point 86; thence, N.80°42'40"W., 48.27 feet to point 87; thence, N.18°15'38"W., 108.93 feet to point 88; thence, N.17°22'09"W., 65.11 feet to point 89; thence, N.00°36'39"E., 52.46 feet to point 90; thence, N.09°57'41"W., 67.90 feet to point 91; thence, N.45°39'58"W., 50.72 feet to point 92; thence, S.67°31'46"W., 86.88 feet to point 93; S.77°54'59"W., 275.06 feet to point 94; thence, N.73°14'47"W., 249.06 feet to point 95; thence, S.86°44'23"W., 105.52 feet to point 96; thence, S.46°56'25"W., 18.69 feet to point 97; thence, S.87°31'13"W., 42.50 feet to point 98; thence, N.60°26'18"W., 51.48 feet to point 99; thence, S.77°34'43"W., 43.91 feet to point 100, whose State Plane Values are N-177496.7489 and E-2149208.1033; thence, S.25°00'57"W., 29.55 feet to point 101; thence, S.09°14'16"W., 282.18 feet to point 102; thence, S.85°27'27"W., 564.23 feet to point 103; thence, N.08°37'39"W., 193.71 feet to point 104; thence, N.59°05'15"W., 309.88 feet to point 105; thence, N.11°34'28"W., 133.76 feet to point 106; thence, N.09°12'41"W., 144.91 feet to point 107; thence, N.86°01'41"E., 273.86 feet to point 108; thence, N.03°05'19"W., 218.20 feet to point 109, whose State Plane Values are N-178008.4009 and E-2148504.3506; thence, N.86°00'46"E., 1091.46 feet to point 110; thence, N.83°59'12"E., 376.65 feet to point 111, a point on the North right-of-way line of said railroad; thence, along said right of way the following three (3) courses; N83°05'24"E., 3056.54 feet to point 112 thence N.76°45'19"E., 1358.31 feet to point 113, said point being the SW corner of the 25.5 acre exclusion tract; thence, N.69°54'08"E., 1854.66 feet to point 114, said point being the SE corner of said exclusion tract; thence departing said railroad right-of-way N.12°55'58"W., 415.87 feet to point 115; thence N.46°24'14"W., 65.17 feet to point 116; thence N.70°20'47"W., 72.77 feet to point 117, said point being the NE corner of said exclusion tract, which is also a point on the southerly side of the centerline of said Highway 12, thence along the following fifteen (15) courses, N.70°58'47"E., 353.93 feet to point 118; thence, N.70°38'21"E., 418.17 feet to point 119; thence, N.70°47'08"E., 399.54 feet to point 120; thence, N.71°05'50"E., 380.13 feet to point 121; thence, N.76°11'04"E., 72.64 feet to point 122; thence N. 82°05'28"E., 56.63 feet to point 123; thence, N.87°46'01"E., 56.12 feet to point 124; thence, S.88°04'35"E., 107.79 feet to point 125; thence, S.88°06'53"E., 137.84 feet to point 126; thence, S.88°28'22"E., 105.36 feet to point 127; thence, N.86°33'43"E., 69.02 feet to point 128; thence, N.76°11'04"E., 34.67 feet to point 129; thence, N.77°22'49"E., 55.86 feet to point 130; thence, N.72°00'42"E., 193.90 feet to point 131; thence N.72°00'40"E. 317.40 feet to the point of beginning and containing 168.57 acres excepting the area of the tract being in common with the Trinidad Railroad right-of-way. Said common area being 36.29 acres. The total acreage being herein conveyed being 132.28 ac

## COAL PURCHASE AND LOADING FACILITIES AGREEMENT

This Coal Purchase and Loading Facilities Agreement (hereinafter "Agreement"), having an effective date of January 12, 2006 is made and entered into by and between **A.P. Maxwell Development Company, LLC, Lorencito Coal Company LLC and Picketwire Processing, LLC**, Kentucky Limited Liability Companies, located at 4422 Bryan Station Road, Lexington, Kentucky 40516 ("Lessor") and **New Elk Company, LLC**, a Kansas Limited Liability Company, located at 1202 Main Street, Goodland, Kansas 67735 ("Lessee").

### WITNESSETH:

**WHEREAS**, Lessor owns or controls certain property, including the coal, and a coal loading facility known as the New Elk Facility located near Weston, Colorado, and

**WHEREAS**, said New Elk Facility includes stockpile coal and refuge and loadout facilities, and the property, and abandoned underground workings (collectively "New Elk Facility") as shown on Exhibit A, along with a description of certain rights that have been granted by the Lessor to other parties regarding the use of the New Elk Facility.

**WHEREAS**, Lessee desires to lease the New Elk Facility, and

**NOW, THEREFORE**, for and in consideration of the foregoing recitals and the sum of One Dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, and in further consideration of the below stated terms, rental and other agreements, Lessor does hereby lease to Lessee the New Elk Facility.

Lessor grants unto Lessee only such rights and privileges in the New Elk Facility as Lessor holds. It is understood and agreed that all the rights and privileges shall be construed as limited to the rights granted herein and to such rights and privileges as Lessor has the lawful right to grant, provided that such rights previously granted by Lessor do not materially impair Lessee's rights to use the New Elk Facility as described in this Agreement.

Lessor excepts and reserves from this Agreement any leases, option(s) or other agreement(s) previously granted by Lessor or its predecessors, and Lessor expressly warrants

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that it has set forth on Exhibit A such rights previously granted to others prior to having granted to Lessee the rights set forth herein.

Notwithstanding the foregoing or any other provision hereof, except to the extent otherwise required by the underlying property documents, copies of which shall be furnished to Lessee, prior to the parties execution of this Agreement, Lessor and Lessee shall exercise their respective rights in the New Elk Facility so as not to interfere unreasonably with the rights of the other parties to the extent such other rights shall have been disclosed to Lessee. With respect to the New Elk Facility leased hereunder to Lessee and the foregoing provisions, except as set forth herein regarding Lessee's rights to non-interference, Lessor has and does hereby reserve to itself and excepts and reserves from this Agreement all rights excepted or reserved by any underlying grantor, Lessor, assignor and any other party in the underlying property documents in addition to the rights of Lessor provided for in this Agreement. Lessor shall exercise its best efforts to assure *non-interference by any other parties with Lessee's rights to use the Facility.*

Lessee hereby accepts the lease of the New Elk Facility set forth herein and agrees and binds itself and covenants to and with Lessor as follows:

1. **Term.** The term of this Agreement shall commence upon the date hereof and shall continue for ten years (the "Initial Term"). Provided, however, the Initial Term of this Agreement shall continue as long as Lessee is marketing coal by use of the New Elk Facility and continues all minimum payments required under paragraph number 3 plus additional royalties that may be due hereunder.

2. **Consideration.** Lessee agrees to pay to Lessor for the use of the New Elk Facility, a rental (hereafter "Rental") equal to (i) \_\_\_\_\_ or

of the Gross Sales Price per ton of 2,000 pounds of coal located on and sold from the New Elk Facility to Goodland Energy Group, LLC, and (ii) for each and every ton of 2,000 pounds of coal stored, handled, processed or loaded and sold at the New Elk Facility to purchasers other than Goodland Energy Group, LLC, an amount equal to

per ton or \_\_\_\_\_ of the Gross Sales Price, whichever is greater, and

(iii) for each and every ton of 2,000 pounds of coal stored, handled, processed or loaded and sold from areas other than from the New Elk Facility an amount equal to \_\_\_\_\_ of the Gross Sales Price to all purchasers.

On or before the 15<sup>th</sup> day of each month, Lessee shall pay to Lessor the Rental for the preceding calendar month and furnish to Lessor a complete and correct statement (hereafter "Rental Report") showing for the preceding month the number of tons of coal sold from the New Elk Facility or coal from other sources, stored, handled, processed or loaded and sold, names and address(es) of the coal purchaser(s), quantity of coal sold and the Gross Sales Price from each respective coal purchaser, the amount of Rental required to be paid for such month and such other related information as Lessor requests. Lessee shall keep and preserve its records pertaining to the removing, storing, handling, processing of coal and/or coal sales information, which shall be open to inspection by Lessor at all reasonable times.

3. **Monthly Minimum Rental.** Commencing one year from the date of this Agreement, Lessee shall pay to Lessor, without demand therefore, a recoupable monthly minimum rental of \_\_\_\_\_ per month (hereafter the "Monthly Minimum Rental"). for the Rental for a period of five (5) years. The Monthly Minimum Rental shall be due and payable monthly on the 15<sup>th</sup> day of the calendar month for the previous calendar month and the first Monthly Minimum Rental shall be due and payable February 15<sup>th</sup>, 2007 and continuing on the 15<sup>th</sup> day of each and every month thereafter during the Term of this Agreement. The Monthly Minimum Rental to be paid on February 15<sup>th</sup>, 2007 shall be with respect to the month of January, 2007. The Monthly Minimum Rental shall be paid for any month during the Term hereof, beginning January, 2007, when the Rental that becomes due and payable for any month is less than \_\_\_\_\_.

Commencing the seventh anniversary date of this Agreement, the amount of Monthly Minimum Rental shall be reduced to \_\_\_\_\_, per year for the remaining term of the Agreement.

All Monthly Minimum Rentals paid hereunder shall be recoupable from Rental payments otherwise due herein during any calendar year.

4. **Late Payments.** If the Lessee does not pay payment(s) when due and payable hereunder, then the Lessee shall pay interest to Lessor on any late payment(s) of Rental, Monthly Minimum Rental and any other payment which Lessee is required to make hereunder at the rate of one and one-half percent (1½ %) per month, or the highest interest rate permitted by applicable law, whichever is smaller. To the extent that interest is paid in excess of that permitted by applicable law, Lessor agrees to refund the excess upon notification by Lessee. Interest on any late payment(s) shall be due and payable ten (10) days from the date of any statement or invoice therefore.

5. **New Elk Facility Improvements, Maintenance, and Repairs and Option.** The Lessee shall install truck scales, scale house and related facilities at the New Elk Facility capable of weighing tractor trailers. In addition, the Lessee shall have the right to make additional improvements and/or expansions to the New Elk Facility. All such improvements and/or expansion to be at Lessee's sole cost and expense. All such improvements and/or expansions shall remain the property of Lessee and be subject to liens and encumbrances as may be reasonably required by Lessee's lenders. Lessee shall be responsible for the maintenance and repairs at the New Elk Facility during the Term, at its sole cost and expense. Lessee shall keep the New Elk Facility in good operational condition, reasonable wear and tear excepted.

Upon termination of this Agreement, Lessor shall have the option to relieve Lessee of its bond obligations by re-acquiring the Facility and the rights and obligations of the permits and bonds. Unless Lessor exercises its Option to re-acquire the Facility, Lessee shall, prior to termination of this Agreement, reclaim all areas of the New Elk Facility that it has used or leased hereunder in compliance with all state and federal regulations. Lessors' failure to exercise its option hereunder shall entitle Lessee to dismantle and remove all equipment, structures, fixtures and machinery located at the Facility.

6. **Taxes.** Lessee shall reimburse Lessor for all real and personal property taxes attributable to the areas of the New Elk Facility that Lessee has used during the Term within fifteen (15) days after receiving an invoice from Lessor for such taxes.

7. **Permit & Bonds.** Promptly upon execution of this Agreement, Lessee shall relieve Lessor as the responsible party under the permits and bonds associated with the New Elk Facility and the Lorencito Bond, and Lessee shall fully comply with all terms and conditions of the Permit and Bonds.

If a notice of non-compliance or cessation order is issued on the Permit or Bonds, after execution of this Agreement, provided that the activities of Lessee shall have been the cause of the non-compliance or cessation order, it shall be the duty of Lessee to defend the non-compliance or cessation order, to pay all fines, to correct violations, and to perform all remedial measures required by the regulatory authorities. If a notice of non-compliance or cessation order is issued on the Lorencito Bond after execution of this Agreement, it shall be the duty of Lessor to defend the non-compliance or cessation order, to pay all fines, to correct violations, and to perform all remedial measures required by the regulatory authorities. In the event Lessee receives notice of any non-compliance or cessation order resulting from Lessee's activities under the Permits assigned hereunder, Lessee shall give notice thereof to Lessor within two (2) business days of receipt of such notice. If Lessor improperly fails to defend the non-compliance or cessation order for the Lorencito Bond and does not promptly and in good faith take necessary action to abate such non-compliance or order, then Lessee shall have the right but not the obligation to defend and/or abate said non-compliance or order and Lessor shall reimburse Lessee for all reasonable and necessary costs associated with such defense/abatement, including attorneys' fees. Lessor shall provide copies of all inspection reports received by Lessor to Lessee within five (5) business days of receipt of same.

Lessee shall immediately, upon execution of this Agreement, replace all reclamation bonds associated with all Permits covering Lessor's Colorado properties, namely Permit Number C-81-012 (New Elk Facility Bond) in the amount of Two Million One Hundred Fourteen Thousand

Six Hundred Forty Nine Dollars (\$2,114,649.00) and Permit Number C-96-084 (Lorencito Reclamation Bond) in the amount of One Million Two Hundred Forty Dollars (\$1,000,240.00); however, notwithstanding Lessee's replacement of the Bonds, Lessor shall remain fully responsible for all reclamation claims under Permit C-96-084.

Likewise, Lessor covenants and agrees to indemnify, defend and save Lessee, its shareholders, officers, directors, employees and affiliates harmless from all costs, expenses, damages, fees, liabilities, obligations, penalties, charges, disbursements in relation to the Lorencito Reclamation Bond.

8. **Books and Records; Inspections.**

(A) Lessee shall keep true and accurate records of all coal removed, stored, handled, processed or loaded, together with correct tonnage weights, names and addresses of the coal purchasers, and tons stored, handled, processed or loaded for each respective coal purchaser for the New Elk Facility. Lessor, its officers, employees, engineers, accountants, attorneys and consultants shall have the right to inspect and copy at all reasonable times said books and records of Lessee pertaining to the Rental Report(s) and for any other reasonable purpose in connection therewith. In addition, Lessor, its officers, employees, engineers, accountants, attorneys and consultants shall have the right to enter the New Elk Facility at all reasonable times to inspect the Facility and operations hereunder.

(B) Lessee covenants and agrees to maintain, until five (5) years after the date of termination of this Agreement, all books, records and data concerning the storing, handling, processing, loading, shipping and selling of coal from the New Elk Facility.

9. **Indemnification.** Lessee covenants and agrees to indemnify, defend and save Lessor, its shareholders, officers, directors, employees and affiliates harmless from all costs, expenses, damages, fees, liabilities, obligations, penalties, charges, disbursements and claims of other parties, both direct and indirect (including, without limitation, reasonable attorneys' fees and court costs), which arise out of or are asserted, either in whole or in part, directly or indirectly, because of (1) any act or omission by Lessee or its contractors, employees, agents or



representatives relating to the use, occupancy, exercise or operation of the property interests or rights granted to Lessee pursuant to this Agreement, including, but not limited to, the violation of any applicable law or regulation or of the terms and conditions of the Permit(s), or (ii) any misrepresentation or breach of any covenant, agreement, obligation, representation or warranty on the part of Lessee herein contained.

Likewise, Lessor covenants and agrees to indemnify, defend and save Lessee, its shareholders, officers, directors, employees and affiliates harmless from all costs, expenses, damages, fees, liabilities, obligations, penalties, charges, disbursements and claims of other parties, both direct and indirect (including, without limitation, reasonable attorneys' fees and court costs), which arise out of or are asserted, either in whole or in part, directly or indirectly, because of (i) any act or omission by Lessor or its contractors, employees, agents or representatives relating to the use, occupancy, exercise or operation of the property interests or rights granted to Lessor pursuant to this Agreement, including but not limited to, the violation of any applicable law or regulation or of the terms and conditions of the Permits, or (ii) any misrepresentation or breach of any covenant, agreement, obligation, representation or warranty on the part of Lessor herein contained.

10. **Insurance.** In addition to, and not in limitation of, any obligation to indemnify Lessor under Section 9 hereof, Lessee covenants and agrees, at its sole cost and expense, to procure and maintain in full force and effect, the following insurance coverage. Lessee's absolute and complete liability for indemnification for the conditions covered by Insurance as provided for herein.

The following described shall be:

(A) Comprehensive general liability insurance against claims for bodily injury, death and property damage occurring on or about the New Elk Facility in an amount not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury or death arising out of any one occurrence and not less than Two Million Dollars (\$2,000,000.00) in respect of bodily injury, death or property damage in the aggregate during any one policy year. In addition, Lessee will carry

umbrella liability insurance with a limit of Ten Million Dollars (\$10,000,000.00). The comprehensive general public liability insurance and the umbrella liability insurance policies shall provide coverage against losses arising out of the liability of Lessee due to its mining operations or any other activity on or pertaining to the New Elk Facility including, (i) premises and operations; (ii) contractual; (iii) contingent; (iv) products; (v) hired vehicles; (vi) non-owned vehicles and (vii) subsidence, pollution or contamination of water, gob pile slides and movement of overburden.

(B) Insurance adequate to fully satisfy Lessee's obligations under all state and federal workers compensation statutes including, but not limited to, obligations with respect to pneumoconiosis or "Black Lung."

All insurance required under this Section 10 shall be with a reputable insurer(s) licensed to do business in the State of Colorado and shall name Lessor as additional insureds in a manner and form acceptable to insurer(s). All insurance required hereunder shall contain a provision for notice to Lessor of any overdue or unpaid premium and thirty (30) days advance notice to Lessor of any proposed cancellation. It is understood by Lessor and Lessee that during the term of this Agreement if any such insurer(s) providing any insurance hereunder either (i) loses its license to conduct business in the State of Colorado, or (ii) is denied the right to write for Lessee or any other customer any business (renewal(s) or new insurance policy(ies)) in the State of Colorado, or (iii) the A.M. Best Company rating for any such insurer(s) is B or below or drops to B or below, then there shall be deemed a failure by Lessee to procure and maintain the insurance coverage required under this Section 10.

11. **Transfers and Encumbrances.**

(A) Lessee covenants and agrees that it shall not sell, assign, lease, convey, sublease, underlet or transfer any interest whatsoever (hereafter collectively "Transfer"), in whole or in part, in this Agreement to any person or entity in any manner whatsoever without the prior written consent of Lessor, and that no such result shall be brought about by operation of law

without the prior written consent of Lessor. Lessor is under no obligation to give its consent and may withhold its consent for any reason.

(B) Lessee and Lessor covenant and agree that Lessee may allow a mortgage, security interest, lien, pledge or encumbrance (hereafter collectively "Encumbrance"), in whole or in part, the leasehold estate created by this Agreement to any person or entity loaning funds to Lessee for purposes of this transaction without the prior written consent of Lessor, and that such result may be brought about by operation of law without the prior written consent of Lessor.

(C) If any consent for a Transfer or Encumbrance is granted by the Lessor, it shall not be construed to be a waiver of the foregoing covenants as to any future action and any consent shall so stipulate.

12. **Compliance with Laws.** Lessee covenants and agrees that it will, at all times, with respect to its operations at the New Elk Facility (i) conduct its operations in compliance with the provisions and requirements of all applicable laws of the United States and the State of Colorado, now existing or hereafter in force and effect, and all rules and regulations promulgated thereunder; (ii) make and file all maps, applications, reports and other documentation and data required thereby and furnish copies thereof to Lessor; (iii) provide Lessor with copies of all applicable permits, licenses and governmental approvals applicable to Lessee's operations hereunder.

13. **Removal and Abatement of Environmental Hazards.** Should Lessee or its employees or contractors do or omit to do any act on the New Elk Facility which creates or contributes to the creation of any condition constituting a common law nuisance or an environmental hazard, or which causes or is likely to cause pollution of air, water or streams, or contravenes any law or requires continuing expenditures in order to comply with the law after termination of operations, Lessee covenants and agrees to, at its sole cost and expense, remove same from the New Elk Facility or otherwise abate the conditions creating or contributing to the creation of the foregoing conditions.

14. Notices, Reports and Payments.

(A) Any notices or other communications required or permitted hereunder shall be deemed to have been given on the date of mailing if in writing and deposited in the U.S. mail and forwarded by certified mail, return receipt requested, and at the same time sent by telephone facsimile to the address(es) and telephone facsimile number(s) of such parties stated below:

If to Lessor:

A.P. Maxwell Development Company, LLC  
4422 Bryan Station Road  
Lexington, Kentucky 40516

Lorencito Coal Company, LLC  
4422 Bryan Station Road  
Lexington, Kentucky 40516

Picketwire Processing, LLC  
4422 Bryan Station Road  
Lexington, Kentucky 40516

With a copy to:

Ronnie G. Dunnigan  
3100 Maria Drive  
Lexington, Kentucky 40516

If to Lessee:

New Elk Coal Company  
1202 Main Street  
Goodland, Kansas 67735

(B) All payments and Rental Reports required to be paid or sent to Lessor by Lessee hereunder shall be paid or sent to Lessor either by (i) delivery on or before the due date to Lessor's Lexington, Kentucky office located at 4422 Bryan Station Road, Lexington, Kentucky 40516, during normal business hours, or (ii) mailing before due date to Lessor by U.S. Mail to the address of Lessor as follows:

A.P. Maxwell Development Company, LLC  
4422 Bryan Station Road  
Lexington, Kentucky 40516

Lorencito Coal Company, LLC  
4422 Bryan Station Road  
Lexington, Kentucky 40516

Picketwire Processing, LLC  
4422 Bryan Station Road  
Lexington, Kentucky 40516

(C) Any party may change its address(es) and telephone facsimile number(s) shown above by giving the other parties appropriate written notice pursuant to Section 15 hereof.

15. **Default and Forfeiture.**

Except as expressly set forth herein, Lessee' s liability to Lessor for default and forfeiture shall be limited to the full extent so provided and acknowledged by Lessee herein.

(A) Any failure by Lessee to pay when due and payable either the Rental, Monthly Minimum Rental or any other payment due Lessor hereunder shall constitute a default under this Agreement. In the event of any such default, Lessor shall give Lessee written notice of such default. In the event of any failure to so cure, the Lessor shall have the right, at its sole option, and in addition to any other remedies available to it hereunder, at law, or in equity, to immediately terminate this Agreement by providing Lessee written notice thereof, whereupon this Agreement and the leasehold created hereby shall immediately cease and terminate and be of no further force or effect.

(B) Any failure by Lessee to send to Lessor a Rental Report required under Section 2 hereof shall constitute a default under this Agreement. In the event of any such default, the Lessor shall give Lessee written notice of such default. The Lessee shall have thirty (30) days from the date of any such notice to cure such default. In the event of any failure to so cure, Lessor shall have the right, at its sole option, and in addition to any other remedies available to it hereunder, at law, or in equity, to immediately terminate this Agreement by providing Lessee written notice thereof, whereupon this Agreement and the leasehold created hereby shall immediately cease and terminate and be of no further force or effect.

(C) Any failure to maintain the insurance coverage required under Section 10 hereof shall constitute a default under this Agreement. In the event of any such default, the Lessor shall give Lessee written notice of such default and all activities of Lessee under this Agreement shall immediately cease. The Lessee shall have thirty (30) days from the date of any such notice to cure such default. In the event of any failure to so cure, the Lessor shall have the right, at its sole option, and in addition to any other remedies available to it hereunder, at law, or in equity, to immediately terminate this Agreement and the leasehold created hereby shall immediately cease and terminate and be of no further force or effect.

(D) Any violation of the provision of Section 11 hereof as to the Transfer of any interest whatsoever in this Agreement or any violation as to the Encumbrance of any interest whatsoever in this Agreement shall constitute a default under this Agreement. In the event of any such default, Lessor shall give Lessee written notice of such default. The Lessee shall have ten (10) days from the date of any such notice to cure such default. In the event of any failure to so cure, Lessor shall have the right, at its sole option, and in addition to any other remedies available to it hereunder, at law or in equity, to immediately terminate this Agreement by providing Lessee written notice thereof, whereupon this Agreement and the leasehold created hereby shall immediately cease and terminate and be of no further force or effect.

(E) Any failure by Lessee to observe or perform any of the other terms, conditions, obligations or provisions of this Agreement shall constitute a default under this Agreement. In the event of any such default, the Lessor shall give Lessee written notice of such default. The Lessee shall have thirty (30) days from the date of any such notice to demonstrate to Lessor that it has cured the default or, as to any default that cannot reasonably be cured within such period, to commence in good faith to cure such default and thereafter continue with reasonable diligence to cure such default. In the event of any failure to so cure, the Lessor shall have the right, at its sole option, and in addition to any other remedies available to it hereunder, at law or in equity, to terminate, at the expiration of sixty (60) from the date of the written notice provided to Lessee, this Agreement by providing Lessee written notice thereof, whereupon this

Agreement and the leasehold created hereby shall immediately cease and terminate and be of no further force or effect.

(F) The Rental, Monthly Minimum Rental and Royalties due Lessor under this Agreement shall be deemed additional rents reserved by Lessor under contract, and all remedies now or hereafter given to landlords by the laws of the State of Colorado in order to secure the above payments and for collection of such rents under contract shall exist in favor of Lessor in addition to any rights and remedies specified herein.

(G) No remedy set forth in this Agreement is intended to be exclusive of any other remedy, and every remedy shall be cumulative and in addition to every other remedy herein or now existing or hereafter existing at law, in equity or by statute. No delay or failure to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver thereof, and any such right or power may be exercised from time to time and as often as may be deemed expedient in Lessor's sole judgment.

16. **Reservations.** Lessor reserves the right to use any road(s), now existing or constructed in the future, located on the New Elk Facility property which is necessary and/or convenient to facilitate Lessor's operations or activities on adjoining property or property in the vicinity.

17. **No Waiver of Rights.** Failure of either Lessor or Lessee to exercise any of their respective rights hereunder upon the defective performance or non-performance by the other party of any covenant, agreement or requirement of this Agreement will not be construed as a waiver of those rights.

18. **Confidentiality.** Lessor, Lessee and their directors, officers, employees, agents and advisors shall hold and treat the terms and provisions of this Agreement as confidential and shall refrain from divulging, discussing or disclosing, in whole or in part, to any other person or entity the terms and provisions of this Agreement. Provided, however, the parties shall have the right to provide copies of this Agreement to their respective lenders, attorneys, accountants and consultants, all of which parties shall keep same confidential.

19. **Time of the Essence.** For purposes of this Agreement, time is of the essence.
20. **Disclaimer of Other Warranties and Representations by Lessor.** Lessee acknowledges that it has inspected and is knowledgeable of the condition of the New Elk Facility. Accordingly, the New Elk Facility is accepted on an as-is basis, with no warranties or representations, either expressed or implied, with regard to the New Elk Facility.
21. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.
22. **Entire Understanding of Parties.** This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all parties hereto.
23. **Savings Clause.** If any provision of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of this Agreement will remain in full force and effect unless the invalidation of the provision substantially alters the essence of the Agreement.
24. **Survival.** Any provision which by its terms has or may have application after the termination for any reason of this Agreement, including, but not limited to, all of Lessee's and Lessor's covenants of indemnity, shall be deemed to survive the termination of this Agreement for any reason.
25. **Governing Law and Venue.** This Agreement shall be governed and construed and the legal relationships of the parties determined in accordance with the laws of the State of Colorado.
26. **Binding Effect.** Subject to the provisions of numerical Section 11 hereinabove, this Agreement shall be binding upon the parties hereto and their respective successors and assigns.
27. **Descriptive Headings.** The descriptive headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.



IN WITNESS WHEREOF, the above parties have made and entered into this Agreement  
this the 12<sup>th</sup> day of January, 2006  
B.A.

A.P. MAXWELL DEVELOPMENT COMPANY, LLC  
LORENCITO COAL COMPANY, LLC  
PICKETWIRE PROCESSING, LLC

By: Brian O'Donoghue  
Title: MANAGER

NEW ELK COAL COMPANY, LLC

By: Wayne Coverdale  
Title: Manager

**EXHIBIT A**

**DESCRIPTION OF NEW ELK FACILITY**

Quitclaim Deeds dated June 1, 1997, from North Central Energy, Inc. to Picketwire Processing, LLC.

**RIGHTS PREVIOUSLY GRANTED**

None

*2*

QUITCLAIM DEED OF ABANDONED UNDERGROUND WORKINGS

THIS DEED, Made as of the 1<sup>st</sup> day of June, 1997, from North Central Energy, Inc., and Basin Resources, Inc., both corporations duly organized and existing under and by virtue of the laws of the State of Colorado ("Grantors"), and Picketwire Processing, LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of Colorado ("Grantee").

WITNESS, That the Grantors, for and in consideration of the sum of One dollar and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has remised, released, granted, conveyed, and QUITCLAIMED, and by these presents does remise, release, grant, convey, and QUITCLAIM unto the Grantee, its successors and assigns forever, all right, title, and interest, claim and demand, if any, in the abandoned underground workings of that certain coal mine known as the New Elk mine (formerly known as the Allen Mine), lying and being in the County of Las Animas and State of Colorado, and which workings are located entirely beneath certain real property owned by Grantors in fee (including all mineral rights) which are generally described as follows:

Those certain lands covered by Permit C-81-012 from the Colorado Division of Minerals and Geology, situate in Las Animas County, Colorado, consisting of 3,997.8 acres, more or less.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the Grantors, either in law or equity, to the use and benefit of the Grantee, its successors and assigns forever, and specifically acknowledging the right of Grantee, its successors and assigns, to dispose of coal processing wastes in said abandoned underground workings. Provided, however, Grantee covenants and agrees to indemnify and hold harmless Grantors, their affiliates, successors and assigns, from and against any claim, damages, liability, responsibility or action whatsoever, made by any person, entity or governmental authority, arising from Grantee's ownership, use or operation of said underground workings, including without limitation, any such claim, damage, penalty, fine, liability, responsibility or action imposed by or resulting from any environmental law or regulation.

IN WITNESS WHEREOF, the Grantors have executed this deed on the date set forth above.

**GRANTORS:**

NORTH CENTRAL ENERGY, INC.

BASIN RESOURCES, INC.

By *Paul Stojmeier*  
Title *Pres*

By *Paul Stojmeier*  
Title *Pres.*

Agreed to and Accepted this \_\_\_\_ day of \_\_\_\_\_, 1996.

**GRANTEE:**

PICKETWIRE PROCESSING, LLC

By *[Signature]*  
Title *[Signature]*

*Q*

STATE OF Montana

)

Instrument      Book      Page  
200100653177      DR      1006      687

) ss.

COUNTY OF Silver Bow

)

Sworn to and subscribed under oath before me by Paul Gatzemeier as  
President of North Central Energy, Inc. this 28th day of January  
1997.

My commission expires: 2-5-99

Paul T. Felt  
Notary Public

STATE OF Montana

)

) ss.

COUNTY OF Silver Bow

)

Sworn to and subscribed under oath before me by Paul Gatzemeier as  
President of Basin Resources, Inc. this 28th day of January, 1997.

My commission expires: 2-8-99

Paul T. Felt  
Notary Public

STATE OF Colorado

)

) ss.

COUNTY OF Denver

)

Sworn to and subscribed under oath before me by John Patterson as  
Vice President of Picketwire Processing, LLC this 29th day of January  
1996.

My commission expires: February 20, 1998

Shari M. Lewis  
Notary Public

## PERMIT TRANSFER AND OPERATING AGREEMENT

This Permit Transfer and Operating Agreement ("Agreement") is made and entered into effective this 12<sup>th</sup> day of January, 2006, by and between **Picketwire Processing, LLC** and **Lorencito Coal Company, LLC**, Kentucky limited liability companies, with offices at 4422 Bryan Station Road, Lexington, Kentucky 40516, (collectively "the Companies") and **New Elk Coal Company**, a Kansas limited liability company, with offices at 1202 Main Street, Goodland, Kansas 67735 ("New Elk").

### WITNESSETH:

- A. The Companies are the holders and owners of Permit Nos. C-81-012 and C-96-084 issued by the Colorado Division of Minerals and Geology ("DMG") (the "Permits").
- B. The Companies desire to designate New Elk as the "Operator" to conduct coal processing and reclamation activities under the Permits until the transfer date ("Transfer Date") for each permit, respectively, subject to the terms and conditions of this Agreement.
- C. The Companies desire to transfer the permits to New Elk, and New Elk desires to succeed to the Permit.

**NOW, THEREFORE**, for and in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Designation of Operator.** The Companies hereby designate New Elk as the Operator under Permit Numbers C-81-012 and C-96-084, and shall, within thirty (30) days after the execution of this Agreement, file with DMG any and all applications or notifications necessary to formalize such designation with DMG.
2. **Operator's Rights and Obligations.** Effective on the date upon which New Elk is recognized by the DMG as Operator under the Permits (the "Effective Date"), and continuing until the Transfer Date for the Permits to the extent allowed by and in accordance with applicable law, the Companies hereby grant New Elk the right to conduct coal processing and reclamation activities on the Permits prior to the Transfer Date; provided that if the DMG has not approved the transfer of the Permits to New Elk within six (6) months of the Effective Date and released the bonds provided by the Companies to secure the Permit, New Elk will cease all further activities on the area of the Permits until the Permits

have been transferred to New Elk and all of the bonds provided by the Companies to secure the Permits have been released. From and after the Effective Date, New Elk shall be solely responsible for compliance with the terms and conditions of the Permits and with all enforcement notices or orders issued by the DMG or other governmental agency with respect to the Permits and any fines or penalties assessed in connection therewith; provided, however, the Companies shall remain solely responsible for the payment of any fines or penalties assessed for any enforcement notice or order issued prior to the Effective Date.

3. **Transfer of the Permits.** No later than thirty (30) days after the date of this Agreement, New Elk shall file a proper and complete application with the DMG and any other government agency to accomplish the transfer of the Permits. New Elk shall thereafter diligently pursue and take all necessary actions to accomplish the final transfer of the Permits as quickly as possible. The parties agree to fully cooperate with each other and to act in good faith to accomplish the results contemplated in this Agreement, including the providing of information and the preparation and execution of any additional documents that may be reasonably necessary to accomplish the transfer of the Permits.

4. **Indemnification.** New Elk shall defend, indemnify and hold harmless the Companies, their affiliates and respective officers, directors, employees and agents from and against any and all liability for damages, costs, losses, fines, assessments, penalties, claims and expenses, including attorney fees, arising from or associated with New Elk's occupation or use of the properties covered by the Permits and the acts or omissions of New Elk, its employees, agents, contractors and invitees in connection therewith.

5. **Miscellaneous.**

a. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Colorado.

b. New Elk acknowledges that the Companies have made no representations, warranties or guarantees of any kind as to the condition of any area covered under the Permits.

c. This Agreement constitutes the entire agreement among the parties pertaining to its subject matter and supersedes all prior agreements and understandings of the parties in connection

with such subject matter. No covenant or condition not expressed in this Agreement shall affect or be effective to interpret, change or restrict this Agreement. No modification, waiver, termination, rescission, discharge or cancellation of this Agreement, and no waiver of any provision of or default under this Agreement, shall be binding on any party unless in writing signed by its duly authorized representative.

d. Neither this Agreement, nor any of the rights, interests or obligations hereunder, shall be assigned by either party without the prior written consent of the other, which consent may be withheld in such party's sole discretion.

e. Any notice or other communication under or in connection with this Agreement shall be in writing and shall be addressed to the parties at their respective addresses set forth in the opening paragraph of this Agreement. Such notice shall be effective when delivered to such address or to such other address as shall have been designated by written notice to the other.

f. The failure of either party to seek redress for violation of or to insist upon strict performance of any covenant or conditions of this Agreement shall not be considered a waiver, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that or any other term of this Agreement.

g. Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the parties any rights or remedies under or by reason of this Agreement.

h. If any provision of this Agreement, or the application thereof, to any person or circumstances shall, to any extent, be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.



PICKETWIRE PROCESSING, LLC  
LORENCITO COAL COMPANY, LLC

By: Bruce Addister  
Title: MANAGER

NEW ELK COAL COMPANY, LLC

By: Wayne Coverdale  
Title: Manager

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of January, 2006 by Bruce Addister as President of Picketwire Processing, LLC and Lorencito Coal Company, LLC, Kentucky limited liability companies, for and on behalf of said corporations.

My Commission Expires: April 5, 2009

Jane Pickett Clark  
NOTARY PUBLIC

STATE OF Kansas

COUNTY OF Sherman

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of January, 2006 by Wayne Coverdale as manager of New Elk Coal Company, LLC, a Kansas limited liability company, for and on behalf of said corporation.

My Commission Expires: 7/1/2007

Barbara Bedore  
NOTARY PUBLIC

RGD:lpc\LCC-014\01-12-06



### AGREEMENT

This Agreement is made this 15<sup>th</sup> day of October 2011, by and between New Elk Coal Company LLC, located at 122 West First Street, Trinidad, Colorado (hereinafter referred to as "NECC") and Pacesetter Energy Leasing, LLC, a Texas limited liability company whose address is 2001 Timber Creek Road, Flower Mound, Texas 75028 ("Pacesetter Energy").

WHEREAS, NECC is the owner and operator of a coal mine located at 12250 Highway 12, Weston, Colorado 81091.

WHEREAS, Pacesetter Energy owns the surface estate and/or the right to grant easements throughout the surface estate of property located in Township 37 South, Range 68 West, Las Animas County, Colorado, as depicted on the attached map and shaded light brown (east of the area referenced on the map as NECC Wash Plant Parcel "A") and is hereinafter referred to as the "Property."

WHEREAS, NECC is interested in purchasing the Property for purposes of NECC's mining operations.

WHEREAS, NECC wishes to enter the Property for purpose of obtaining data regarding vegetation, soils and other baseline information relative to the Property as may be required to obtain permit approval from the Colorado Division of Reclamation, Mining and Safety ("DRMS").

WHEREAS, Pacesetter Energy is willing to grant NECC and its authorized representatives access to the Property for such purposes upon all of the terms and conditions as set forth herein.

NOW THEREFORE, in acknowledgment of the above statements and in consideration of the agreements set forth below, the parties agree as follows:

1. Permission to Enter. Pacesetter Energy hereby acknowledges that NECC, its officers, employees, agents, contractors, and all other persons authorized by NECC, are hereby authorized to enter and use the Property for the purposes described above and in Paragraph 2 below.
2. Purpose of Entry. By this Agreement and in consideration of the mutual promises herein, Pacesetter Energy authorizes NECC, or persons acting on its behalf (collectively referred to as "NECC"), the right of entry onto the Property to conduct pre-permit environmental testing of vegetation, soils and other baseline information concerning the Property as may be required by DRMS ("environmental surveying"). For purposes of these activities, NECC shall utilize light equipment and tools specifically designed for environmental surveying. The environmental surveying to be performed by NECC shall be completed within 45 days from the date of NECC's initial entry onto the Property.
3. Conditions to Entry. NECC's entry upon the Property pursuant to this Agreement is subject to each of the following conditions:

a. NECC shall make every reasonable effort to minimize any interference with Pacesetter Energy's activities being conducted at the Property.

b. NECC shall maintain in a reasonably neat and clean condition at all times both the areas of the Property in the vicinity of the environmental surveying and all other areas of the Property utilized in connection with the environmental surveying.

c. Following the conclusion of the environmental surveying, NECC shall remove from the Property all tools, supplies, and materials used in connection with such activities and shall restore the Property to a substantially similar condition as existed immediately prior to the activities described in this Agreement and in compliance with the applicable reclamation requirements of the Colorado Division of Reclamation Safety and Health.

d. NECC shall provide Pacesetter Energy with forty-eight hour (telephone) notice of its intent to enter upon the Property.

e. Persons entering the Property for the purposes set forth herein may be asked by employees or authorized representatives of Pacesetter Energy to produce appropriate identification and may be excluded from the Property if they fail to do so.

4. Term. The consent and grant of right to enter the Property by NECC provided by this Agreement shall terminate on November 1, 2011 ("Termination Date"); provided however, that by written notice by NECC to Pacesetter Energy not later than 10 days prior to the Termination Date, NECC may elect to extend the Termination Date for an additional 30 days.

5. Indemnification. NECC hereby covenants and agrees to indemnify and hold harmless Pacesetter Energy, its affiliates, successors and assigns, from and against any claim, damages, liability, responsibility or action whatsoever, made by any person, entity or governmental authority, arising from NECC's presence on, or use of the Property.

6. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the successors and assigns of the parties.

7. Authority. Each person executing this Agreement on behalf of a party represents and warrants that he or she is authorized to execute this Agreement on behalf of such party and to bind such a party by its terms.

Signature Page to Follow

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

**NEW ELK COAL COMPANY LLC**

By: Ron Thayer  
Its: mine MANAGER  
Date: 9-23-11

**PACESETTER ENERGY LEASING, LLC**

By: P. E. Bel  
Its: President  
Date: 10-1-11

# EXHIBIT 34-1

## APPLICATION FOR TEMPORARY SPECIAL USE AGREEMENT ON CDOW LANDS

*All portions of this form must be completed. Attach additional information or sheets if needed.*

1. New Elk Coal Company, LLC

Company, Organization, or Individual

122 W. 1<sup>st</sup> Street, Trinidad, CO 81082

Address, City, and State

Ron Thompson, General Manager

719-845-0090

Contact Person

Phone Number

2. Type of Use Requested

Construct riprap ditch and install a culvert on DOW lands.

3. Period(s) of Use Starting Date 07/16/2012 Ending Date 08/31/2012

4. State Wildlife Area(s) to be used: Bosque del Oso

5. Anticipated Impacts (describe all that apply; attach additional sheets if necessary):  
See attached drawings which are part of TR-65 submitted to the Colorado Department  
of Reclamation, Mining and Safety.

a) Wildlife:

b) Vegetation: Temporary disturbance of 0.04 Acres (80 foot long by 20 foot wide  
corridor). Disturbed areas associated with ditch a culvert installation will be  
reclaimed.

c) Water Resources:

d) Air Quality:

e) Public Use Facilities:

f) Roads and/or other Capital Structures:

6. Compensation or remuneration proposed (if this is a commercial use, a minimum of 5%  
of the gross income generated by the activity shall be paid to the Division of Wildlife but  
in no event shall any fee for commercial use be less than \$100). \$100 fee proposed.

Division Use Below This Line

Date Application Received: \_\_\_\_\_

Approved M. L. Lyle  
7/11/12

## GRANT OF ROYALTY

THIS Grant, made this 12<sup>th</sup> day of May, 2008, between North Central Energy Company, a Colorado corporation ("Grantor"), Westmoreland Coal Company, a Delaware corporation, ("Grantee"),

WITNESSETH, That the Grantor, for and in consideration of the sum of Ten Dollars and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, by these presents does grant and convey unto the Grantee, its successors and assigns, forever, and Grantor agrees to pay to Grantee, its successors and assigns a royalty of (i) two dollars (\$2.00) per ton (2,000 pounds) or (ii) seven percent (7%) of the total gross realization received by Grantor, its successors or assigns, which ever is the greater, with respect to any and all coal mined, removed and sold from those lands located in the County of Las Animas, State of Colorado, as more particularly described on Exhibit 1 attached hereto and incorporated herein by reference ("the Lands"). Such royalty shall be calculated in accordance with the following:

- (i) The term "gross realization" shall mean all revenues, except reimbursements received for abandoned mine reclamation fund fees, black lung fund fees or any other similar governmental fund fees resulting from mining or delivery of coal from the Lands during said month undiminished by sales costs, transportation costs, expenses or commissions, but excluding all federal, state and local sales and use taxes charged and collected from the purchaser by Grantor and all amounts representing federal and state severance taxes and taxes of a similar nature levied against the extraction of coal.
- (ii) The tons shall be calculated by accepted and recognized engineering methods.
- (iii) Royalties due and payable for coal actually mined and removed from the Lands and sold during any calendar month shall be paid on or before the last day of the next succeeding calendar month.
- (iv) Grantor may remove, sell or otherwise dispose of pyrites, sulphurs and other materials which are intermingled with coal and recovered in cleaning the coal for market, and also any coal and other refuse recovered in cleaning slurry ponds without the payment of any royalty to Grantee with respect to such extraneous materials.

(v) Grantor shall keep a true and correct record of all coal mined, removed and sold from the Lands and shall permit Grantee or Grantee's agent at all reasonable times and upon prior notice to Grantor to examine such records. Each royalty payment shall be accompanied by a royalty statement showing in reasonable detail the quantities of coal from the Lands processed, mined and sold by Grantor for the preceding month; the proceeds of sale, costs, and other deductions; and other pertinent information in sufficient detail to explain the calculation of the royalty payment. Unless either party hereto shall give notice to the other of a dispute or question with respect to such statement within 180 days from the date the same is delivered to Grantee, such statement shall be final and binding upon the parties hereto.

(vi) Grantor acknowledges that the parties intend that the obligation to pay the Royalty and all of the other covenants, terms and conditions of this Agreement (a) shall be binding upon and inure to the benefit of the parties and their respective successors and assigns and (b) shall be a covenant running with the Property. The parties further agree that any conveyance of any interest in the Property shall require the transferee to agree in writing to assume the obligation to pay the Royalty set forth in this Agreement.

IN WITNESS WHEREOF, The Grantor has executed this deed on the date set forth above.

North Central Energy Company

By: Wayne Coverdale  
Wayne Coverdale  
Title: President

This instrument prepared by:

Morris W. Kegley  
Attorney At Law  
2 N. Cascade Ave., 14<sup>th</sup> Floor  
Colorado Springs, CO 80903

STATE OF COLORADO

)

) ss.

COUNTY OF EL PASO

)

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of May, 2008 by Wayne Coverdale as President of North Central Energy Company, a Colorado corporation.

My commission expires 27 July, 2008.

Witness my hand and official seal,



Notary Public

NICHOLAS C. SOOTY

EXHIBIT 1



(Legal Description)

Township 33 South, Range 68 West, Las Animas County, Colorado

Section 12:  
NE1/4 SE1/4  
SW1/4 SE1/4

Township 33 South, Range 67 West, Las Animas County, Colorado

Section 5:  
Lot 4 (NW1/4 NW1/4)  
S1/2 NW1/4  
S1/2 NE1/4  
S1/2

Section 6:  
Lot 1 (NE1/4 NE1/4)  
S1/2 NE1/4  
SE1/4  
SE1/4 SW1/4

Section 7:  
NW1/4 NE1/4

Section 18:  
S1/2 SE1/4

Section 19:  
SW1/4 NE1/4  
SE1/4 NW1/4  
NE1/4 NE1/4  
SE1/4 NE1/4

Part of Lot 2 (SW1/4 NW1/4) and part of Lot 3 described as follows: Commencing at the northwest corner of the SE1/4 NW1/4 of Section 19, T33S, R67W, thence West 443 feet to a point; Thence in a southerly direction 1,779 feet more or less to the North line of the Maxwell Land Grant; thence in a southeasterly direction along the northerly line of the said Grant line 498 feet to a point; thence in a northerly direction 1,920 feet more or less to the place of beginning, said tract containing 20 acres more or less; also, any other surface, coal or mineral interest presently owned by CF&I Steel Corporation in Lot 2 (SW1/4 NW1/4) and Lot 3

qcdood.nis2

Lot 4 Except 0.16 acres as conveyed in Book 121 Page 72

Lot 5 Except 4.0 acres as conveyed in Book 79 Page 186

Lot 8 Except 0.14 acres as conveyed in Book 143 Page 35

Section 20:

E1/2 SW1/4

W1/2 SE1/4

Township 33 South, Range 66 West, Las Animas County, Colorado

Section 13:

W1/2

Section 14:

All

Section 15:

SE1/4

E1/2 NE1/4

Section 22:

E1/2

Section 23:

All

Section 24:

All

Section 25:

All

Section 26:

N1/2

SE1/4

E1/2 SW1/4

Section 27:

NE1/4

That part of the NW1/4 and the NW1/4 SW1/4 lying North and East of the Sarcillo Canyon Road.

The E1/2 SW1/4 except for an undescribed 6.97 acres in the Southeast corner of the SW1/4 as described in the deed from Richard C. Hills to D.C. Beamann, dated March 7, 1983 and recorded in the official records of the Clerk and Recorder of Las Animas County, Colorado on October 23, 1894 in Book 84 at page 191

Township 33 South, Range65 West, Las Animas County, Colorado

Section 19:

Lot 1 (NW1/4 NW1/4)

Lot 2 (SW1/4 NW1/4)

SE1/4 NW1/4

Colorado

**UNDERGROUND COAL LEASE**

This Underground Coal Lease ("Lease") entered into this 3rd day of May, 2007, between XTO Energy Inc., a Delaware corporation, with an address at 810 Houston Street, Fort Worth, Texas 76102-6298 hereinafter called "Lessor", and New Elk Coal Company LLC, a Kansas limited liability company, with an address at 136 West Main Street, Trinidad, Colorado 81082, hereinafter called "Lessee".

**WITNESSETH THAT:****SECTION 1. Agreement to Lease**

Lessor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Lessor, and in further consideration of the mutual covenants and agreements hereinafter set forth does hereby demise, lease and let exclusively unto Lessee all of the coal and any substance mixed with or encountered when mining coal (all hereinafter referred to as "coal") in, on and underlying the following described real estate, located in Las Animas County, State of Colorado, more particularly described as follows, to-wit:

See Exhibit A attached hereto and made a part hereof.

containing for the purpose of this Lease 1,840.00 acres, more or less, said coal and substances together with the real estate, hereinafter called "leased premises".

**SECTION 2. Interest Leased**

This Lease covers and includes all present interest of Lessor in the leased premises, and also conveys unto the Lessee any reversionary, contingent or future interest owned by Lessor or hereinafter acquired by Lessor together with all of the mining rights and privileges appurtenant to the aforesaid coal and incident to the ownership thereof, and (by way of enlargements, and not by way of restriction) the following rights and privileges:

a. The right to enter underground into and through said leased premises, at such points and in such manner as may be necessary or convenient for the purpose of mining all coal by any underground mining method, i.e., any method except the strip or surface mining method

b. The right to have and use the free and uninterrupted right-of-way under said leased premises, at such points and in such manner as may be necessary or convenient to the mining, removal, processing and marketing of said coal.

c. The right to transport under the leased premises any coal now or hereafter owned, leased or otherwise acquired by Lessee and located within the general mining area as hereinafter defined in Section 5.

d. Rights-of-way for the location of electrical powerlines on, across, over, and under the leased premises.

e. Insofar as Lessor is able to grant such right under current and future laws and regulations, Lessee, its employees, agents, licensees, invitees, contractors, sub-contractors, successors and assigns shall have the continuous right and privilege to undermine the surface of the leased premises, including the right, to enter upon the leased premises to repair any subsidence damage that may occur to surface structures on the leased premises. Despite any termination of this Lease, this subsection (e) shall survive and run with the leased premises.

The provisions contained in this Lease for royalty payments fully compensates Lessor for all the rights and privileges granted Lessee under this or any other provision of this Lease; except, however, Lessee shall be fully responsible for any crop damage caused by Lessee in the exercise of any of the rights granted to the Lessee by the terms of this Lease.

### **SECTION 3. Rights Surviving**

All rights (except the actual right to mine and remove coal) and easements hereinabove granted to Lessee shall survive the surrender or termination of this Lease, provided that Lessee is then conducting mining operations or reclamation is not final and complete anywhere within the general mining area as hereinafter defined in Section 5, and for as long thereafter as Lessee conducts mining operations or reclamation is not final and complete anywhere within said general mining area.

### **SECTION 4. Lease Term**

Unless voluntarily surrendered by Lessee at an earlier date, the primary term of this Lease shall run for a period of five (5) years from and after the date hereof, and this Lease shall continue in effect as long thereafter as mining operations are being conducted on the leased premises or in the general mining area (as hereinafter defined).

### **SECTION 5. General Mining Area**

Any mining operations conducted by Lessee elsewhere than on the leased premises but within, Townships 33 & 34 South, Ranges 67 & 68 West, Las Animas County, State of Colorado, shall be deemed to have been conducted in the general mining area.

### **SECTION 6. Compliance with Laws**

Lessee agrees to conduct all mining operations on the leased premises in a good and workmanlike manner and shall materially comply with all applicable Federal, state and local laws, rules, regulations and orders.

### **SECTION 7. Reserved Minerals**

The rights hereby granted to Lessee shall not include mining rights with respect to oil, gas or other minerals other than coal and substances (including but not limited to gas or coalbed methane gas ("CBM")) mixed with or encountered when mining coal. Exhibit B attached hereto identifies the locations in which Lessor has drilled, or expects to drill, CBM wells on the leased premises (the "CBM Sites"). Lessee agrees that it shall not mine any of the CBM Sites unless and until the applicable CBM well has been plugged and abandoned and Lessor confirms that there will be no further CBM operations thereon. Notwithstanding the foregoing, Lessee shall have the right to vent any gases or CBM encountered in Lessee's mining operations as a safety measure without any liability or accountability of any nature whatsoever to Lessor, but Lessee shall not have the right to commercially exploit any such gases or CBM. Lessor shall have the right, but not the obligation, to capture, market and sell any gases and/or CBM vented by Lessee on the leased premises so long as such activity by Lessor is done with the consent of Lessee and does not interfere with Lessee's mining and/or safety operations. The exploration for, mining or removal of other minerals or substances other than coal and substances mixed with coal shall not interfere with the coal mining operations of the Lessee, except for drilling on the CBM Sites and as provided in existing leases.

### **SECTION 8. Minimum Advance Royalties**

Until actual mining operations are commenced on the leased premises by the Lessee, the Lessee shall pay to the Lessor as minimum advance royalty, a sum of five and 00/100 Dollars (\$5.00) per acre during the first year of this Lease, and a sum equal of five and 00/100 Dollars (\$5.00) per acre per year during each of the next four (4) years of this Lease, which constitutes minimum advance royalty payments for the entire primary term of this Lease. The above minimum advance royalty paid during the primary term, shall be credited on and deducted from any future production royalty as the same becomes due and payable. When and if actual mining operations are commenced on the leased premises by Lessee, all further liability on Lessee's part to pay minimum advance royalty shall terminate (except as otherwise provided in this Section 8, or in Sections 9 and 14). Notwithstanding anything to the contrary contained herein, if the Lessee shall default in the payment of any minimum advance royalty when due, then, and in such event, if such default shall continue for a period of Ninety (90) days following Lessee's receipt of notice from Lessor, Lessor shall have the right to terminate this Lease and retain all sums theretofore paid Lessor by Lessee.

In the event that, after the end of the primary term, a lease year occurs during which this lease is maintained in effect by mining operations within the general mining area and no mining operations take place on the leased premises, then Lessee shall pay to the Lessor as minimum advance royalty the sum of five and 00/100 Dollars (\$5.00) per acre on the next anniversary date of this Lease.

**SECTION 9. Suspension for Force Majeure**

In the event Lessee is unable to commence mining operations on the leased premises due to Force Majeure as hereinafter provided, then, and in such event, Lessee shall be required to pay minimum advance royalty during such period of Force Majeure. Such minimum advance royalty payment (in the amount of five and 00/100 Dollars (\$5.00) per acre) shall be due on the first anniversary date of this Lease that occurs during or after the period of Force Majeure; provided, however, that Lessee shall not be required to pay minimum advance royalty in an amount greater than \$5.00 per acre in the event that two or more periods of Force Majeure occur during one lease year.

**SECTION 10. Water Rights; Use of Water**

Lessor excepts and reserves ownership of any and all water rights owned by Lessor. Notwithstanding the foregoing, it is recognized that Lessee shall have the right to use and remove, in compliance with applicable law and regulations and without obligation to Lessor, any water encountered by Lessee in connection with its operations on the leased premises.

**SECTION 11. Earned Royalties**

Lessee shall pay to Lessor a production royalty for all coal mined, removed and sold from the leased premises equal to the greater of (a) seven percent 7(%) of Gross Realization (as defined in Section 31), or (b) \$3.75 per ton. Measurements showing extraction, with certified surveys of tonnages extracted and processed, shall be taken as the basis for payment of such production royalty. Production royalty due and payable for coal actually mined, removed and sold from the leased premises during any calendar month shall be paid on or before the end of the next succeeding calendar month. Lessor shall have the right to examine the Lessee's records relative to coal mined, removed and sold from the leased premises and royalty paid thereon, as provided in Section 13.

**SECTION 12. Depository for Payments**

All royalty payments which may hereinafter be paid by Lessee to Lessor shall be paid to Lessor's revenue lock box, addressed as follows:

XTO Energy Inc.  
P O Box 730586  
Dallas, TX 75373-0586

All such payments of royalties shall be considered tendered when made by check of Lessee or of any assignee of Lessee and mailed or delivered to Lessor as herein above set forth. Lessor reserves the right to change payment instructions upon written notice to Lessee.

**SECTION 13. Records and Accounts**

Lessee shall keep a true and correct record of all coal mined, removed and sold from the leased premises and shall permit Lessor or Lessor's agent at all reasonable times and upon prior notice to Lessor to examine such records. Each production royalty payment shall be accompanied by a royalty statement as showing in reasonable detail the quantities of coal from the leased premises processed, mined and sold by Lessee for the preceding month; the proceeds of sale, costs, and other deductions; and other pertinent information in sufficient detail to explain the calculation of the production royalty payment. Unless either party hereto shall give notice to the other of a dispute or question with respect to such statement within 180 days from the date the same is delivered to Lessor, such statement shall be final and binding upon the parties hereto.

**SECTION 14. Suspension of Operations**

Suspension of actual mining operations by the Lessee shall be without prejudice to its rights to resume operations. Except as expressly provided herein, neither suspension nor the cessation of such mining operations shall operate to reinstate the provisions for the payment of minimum advance royalty, nor to terminate, suspend or prejudice any of the rights of the Lessee to continue occupation and use of the leased premises in connection with its mining or reclamation operations upon any lands within the general mining area. If actual mining operations are suspended during the term of this Lease for more than one year, then minimum advance royalties pursuant to Section 8 hereof shall be reinstated on the next anniversary date of this Lease.

**SECTION 15. Poor Quality Coal**

Lessee shall not be required to mine, remove or pay any royalty on poor quality coal, unless Lessee actually sells the same.

**SECTION 16. Warranty of Title**

Lessor provides no warranty with respect to its title to the leased premises, except that Lessor covenants that there are no liens or encumbrances of any kind whatsoever on said leased premises.

**SECTION 17. Title to Leased Premises**

Lessee, at its sole expense, shall have the right for a period of within one hundred and twenty (120) days after the date of this Lease to examine title to the leased premises, and Lessor shall furnish to Lessee all abstracts and other title information covering the leased premises that are under Lessor's possession or control. If objections to Lessor's title to all or part of the leased premises are found, Lessee shall have the right, at its cost and expense, to cure any such objections to title. Lessor agrees to cooperate with Lessee in connection with any title curative efforts. In the event that title to all or part of the leased premises is not cured to Lessee's satisfaction within six (6)



months following the date of this Lease, Lessee shall have the option of terminating this Lease, in whole or as to part of the leased premises, on notice to Lessor.

#### **SECTION 18. Breach of Lease Obligations**

Breach by Lessee of any obligation arising hereunder shall not cause (maybe "constitute" is more appropriate) a forfeiture or termination of this Lease or cause a termination or reversion of the rights hereby created, nor be grounds for cancellation hereof in whole or in part, except as herein expressly provided. In the event that Lessor considers that Lessee's mining operations are not at any time being conducted in compliance with this Lease, Lessor shall notify Lessee in writing of the fact relied upon as constituting a breach hereof, and Lessee, if in default, shall have one hundred and twenty (120) days after receipt of such notice in which to comply with the obligations imposed by virtue of this instrument. Neither notice nor attempted compliance shall be evidence that a breach has occurred.

#### **SECTION 19. No Implied Covenants**

It is understood between the Lessor and Lessee hereto that this Lease shall not be forfeited for any failure to prosecute mining operations on the leased premises, nor shall any forfeiture be claimed or enforced for the breach of any implied covenant, and the rights herein granted and conveyed shall not be canceled or revert to Lessor or Lessor's assigns so long as all payments herein stipulated to be paid by Lessee are paid to Lessor. The fact that Lessee may fulfill some or all of its obligations under a coal sales contract with production from the leased premises, is not intended to nor shall it give Lessor any rights in or to said coal sales contract. Any amounts received by Lessee for a buyout, buydown or amendment to a coal sales contract shall not be deemed gross realization subject to royalty.

#### **SECTION 20. Lesser Interest**

In the event Lessor owns less than the entire fee simple estate in and to the coal in the leased premises, whether or not such lesser interest is specified herein, then in such event, all payments to Lessor as provided for herein shall be reduced in the proportion that such lesser interest bears to the entire fee simple estate in and to the coal in the leased premises.

#### **SECTION 21. Taxes**

Lessee covenants to pay promptly all taxes and assessments, or increases in existing taxes and assessments (if any), levied against the leased premises as a result of Lessee's operations.

Lessor covenants to pay promptly all other taxes and assessments (if any) levied against the leased premises or any part thereof during the entire term of this Lease, and if Lessor fails to do so, or if there shall be any taxes or encumbrances now on the leased premises or any part thereof, Lessee may, without being obligated so to do, pay such taxes or encumbrances and any penalties

thereon or redeem said leased premises from tax sale. Any payments so made may be considered as minimum advance royalty and may be credited on or deducted from minimum advance or production royalty payments as the same become due and payable under this Lease.

#### **SECTION 22. Removal of Equipment, Etc.**

Lessee shall have the right, but not the obligation unless otherwise required by law, to remove, within one year after the termination of this Lease as to any part of the leased premises all property, fixtures, and structures, erected or placed by Lessee on such part. Lessor shall not be entitled to share in the proceeds of salvage or other disposition of personal property or fixtures erected or placed on the leased premises by Lessee. Lessee shall also have the right to remove, during the one-year period, all coal mined or extracted by Lessee during the term hereof, subject to the payment of production royalty as provided for in this Lease.

#### **SECTION 23. Right of Surrender or Termination**

Lessee may at any time execute and transfer to Lessor or file for record, in the official records of the county where the leased premises are situated, a release of the leased premises and thereby surrender this Lease as to the leased premises and terminate from and after the date of such surrender all obligations as to the leased premises. Lessee may not surrender this Lease as to less than all of the leased premises except as provided in Section 17. After a surrender or release of this Lease as to a portion only of the leased premises, any minimum advance royalty theretofore paid and not theretofore recouped by Lessee shall be apportioned on an acreage basis to the lands surrendered and to the lands not surrendered. Thereafter, Lessee shall be entitled to recover from Lessor's future interest in production royalties, only those sums so allocated to the lands not surrendered or released, plus further minimum advance royalties, if any, paid with respect thereto.

#### **SECTION 24. Ownership Disputes**

In case of any dispute or question regarding ownership of the leased premises or of any royalty payable hereunder, Lessee shall be entitled to withhold, without interest, payment of such royalty until sixty (60) days after receipt by Lessee of appropriate proof (such as original, or certified copies of settlement instruments) that such dispute or question has been properly settled.

#### **SECTION 25. Force Majeure**

Lessee shall not be deemed in default for failure to perform any of its obligations, except the obligation to pay minimum advance royalty, during periods in which performance is prevented by any cause reasonably beyond Lessee's control (any such cause being herein called "Force Majeure") such as, for example and not by way of limitation, fire, cave-in, floods, windstorms, other damage from the elements, strikes, riots, unavailability of transportation or necessary equipment, lack of satisfactory market for coal from the leased premises, action of governmental authority, failure of governmental authority to issue any necessary permit or authorization, litigation, acts of God and

acts of the public enemy. The duration of this Lease shall be extended, unless sooner terminated by Lessee by release as herein above provided, for a period equal to the period for which performance is suspended due to Force Majeure. All suspensions due to Force Majeure shall be deemed to begin thirty (30) days after the date on which Lessee stops performance hereunder by reason of Force Majeure, and Lessee shall notify Lessor of the beginning and ending date of each such period. Notwithstanding any provision to the contrary, Lessor and Lessee agree that the duration of this Lease shall not be extended for more than a period of two (2) consecutive years from the date the Lease is suspended due to Force Majeure.

#### **SECTION 26. Successors and Assigns**

This Lease states the entire consideration for each and all of the rights and privileges herein granted as a whole. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

#### **SECTION 27. Assignment or Sublease**

The estate of either party to this Lease may be subleased, assigned or transferred in whole or in part. No change or division of ownership in the leased premises or in the royalties payable under this Lease shall (except at Lessee's option in any particular case) be binding upon Lessee until thirty (30) days after Lessee shall have been furnished, at its address shown above, with the original recorded instruments, or duly certified copies thereof, properly evidencing the same. No such change or division of ownership shall operate to enlarge the obligations or diminish the rights of Lessee.

#### **SECTION 28. Notices**

Any and all notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered if delivered personally or by courier; or (b) three days after the mailing thereof by first-class, postage prepaid, mail if mailed, at the respective addresses first above written below (or at such other address as may be designated in a written notice and given in accordance with this section).

#### **SECTION 29. Insurance**

During any period while this Lease remains in effect, Lessee agrees to carry insurance of the type and in the amounts no less than that set forth on Exhibit C attached hereto.

#### **SECTION 30. Genders**

Wherever used herein, the plural shall include the singular and vice versa, and each gender shall include the other as the text and tenor of this Lease shall indicate.

**SECTION 31. Gross Realization**

For the purpose of this Lease, the "Gross Realization" shall be the "Average Gross Sales Price" per ton of coal actually mined, removed, sold and shipped from the leased premises during any month, which shall be an amount equal to the total gross proceeds from all such sales of such coal during such month divided by the total number of tons of such coal (except that deductions shall be made from the total gross proceeds for the following items to the extent included in such total gross proceeds (i) any tax assessed upon or measured by the production of such coal, the severance thereof from the leased premises, or the sale thereof, and (ii) transportation or delivery costs incurred by Lessee in transporting such coal from the tipple at which such coal is processed to point of sale). Measurement of weights for purposes of computing the "Average Gross Sales Price" of coal mined from the leased premises shall be (i) in the case of such coal shipped by rail, determined by the rail carrier in accordance with its customary practices employed for invoicing such shipments, (ii) in the case of such coal delivered other than by rail, determined by Lessee by use of accurate scales and (iii) in the case of such commingled with other coal not mined from the leased premises, determined by an accurate system of weights and measurements commonly used in the coal industry.

**SECTION 32. Indemnification**

(a) Lessee will hold harmless and fully indemnify Lessor against all claims or demands of any kind or nature which may be made upon Lessor or against Lessor's interest in the leased premises for, or on account of, any debt or expense contracted or incurred by Lessee in conducting its activities, as well as against any and all acts, transactions and omissions of Lessee, its employees, agents, contractors, subcontractors, lessees, partners, licensees and suppliers in conducting such activities, and Lessee will defend and save Lessor harmless and fully indemnify Lessor as to liability or asserted liability, for, on account of, injury to, or death of, any person or damage to any property sustained during the term of this Lease, alleged to have resulted from any such act or omission of Lessee, its employees, agents contractors, subcontractors, lessees, partners, licensees and suppliers, or any unsafe condition of the leased premises created by Lessee or Lessee's operations. In addition, Lessee will waive, hold harmless and fully indemnify Lessor against any and all penalties or charges imposed upon Lessor by federal, state, or local authorities on account of Lessee's failure to comply with all laws, rules, regulations or orders of such authorities.

(b) Further, Lessee agrees to hold Lessor harmless from all claims of environmental damages and demands arising directly out of the condition of the underground workings on the leased premises or Lessee's operations that may be asserted by third parties, including but not limited to claims by individuals or groups, whether public or private by federal, state, or local agencies and/or by any other party bringing said action against Lessor, unless Lessor, or any person or instrumentality acting in Lessor's behalf shall have been a contributing cause to the event giving rise to such claim or demand. Lessor agrees to cooperate with Lessee in the conduct of any suits arising from claims and demands under this subsection.

(c) If any third party asserts, through a judicial proceeding, any claim to or against the Premises for any minerals, concentrates or mineral products lying in or under the leased premises, of the leased premises, or to any amounts payable to Lessor, Lessee may deposit any amounts otherwise due to Lessor in escrow until the controversy is finally determined. If Lessee is required to deposit any amounts in escrow or pay any third party as the result of any such claim, payment and all costs incurred by Lessee, including reasonable attorney's fees, shall be credited against all payments thereafter due to Lessor.

### **SECTION 33. Lessor's Cooperation**

Lessor shall further cooperate with Lessee in any manner as may be reasonably necessary to assure the complete and full development of the coal pursuant to this Lease, and Lessor shall execute and deliver to Lessee any and all documents, waiver, release or covenants which may be needed, including, but not limited to any consent to mining which may be required under any current or further laws, rules or regulations of any federal, state or local authorities.

### **SECTION 34. Governing Laws**

This lease shall be construed in accordance with and governed by the laws of the State of Colorado.

### **SECTION 35. Counterparts**

This Lease may be executed in any number of counterparts and shall be binding upon all owners of interests in the leased premises executing the same or a counterpart hereof, whether or not named herein as one of the Lessors, and whether or not other owners of interests in the leased premises have executed other counterparts or have not entered into this Lease.

### **SECTION 36. Further Acts**

Each party, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Lease. Lessor also agrees to cooperate at all times with Lessee in any reasonable manner to assist Lessee in the effecting of the purpose of this Lease.

### **SECTION 37. Severance**

Should any portion of this Lease be declared invalid and unenforceable, then such portion shall be deemed to be severed from this Lease and shall not affect the remainder thereof.

**SECTION 38. Memorandum**

The parties agree that, at the request of either party, they will execute for recording purposes a Memorandum Coal Mining Lease in a form to be prepared by Lessee.

IN WITNESS WHEREOF, this instrument is executed as of the day and year first above written.

SOCIAL SECURITY NUMBER OR  
EMPLOYER IDENTIFICATION NO.:

LESSOR:

XTO ENERGY INC.  
By: Edwin S. Ryan, Jr.  
Edwin S. Ryan, Jr.  
Sr. Vice President - Land Administration *msw*

LESSEE:

New Elk Coal Company LLC

By: Wayne Overdale  
Its: Manager

This instrument prepared by:

CORPORATE ACKNOWLEDGMENT - COLORADO

STATE OF TEXAS )

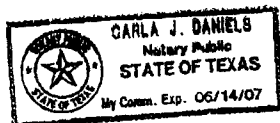
) ss.

COUNTY OF TARRANT )

The foregoing instrument was acknowledged before me this 3 day of May, 2007, by Edwin S. Ryan, Jr. as Senior Vice President - Land Administration of XTO Energy Inc., a Delaware corporation.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_



Carla Daniels  
Notary Public

STATE OF North Carolina )

) ss.

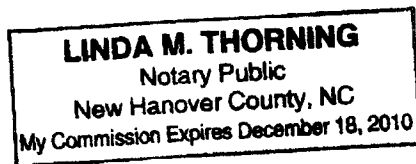
COUNTY OF New Hanover )

The foregoing instrument was acknowledged before me this 3rd day of May, 2007, by Travis Covardale, as Manager of New Elk Coal Company LLC, a Kansas limited liability company

WITNESS my hand and official seal.

My commission expires: 12-18-10

Linda M. Thorning  
Notary Public



**EXHIBIT A**  
**to**  
**Underground Coal Lease**

**Description of Leased Premises**

**Township 33 South, Range 67 West**

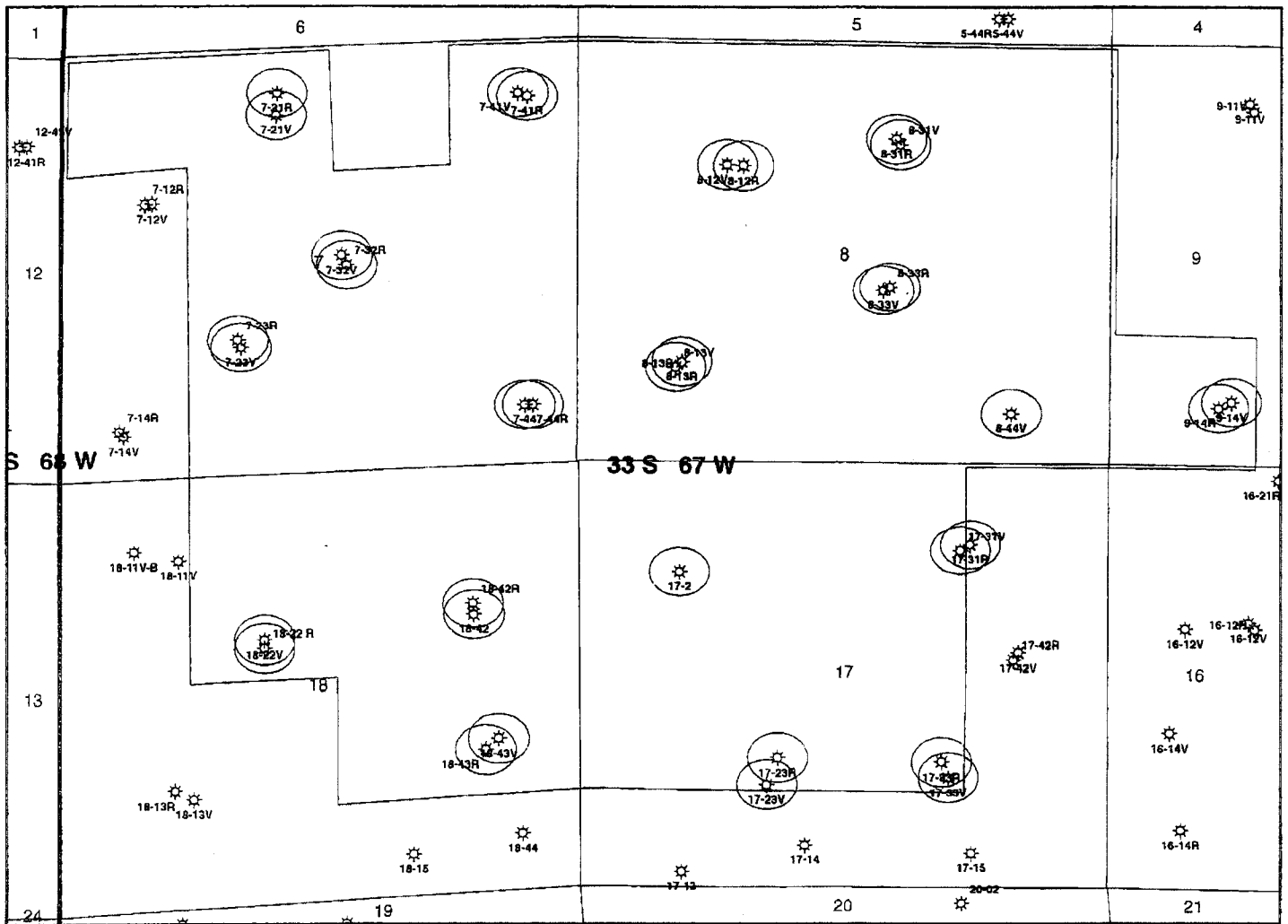
	<u>Coal Acres</u>
Section 7: NE1/4 NE1/4,	40
S1/2 NE1/4,	80
E1/2 NW1/4,	80
NW1/4 NW1/4,	40
E1/2 SW1/4, and	80
SE1/4	160
Section 8: All	640
Section 9: SW1/4 SW1/4	40
Section 17: NW1/4, W1/2 NE1/4,	240
N1/2 SW1/4, NW1/4 SE1/4	120
Section 18: NE1/4, E1/2 NW1/4, N1/2 SE1/4	320
TOTAL COAL ACRES:	1840



**EXHIBIT B**  
to  
**Underground Coal Lease**

**CBM Sites**

Each CBM Site shall consist of a circle having a radius of 150 feet, with the center of such circle being the location of the applicable CBM well or proposed location.



**EXHIBIT C**  
**to**  
**Underground Coal Lease**

**Insurance**

<i>Type</i>	<i>Policy Number</i>	<i>Coverage Limits</i>
Commercial General Liability	3711-14-56	Each Occurrence - \$1,000,000.00 Damage to Rented Premises - \$100,000.00 Medical Expenses - \$10,000.00 Personal & Adv Injury - \$1,000,000.00 General Aggregate - \$2,000,000.00 Products-Comp / Oper. Aggregate - \$1,000,000.00
Workman's Compensation	37 WEC RF6541	Bodily Injury by Accident - \$100,000.00 each accident Bodily Injury by Disease - \$500,000.00 policy limit Bodily Injury by Disease - \$100,000.00 each employee
Automobile	03425255-1	Bodily Injury/Property Damage - \$1,000,000 combined single limit Uninsured/Underinsured Motorist - \$1,00,000 each person/\$1,000,000 each accident