



200301100181

Skagit County Auditor

1/10/2003 Page

1 of

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THIS INSTRUMENT WAS PREPARED BY
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PLEASE RETURN TO:

SKAGIT COUNTY, WASHINGTON

Michael A. Donadee, Esq.
Buchanan Ingersoll Professional Corporation
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410

**DEED OF TRUST, ASSIGNMENT OF PRODUCTION,
SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING**

Grantor: GREAT NORTHERN PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership

Beneficiary: PNC BANK, NATIONAL ASSOCIATION, a national banking association

Deed of Trust Trustee: Chicago Title Insurance Company

Complete Legal Description: See Exhibit A attached hereto.

P30648 601 Lts 5, 11, 12 pt N $\frac{1}{2}$ SW $\frac{1}{4}$ + SE $\frac{1}{2}$ SW $\frac{1}{4}$

**DEED OF TRUST, ASSIGNMENT OF PRODUCTION,
SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING**

FROM

GREAT NORTHERN PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership,
Grantor

TO

Chicago Title Insurance Company, Trustee

IN FAVOR OF

PNC BANK, NATIONAL ASSOCIATION, a national banking association, Beneficiary

"THIS DEED OF TRUST CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS AND ENCUMBERS PROCEEDS AND PRODUCTS OF THE MORTGAGED PROPERTY."

"THIS DEED OF TRUST SECURES PAYMENT OF FUTURE ADVANCES AND OTHER OBLIGATIONS HEREAFTER INCURRED AND CREATES A LIEN UPON THE PROPERTY DESCRIBED HEREIN, WHETHER NOW OWNED OR HEREAFTER ACQUIRED."

"THE MAXIMUM PRINCIPAL AMOUNT SECURED HEREBY IS \$20,000,000."

"THE MINERAL INTERESTS INCLUDED IN THE MORTGAGED PROPERTY ARE LOCATED ON THE PROPERTIES DESCRIBED IN EXHIBIT A HERETO, AND THIS DEED OF TRUST IS TO BE FILED AS A FINANCING STATEMENT, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS."

"THE GRANTOR HAS AN INTEREST OF RECORD IN THE REAL ESTATE CONCERNED, WHICH IS DESCRIBED IN EXHIBIT A HERETO."

"THE BENEFICIARY IS NOT A SELLER OR PURCHASE MONEY LENDER OF THE MORTGAGED PROPERTY."

"A POWER OF SALE HAS BEEN GRANTED IN THIS DEED OF TRUST. A POWER OF SALE MAY ALLOW THE BENEFICIARY TO TAKE THE MORTGAGED PROPERTY AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY THE GRANTOR UNDER THIS DEED OF TRUST."

"GRANTOR'S FEDERAL TAX I.D. NUMBER IS 76-0380610."

"GRANTOR'S ORGANIZATIONAL I.D. NUMBER IS 2300124."



200301100181
Skagit County Auditor

**DEED OF TRUST, ASSIGNMENT OF PRODUCTION,
SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF PRODUCTION, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING ("Deed of Trust"), is made as of December 27, 2002 by GREAT NORTHERN PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership, with offices at 1658 Cole Boulevard Building #6, Suite 2, Golden, Colorado 80401), as grantor ("Grantor"), in favor of Chicago Title Insurance Company, as trustee ("Trustee"), for the benefit of PNC BANK, NATIONAL ASSOCIATION, a national banking association, with offices at 249 Fifth Avenue, One PNC Plaza, Pittsburgh, Pennsylvania 15222, as beneficiary ("Beneficiary").

1. Grantor is the owner and holder of certain tracts or parcels of land located in the County of Skagit, State of Washington, more fully described in Exhibit A attached hereto and incorporated herein by this specific reference, and the owner of the Mortgaged Property (as defined below).

2. Pursuant to that certain Credit Agreement dated as of September 23, 1999, as amended (the "Prior Credit Agreement") by and among Grantor, Beneficiary in its corporate capacity and as Agent for the other Banks (as such terms are defined in the Prior Credit Agreement) from time to time a signatory thereto (Beneficiary and the other Banks collectively, the "Banks"), the Banks agreed to lend to Grantor, and Grantor agreed to borrow from the Banks, the aggregate principal amount of Fifty Two Million and No/100 Dollars (\$52,000,000) (collectively, the "Prior Term Loans"), which Prior Term Loans consisted of term loans evidenced by certain Term Notes (the "Prior Term Notes") in an aggregate principal amount not to exceed Fifty-Two Million and No/100 Dollars (\$52,000,000.00).

3. Pursuant to that certain Amended and Restated Credit Agreement dated as of October 17, 2002, by and among Grantor and Beneficiary (the "Amended Credit Agreement"), Grantor and Beneficiary have amended and restated the Prior Credit Agreement in its entirety and have modified certain obligations of Grantor to Beneficiary, as further set forth therein.

4. Subject to the terms of the Amended Credit Agreement, the Beneficiary has agreed to lend to Grantor, and Grantor has agreed to borrow from Beneficiary, an aggregate principal sum not to exceed Fourteen Million Nine Hundred Twenty Five Thousand Dollars (\$14,925,000) (collectively, the "Term Loan"), which Term Loan is evidenced by a certain Term Note (the "Term Note") dated as of October 17, 2002 in the principal face amount of Fourteen Million Nine Hundred Twenty Five Thousand Dollars (\$14,925,000). The Term Note bears interest at, and is payable in accordance with the terms of the Term Note and the Amended Credit Agreement.

Unless earlier prepaid or accelerated pursuant to the terms of the Amended Credit Agreement, the maturity date of the Term Note is October 15, 2003.



5. As a condition precedent to certain transactions contemplated by the Amended Credit Agreement, the Grantor has agreed to grant to the Beneficiary various mortgages with respect to property interests owned or controlled by Grantor, to secure the payment and performance of all of the Obligations (as hereinafter defined).

6. This Deed of Trust is being given by Grantor to Beneficiary, in its capacity as the Bank under the Amended Credit Agreement, to secure: (i) the payment of the principal of and interest on the Term Note and the Term Loan made pursuant to the Amended Credit Agreement and all other Obligations (as such term is defined in the Amended Credit Agreement) of Grantor now existing or hereafter incurred under, arising out of, or in connection with the Amended Credit Agreement and the other Loan Documents; (ii) the due performance and compliance with all of the terms, conditions and agreements contained in the Amended Credit Agreement, this Deed of Trust and the other Loan Documents; (iii) all Indebtedness (as such term is defined in the Amended Credit Agreement) now outstanding or hereafter arising owed by the Grantor to Beneficiary under or out of any Interest Rate Protection Agreement (as such term is defined in the Amended Credit Agreement); and (iv) any and all sums advanced or made by the Beneficiary to preserve the Mortgaged Property or the lien of this Deed of Trust (all of the foregoing, including but not limited to, all covenants and agreements of Grantor under the Term Note, this Deed of Trust and the other Loan Documents, are referred to herein collectively as the "Obligations").

7. All capitalized terms used in this Deed of Trust, not specifically defined herein, shall have the meanings ascribed in the Amended Credit Agreement.

8. For all purposes of this Deed of Trust, unless the context otherwise requires:

A. "Coal" shall mean all of the coal, including without limitation bituminous and sub-bituminous coal, and lignite, severed from or located on the Mortgaged Property, together with all of the in-place Coal located in, on or under the Mortgaged Property. With respect to properties hereafter acquired by Grantor, "Coal" means in-place, produced and severed Coal, as to such properties which are mortgageable and produced and severed Coal, as to such properties which are not mortgageable;

B. "Coal Leases" shall mean collectively, and individually: (i) that certain mining lease of coal lands generally referred to by the Grantor as IL003, dated as of December 17, 1964, between Grantor, as successor-in-interest to the Chicago Burlington & Quincy Railroad Company and American National Bank and Trust company of Chicago, not individually, but as Trustee under Trust Agreement dated November 16, 1964, and known as Trust No. 19830, which Lease covers certain coal and mineral lands and related rights and interests in Montgomery and Macoupin Counties, Illinois; (ii) that certain coal lease generally referred to by the Grantor as MT019, dated as of March 6, 1979, between Grantor, as successor-in-interest to Peabody Coal Company and Consolidation Coal Company, a Delaware corporation, which Lease covers certain coal and mineral lands and related rights and interests in Powder River County, Montana; (iii) that certain coal lease generally referred to by the Grantor as MT021, dated as of August 11, 1988, but effective April 1, 1987, between Grantor, as successor-in-interest to Meridian Minerals Company and Consolidation Coal Company, a Delaware corporation, which Lease covers certain



coal and mineral lands and related rights and interests in Powder River County, Montana; (iv) that certain amended and restated lease generally referred to by the Grantor as MT034, dated as of April 4, 1989, but effective November 1, 1986 between Grantor as successor in interest to Meridian Minerals Company and Peabody Development Company, a Delaware corporation, which lease covers certain coal and mineral lands and related rights and interests in Rosebud County, Montana; (v) that certain coal lease generally referred to by the Grantor as IL002, dated as of April 1, 1961 between Grantor, as successor-in-interest to the Chicago, Burlington & Quincy Railroad Company and American National Bank and Trust Company of Chicago, not individually, but as Trustee under Trust Agreement dated April 1, 1961, and known as Trust No. 16832, which Lease covers certain coal and mineral lands and related rights and interests in Montgomery County, Illinois; (vi) that certain amended and restated mining lease of coal lands generally referred to by the Grantor as WA001, dated and effective January 1, 1996 between Grantor and Pacificorp, an Oregon corporation which Lease covers certain coal and mineral lands and related rights and interests in Lewis County, Washington, and (vii) any and all present or future leases executed by or on behalf of Grantor and relating to the recovery of Coal on any portion of the Mortgaged Property, as any or all of the same may be amended, supplemented, renewed or replaced from time to time, and including any guaranties of the performance of any lessee or sublessee thereunder.

C. "Environmental Laws" shall mean all federal, state and local statutes, codes, regulations, ordinances, consent decrees, settlement agreements, judgments, orders, directives, policies or programs issued by, or entered into with, any legislative body or governmental authority, pertaining or relating to: (i) pollution or pollution control; (ii) protection of human health or the environment; (iii) employee safety in the workplace; (iv) the presence, use, management, generation, manufacture, processing, extraction, treatment, recycling, refining, reclamation, labeling, transport, storage, collection, distribution, disposal or release or threat of release of Hazardous Materials; and (v) the protection of endangered or threatened species.

D. "Hazardous Materials" shall include, without limitation, any substance, material or waste, regardless of its form or nature, defined as a "hazard substance," "hazardous waste," "toxic substance," "extremely hazardous substance," "toxic chemical," "toxic waste," "solid waste," "industrial waste," "residual waste," "municipal waste," "special handling waste," "mixed waste," "infectious waste," "chemotherapeutic waste," "medical waste," "regulated substance," "pollutant," or "contaminant" pursuant to Environmental Laws or any other substance, material or waste, regardless of its form or nature, which is regulated, controlled or governed by Environmental Laws due to its radioactive, ignitable, corrosive, reactive, explosive, toxic, carcinogenic or infectious properties or nature, or which otherwise is regulated by any applicable Environmental Law, including without limitation, natural gas, synthetic gas and any mixtures thereof, urea formaldehyde, mercury, radon, asbestos, polychlorinated biphenyls, petroleum and petroleum products (including crude oil and any fractions thereof), any flammable explosives, radioactive materials, hazardous materials, or similar term defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act, as amended ("RCRA") (42 U.S.C. § 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601, et seq.), the



Federal Water Pollution Control Act, as amended (33 U.S.C. § § 1251 et seq.), the Federal Safe Drinking Water Act, as amended (42 U.S.C. § § 300f-300j), the Federal Air Pollution Control Act, as amended (42 U.S.C. § 7401 et seq.), the Oil Pollution Act, as amended (33 U.S.C. § 2701 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. § § 136 to 136y), the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 et seq.), or in the regulations adopted and publications promulgated pursuant thereto or defined in any other present or future federal, state or local governmental law, ordinance, rule or regulation relating in whole or in part to environmental regulation.

E. "Lands" shall include any lands which are either described in Exhibit A or the description of which is incorporated in Exhibit A by reference to another instrument or document.

F. "Leases" shall mean, collectively the Coal Leases and the Other Leases.

G. "Loan Documents" shall mean, collectively, the Amended Credit Agreement, the Term Note, this Deed of Trust and the other Loan Documents (as defined in the Amended Credit Agreement), together with all documents, instruments and agreements relating to any and all extensions, renewals, refinancings or refundings thereof in whole or in part.

H. "Mortgaged Property" shall mean the properties, rights and interest hereinafter described and defined as the Mortgaged Property.

I. "Obligations" shall have the meaning ascribed to such term in paragraph 6 above.

J. "Other Leases" shall mean any leases, other than Coal Leases, executed and delivered by or on behalf of Grantor, but including without limitation, subleases, assignments, options, licenses, concessions, work agreements, joint venture agreements, partnerships (including mining partnerships), exploration agreements, operating agreements, surface use agreements and surface use and damage agreements, subsidence agreements, easements, licenses, net profits agreements, royalty agreements, nominee agreements, options, and all other conveyances, transfers, agreements, or arrangements (whether mineral or otherwise, whether previously or hereafter made, and whether existing now or hereafter including, without limitation, those shown on Exhibit A) relating to all or any part of the Lands or to any other lands any production from which, or profits or proceeds from such production, is attributed to any interest in Lands or to any interest described in Exhibit A, together with all rentals, royalties, and other rights of the Grantor thereunder; the term "Other Leases" shall not apply to Coal Leases.

K. "Rent" shall mean all income of any kind whatsoever received by Grantor from its interests in the Mortgaged Property, including without limitation, periodic rents, percentage rents, production royalties, advance royalties and all other sums payable to Grantor under any of the Coal Leases or the Other Leases.

L. "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect from time to time in the State of Washington and the terms "Accounts," "As-



extracted Collateral," "Chattel Paper" (including, without limitation, Electronic Chattel Paper), "Chattel Paper Documents," "Contract Rights," "Documents," "Instruments," "Software," "Investment Property," "Letters of Credit," "Letter of Credit Rights," "Commercial Tort Claims" as listed on Schedule B of that certain Amended and Restated Security Agreement of even date herewith between Grantor and Beneficiary (as such Schedule is amended or supplemented from time to time), "Health Care Insurance Receivables," "General Intangibles," "Payment Intangibles," "Deposit Accounts," "Goods," "Equipment," "Fixtures," "Instruments," "Inventory," "Supporting Obligations," and "Proceeds" shall have the respective meanings assigned to such terms in the Uniform Commercial Code.

M. "Water Rights" shall mean all now or hereafter existing or acquired water and water rights, reservoirs and reservoir rights, ditches and ditch rights, wells and well rights, whether evidenced or initiated by permit, decree, well registration, appropriation not decreed, water court application, shares of stock or other interests in mutual ditch or reservoir companies or carrier ditch or reservoir companies or otherwise, appertaining or appurtenant to or beneficially used or useful in connection with the Lands, together with all pumps, well casings, wellhead, electrical installations, pumphouses, meters, monitoring systems, parshall flumes or other measuring devices, pipes, pipelines, and other structures or personal property which are or may be used to produce, regulate, measure, distribute, store, or use water from the said water and water rights, reservoirs and reservoir rights, ditches and ditch rights, wells and well rights.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

NOW THEREFORE, the Grantor, for and in consideration of the premises and of the debts and trusts hereinafter mentioned, and upon and subject to the terms and conditions hereafter set forth, and by these presents does grant, bargain, sell, mortgage and warrant, encumber, assign, transfer and convey, unto the Trustee, its successors and assigns, IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY, for the use and benefit of the Beneficiary and its successors and assigns, all of the Grantor's rights, title and interest, whether nor owned or hereafter acquired, in and to all of the hereafter described properties, rights and interests; and insofar as such properties, rights and interests consist of General Intangibles, Accounts, Chattel Paper, Contract Rights, Documents, Inventory, Fixtures, Goods, Proceeds of Collateral or any other personal property of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code (as in effect in the appropriate jurisdiction with respect to each of said properties, rights and interests), the Grantor hereby grants to Trustee, for the use and benefit of the Beneficiary and its successors and assigns, and to the Beneficiary directly, a security interest therein to the full extent of the Grantor's legal and beneficial interest therein now owned or hereafter acquired, namely:

- (a) the Lands and all interests therein,
- (b) the Coal that is:
 - (i) on, in, or under, extending from or into



200301100181
Skagit County Auditor

- (ii) produced or to be produced from
- (iii) stored, handled, processed, or refined or to be stored, handled, processed, or refined on and/or
- (iv) transported or marketed or to be transported or marketed on or from

all or any part of the Lands or any other lands any production from which (or profits or proceeds from such production) is attributed to any interest in Lands or any interest described in Exhibit A,

- (c) the Coal Leases,
- (d) the Other Leases,
- (e) the Water Rights (including, without limitation, any identified on Exhibit A),
- (f) all easements, rights-of-way, licenses and privileges belonging to or appurtenant to the Lands,
- (g) all other records and data of the Grantor related to the mining and production of Coal, including without limitation all engineering and mining plans, data, surveys, assessments, appraisals and reports,
- (h) and, in any event, all General Intangibles, Accounts, As-extracted Collateral, Contract Rights, Chattel Paper, Documents, Goods, Equipment, Fixtures, Inventory, Mortgages, Proceeds, Chattel Paper Documents, Instruments, Software, Investment Property, Letters of Credit, Letter of Credit Rights, Commercial Tort Claims, Health Care Insurance Receivables, Payment Intangibles, Deposit Accounts, Supporting Obligations and Proceeds,

and together with any and all corrections or amendments to, or renewals, extensions or ratifications of, or replacements or substitutions for, any of the same, or any instrument relating thereto, and all contracts, contract rights, title instruments, title opinions, land status reports, title abstracts, title materials and information, files, records, writings, data bases, information, systems, maps, plats, surveys, geological and geophysical (including, without limitation, electrical, electromagnetic, gravity, and seismic), geochemical, and radiometric data and information, drilling data, test data, mineral samples (including, without limitation, reserve or deposit studies or evaluations), mine feasibility reports, mine development studies and plans, information concerning exploration and development of deposits of Coal (including information concerning mine operation, shutdown, and closure and concerning reclamation of lands and other resources affected by mining), environmental data and related information and reports and studies, computer hardware, and software and all documentation therefor or relating thereto



(including, without limitation, all licenses relating to or covering such computer hardware, software and/or documentation), trade secrets, business names and the goodwill of the business relating thereto, lease records (including rental and royalty payment records), financial statements and audits, reclamation plans and related data and reports, insurance policies, information and data and reports regarding the products and proceeds of mine operations (including, without limitation, quantities produced, proceeds from sale or other disposition, and disbursement of proceeds to persons entitled to a share thereof), right-of-way, franchises, easements, servitudes, permits, licenses, tenements, hereditaments, appurtenances, condemnation awards, rents, royalties, overriding royalties, revenues, income, returns, issues, profits, products, proceeds, whether now or hereafter existing or arising, used or useful in connection with, covering, relating to, or arising from or in connection with, any of the aforesaid in this granting clause referenced, and all other things of value and incident thereto which the Grantor might at any time have or be entitled to (including, without limitation, any and all liens, lien rights and security interests, and all properties, rights and interests, whether now or hereafter existing or arising, that may be used or useful in connection with mining Coal from all or any part of the Lands, or any other lands any production from which, or the profits or proceeds from such production, is attributed to any interest in the Lands or to any interest described in Exhibit A, or in connection with any related activities),

all the aforesaid properties, rights and interest, together with any additions thereto which may be subjected to the lien and security interest of this Deed of Trust by means of supplements hereto, being herein called the "Mortgaged Property."

Subject, however, to (i) the assignment of leases, rents and production contained in Article III hereof and (ii) the condition that the Beneficiary shall not be liable in any respect for the performance of any covenant or obligation of the Grantor in respect of the Mortgaged Property.

TO HAVE AND TO HOLD the Mortgaged Property unto the Trustee, its successors and assigns, for the benefit of Beneficiary and its successors and assigns, in trust with the power of sale and right of entry, in accordance with the provisions hereof, to secure the payment and performance of the Obligations.

Grantor also hereby grants Beneficiary a security interest in any of the Mortgaged Property that is personal property in order to secure the payment and performance of the Obligations.

It is expressly understood and agreed that the Obligations will in no event exceed Twenty Million Dollars (\$20,000,000). The final date of maturity of the Obligations is October 15, 2003.

Grantor, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, hereby covenants and agrees with the Beneficiary as follows:



200301100181
Skagit County Auditor

1/10/2003 Page 9 of 31 11:39AM

ARTICLE I

Obligations Secured

1.1 Obligations Secured. This Deed of Trust secures the Obligations.

ARTICLE II

Particular Covenants and Warranties of the Grantor

2.1 Payment of the Obligations. The Grantor will duly and punctually pay and timely perform the Obligations.

2.2 Certain Representations and Warranties. The Grantor represents and warrants to the Beneficiary that:

(a) each of the Leases (other than those to be executed in the future) is in full force and effect and no default has occurred and is continuing;

(b) each of the Leases, is or will be (i) a valid, subsisting lease, (ii) as to Coal Leases, superior and paramount to all other leases, if any, of the Coal estate in the Lands, and (iii) as to Coal Leases, in recordable form, and each such Coal Lease or a memorandum thereof has been recorded;

(c) the Grantor has good, marketable, valid and indefeasible title to the Mortgaged Property, except for (i) Permitted Liens (as allowed under the Amended Credit Agreement) and (ii) as set forth in Exhibit B attached hereto and made a part hereof by this reference; and Grantor has a good and legal right to grant and convey the same to the Trustee for the benefit of Beneficiary;

(d) except as set forth in Exhibit B hereto, the Beneficiary will obtain, as security for the Obligations, (i) a legally valid and binding first mortgage lien on the Mortgaged Property, and (ii) a first perfected security interest in all personal property described in this Deed of Trust as being assigned hereby; the legal descriptions attached hereto correctly describe the Lands containing mineral and other interests as of the date this Deed of Trust.

The Grantor will warrant and forever defend the Mortgaged Property unto the Trustee and the Beneficiary against every person whomsoever lawfully claiming the same or any part thereof, and the Grantor will maintain and preserve the lien and security interest hereby created so long as any of the Obligations remains unpaid.

2.3 Further Assurances. The Grantor will execute and deliver such other and further instruments and will do such other and further acts as in the opinion of the Beneficiary may be necessary or desirable to carry out more effectually the purpose of this Deed of Trust, including, without limitation the generality of the foregoing, (a) prompt correction of any material defect



200301100181
Skagit County Auditor

which may hereafter be discovered in the title to the Mortgaged Property or in the execution and acknowledgment of this Deed of Trust, or any other document executed in connection herewith (b) prompt execution and delivery of all notices to parties producing, purchasing or receiving proceeds of production from the Mortgaged Property, any of which, in the opinion of the Beneficiary, is needed to transfer effectually or assist in the transferring to the Beneficiary the assigned proceeds of production from the Mortgaged Property; and (c) supplements to this Deed of Trust as reasonably required from time to time by the Beneficiary.

2.4 Payment of Taxes. The Grantor shall pay or cause to be paid promptly and in all events prior to delinquency (a) all taxes, assessments and governmental charges now or hereafter assessed or imposed upon or with respect to, measured by or charged against the Mortgaged Property, or this Deed of Trust and the Obligations, or assessed against or imposed upon the Grantor because of the Grantor's ownership of the Mortgaged Property or any part thereof or the Beneficiary because of the interest of the Beneficiary therein, (b) all federal, and state income taxes payable generally by the Grantor regardless of their relation to the Mortgaged Property, provided, however, that as to any of the above-described taxes, assessments and governmental charges that are being promptly contested in good faith by appropriate proceedings promptly initiated and diligently conducted as to which adequate reserves in accordance with generally accepted accounting principles have been set aside, the same shall be paid promptly after the final determination of such contest, together with any interest and penalty payable in connection therewith.

2.5 Operation of the Mortgaged Property. So long as the Obligations or any part thereof remains unpaid, and whether or not the Grantor is the operator of the Mortgaged Property, the Grantor shall, at the Grantor's own expense:

(a) Do or cause to be done all things necessary to keep unimpaired the Grantor's rights in the Mortgaged Property and not, except as may be permitted under the terms of the Amended Credit Agreement, or forfeit, surrender or release any rights in the Mortgaged Property, or agree to or permit the termination of any Coal Lease, without the prior written consent of the Beneficiary, or permit the termination of any Other Lease, if the termination of such Other Lease would result in a Material Adverse Change (as such term is defined in the Amended Credit Agreement);

(b) Substantially perform and comply with all material terms, provisions, covenants, conditions and agreements imposed upon or assumed by the Grantor under any of the Leases, including any amendments or supplements thereof;

(c) Not consent to any material alteration, modification, amendment, supplement or change to or in, any Lease, except as may be permitted under the terms of the Amended Credit Agreement;

(d) Cause the Mortgaged Property to be kept free and clear of liens, charges and encumbrances of every character, other than (1) the lien and security interest hereof, and (2) Permitted Liens and those set forth in Exhibit B.



200301100181

Skagit County Auditor

2.6 Recording and Filing. The Grantor will promptly, and at the Grantor's expense, record, register, deposit and file this and every other instrument in addition or supplemental hereto in such offices and places and at such time and as often as may be necessary to create, preserve, protect and renew the lien and security interest hereof as a first lien on and prior perfected security interest in real or personal property, as the case may be, and the rights and remedies of the Beneficiary, and otherwise will do and observe all things or matters necessary or expedient to be done or observed by reason of any law or regulation of any State or of the United States of America or of any other competent authority, for the purpose of effectively creating, maintaining and preserving the lien and security interest hereof on and in the Mortgaged Property.

2.7 Sale or Mortgage of the Mortgaged Property. Except as provided in the Amended Credit Agreement, Grantor shall not sell, lease or otherwise dispose of, nor shall Grantor mortgage, hypothecate or grant a security interest in, the Mortgaged Property or any portion thereof.

2.8 Right of Entry. The Grantor will permit the Beneficiary, employees of the Beneficiary and such other persons or entities as the Beneficiary may in its discretion designate, reasonable access to the Mortgaged Property and to the field offices and other offices, including the principal place of business, of the Grantor to inspect and examine the Mortgaged Property and to inspect, review and reproduce as necessary any books, records, accounts, contracts or other documents of the Grantor. Without limiting the generality of the foregoing, the Beneficiary shall have the right, on seventy-two (72) hours prior notice to the Grantor, to cause such persons and entities as the Beneficiary may designate to enter the Mortgaged Property to conduct (at the cost and expense of the Grantor), or to cause the Grantor to conduct (at the cost and expense of the Grantor), such tests and investigations as the Beneficiary deems necessary to determine whether any hazardous substance or solid waste is being generated, transported, stored, or disposed of in accordance with applicable Environmental Laws. Such tests and investigations may include, without limitation, underground borings, ground water analyses and borings from the floors, ceilings and walls of any improvements located on the Mortgaged Property. This section shall not be construed to affect or limit the obligations of the Grantor.

2.9 Environmental Laws. The Grantor shall maintain the Mortgaged Property in material compliance with all Environmental Laws (including keeping all necessary permits, approvals, certificates and licenses in effect and remaining in material compliance therewith) and handle all Hazardous Materials in compliance with the terms and provisions of this Deed of Trust and the Amended Credit Agreement.

2.10 After-Acquired Properties. The Grantor shall, within thirty (30) days after the end of each calendar quarter, advise the Beneficiary as to any additional interest in the Mortgaged Property it has acquired and any other material assets acquired by the Grantor during such preceding calendar quarter and shall execute, acknowledge and deliver such other and further instruments and agreements necessary or desirable to include such interests and assets as a part of the Mortgaged Property hereunder. This Deed of Trust shall spread to, and encumber, all of the right, title and interest of Grantor in and to any real property interests acquired by Grantor from



200301100181
Skagit County Auditor

and after the date of execution and delivery of this Deed of Trust in the County in which this Deed of Trust is recorded.

ARTICLE III

Assignment of Leases, Rent and Production

3.1 Assignment. Grantor hereby (a) transfers, assigns, warrants and conveys to the Beneficiary, (i) all Coal (to the extent of the Grantor's interests therein) which is hereafter produced from and which accrue to, the Mortgaged Property, (ii) all Rent, and (iii) all of the right, title and interest of the Grantor in and to the Coal Leases and the Other Leases, and (b) gives to and confers upon the Beneficiary the right, power and authority to enforce the Coal Leases and the Other Leases, and to collect the Rent and proceeds thereof. The Grantor irrevocably appoints the Beneficiary its true and lawful attorney-in-fact, at the option of the Beneficiary at any time and from time to time, to take such actions as may be permitted by the terms of the Coal Leases or the Other Leases, as Beneficiary deems in its best interests, and to sue, in the name of the Grantor or the Beneficiary, for all such Rent and proceeds and apply the same to the payment of the Obligations; provided, however, that the Grantor shall have the right to act as lessor under the Coal Leases and as lessor or lessee as the case may be under the Other Leases, and to collect such Rent (in accordance with the terms of the Coal Leases and Other Leases) prior to or at any time there is not an Event of Default under Section 4.1 hereof. Subject to the foregoing, all parties producing any such Coal, or having such, or proceeds therefrom, in their possession for which they or others are accountable to the Beneficiary by virtue of the provisions of this Article, or having any obligations to Grantor under any of the Other Leases, are authorized and directed to treat and regard the Beneficiary as the assignee and transferee of the Grantor and entitled in the Grantor's place and stead to receive such Rent; and said parties and each of them shall be fully protected in so treating and regarding the Beneficiary and shall be under no obligation to see to the application by the Beneficiary of any such proceeds or payments received by it. The assignment of the Coal, Rent, Coal Leases and Other Leases, and proceeds in this Section 3.1 is intended to be an absolute assignment from the Grantor to the Beneficiary and not merely the granting or passing of a security interest. Such Coal, Rent, Coal Leases and Other Leases and proceeds are hereby assigned absolutely by the Grantor to the Beneficiary, subject only to the right, license and privilege of the Grantor to enforce the Coal Leases and the Other Leases, and to collect the Rent prior to the occurrence of an Event of Default, as defined under Section 4.1 hereof.

3.2 Collection Upon Default. Upon the occurrence of any Event of Default under Section 4.1 hereof, the Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Mortgaged Property, or any part thereof, and in its own name sue for or otherwise collect such Rent and proceeds, including those past due and unpaid and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any of the Obligations, as provided in Section 3.3 below. The collection of such Rent and proceeds, or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any Event of



200301100181
Skagit County Auditor

Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to notice of default.

3.3 Application of Proceeds. All payments of proceeds received by the Beneficiary pursuant to Sections 3.1 and 3.2 hereof shall be placed in a cash collateral account at the Beneficiary. All such deposits shall be applied and disposed of as provided in the Amended Credit Agreement.

3.4 No Liability of the Beneficiary in Collecting. The Beneficiary is hereby absolved from all liability for failure to enforce collection of any proceeds so assigned (and no such failure shall be deemed to be waiver of any right of the Beneficiary under this Article) and from all other responsibility in connection therewith, except the responsibility to account to the Grantor for funds actually received.

3.5 Assignment Not a Restriction on the Beneficiary's Rights. Nothing herein contained shall detract from or limit the absolute obligation of the Grantor to make payment of the Obligations regardless of whether the proceeds assigned by this Article are sufficient to pay the same, and the rights under this Article shall be in addition to all other security now or hereafter existing to secure the payment and performance of the Obligations.

3.6 Status of Assignment. Notwithstanding the other provisions of this Article, and in addition to the other rights hereunder, the Beneficiary or any receiver appointed in judicial proceedings for the enforcement of this Deed of Trust shall have the right to receive all Rent herein assigned and the proceeds therefrom after any item of Obligations has been declared due and payable in accordance with the provisions of Section 4.1 hereof and to apply all of said proceeds as provided in Sections 3.2 and 3.3 hereof. Upon any sale of the Mortgaged Property or any part thereof pursuant to Article V, the Coal and any other minerals thereafter produced from the property so sold, and the proceeds therefrom, shall be included in such sale and shall pass to the purchaser free and clear of the assignment contained in this Article.

ARTICLE IV

Events of Default

4.1 Events of Default Hereunder. The following shall constitute an "Event of Default" under this Deed of Trust: the occurrence of an "Event of Default" under, and as defined in, the Amended Credit Agreement, any default by Grantor under any Interest Rate Protection Agreement to which Grantor is a party, and any other payment default by Grantor on any of the Obligations after the expiration of any applicable grace period.



200301100181
Skagit County Auditor

1/10/2003 Page 14 of 31 11:39AM

ARTICLE V

Enforcement of the Security

5.1 Power of Sale of Real Property Constituting a Part of the Mortgaged Property.

Upon the occurrence of an Event of Default and if such event shall be continuing, the Beneficiary shall have the right and power to sell, to the extent permitted by law, at one or more sales, as an entirety or in parcels, as they may elect, the real property consisting of all or any part of the Mortgaged Property, at such place or places and otherwise in such manner and upon such notice as may be required by law, or, in the absence of any such requirement, as the Beneficiary may deem appropriate, and to make conveyance to the purchaser or purchasers; and the Grantor shall warrant title to such real property to such purchaser or purchasers to the extent warranted herein. The Beneficiary may postpone the sale of all or any portion of such real property by public announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement. The right of sale hereunder shall not be exhausted by one or any sale, and the Beneficiary may make other and successive sales until all of the trust estate be legally sold.

5.2 Rights of the Beneficiary With Respect to Personal Property Constituting a Part of the Mortgaged Property. Upon the occurrence of an Event of Default and if such event shall be continuing, the Beneficiary will have all rights and remedies granted by law, and particularly by the Uniform Commercial Code, including, but not limited to, the right to take possession of all personal property constituting a part of the Mortgaged Property, and for this purpose the Beneficiary may enter upon any premises on which any or all of such personal property is situated and take possession of and operate such personal property (or any portion thereof) or remove it therefrom. The Beneficiary may require the Grantor to assemble such personal property and make it available to the Beneficiary at a place to be designated by the Beneficiary which is reasonably convenient to all parties. Unless such personal property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, or unless provided otherwise in the Amended Credit Agreement, the Beneficiary will give the Grantor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition of such personal property is to be made. This requirement of sending reasonable notice will be met if the notice is mailed by first-class mail, postage prepaid, to the Grantor at the address shown below the signatures at the end of this Deed of Trust and either received at least five (5) days before the time of the sale or disposition or mailed at least ten (10) days before the time of the sale or disposition.

5.3 Beneficiary Authorized to Execute Deeds. Grantor irrevocably appoints the Beneficiary to be its true and lawful attorney in its name and stead and on its behalf, for the sole purpose of effectuating any sale, assignment, transfer or delivery for the enforcement of this Deed of Trust, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such deeds, bills of sale, assignments and other instruments as the Beneficiary may consider necessary or appropriate, with full power of substitution, Grantor hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Beneficiary or any purchaser, Grantor shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to



200301100181

Skagit County Auditor

Beneficiary or such purchaser all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

5.4 Rights of the Beneficiary with Respect to Fixtures Constituting a Part of the Mortgaged Property. Upon the occurrence of an Event of Default and if such event shall be continuing, the Beneficiary may elect to treat the fixtures constituting a part of the Mortgaged Property as either real property collateral or personal property collateral and then proceed to exercise such rights as apply to such type of collateral.

5.5 Judicial Proceedings. Upon occurrence of an Event of Default and if such event shall be continuing, the Beneficiary, in lieu of or in addition to exercising any power of sale hereinabove given, may proceed by a suit or suits in equity or at law, whether for a foreclosure of this Deed of Trust and the liens and security interest hereunder, or for the judicial or other sale of the Mortgaged Property, or for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgaged Property, or for the enforcement of any other appropriate legal or equitable remedy.

5.6 Appointment of Receiver. Upon occurrence of an Event of Default and if such event shall be continuing, in addition to all other remedies herein provided for, the Beneficiary shall, as a matter of right, be entitled to the appointment of a receiver or receivers for all or any part of the Mortgaged Property, whether such receivership be incident to a proposed sale of such property or otherwise, and without regard to the value of the Mortgaged Property or the solvency of Grantor or any entity or entities liable for the payment of the Obligations secured hereby, and Grantor does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by the Beneficiary and where allowed by law such receiver or receivers may be appointed by any court of competent jurisdiction upon ex parte application without notice, notice being hereby waived. Nothing herein is to be construed to deprive the Beneficiary of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of the Beneficiary to receive payment of the proceeds and income pursuant to Article III hereof.

5.7 Possession of the Mortgaged Property. It shall not be necessary for the Beneficiary to have physically present or constructively in its possession, at any sale held by the Beneficiary or by any court, receiver or public officer, any or all of the Mortgaged Property; and the Grantor shall deliver to the purchasers at such sale on the date of sale the Mortgaged Property purchased by such purchasers at such sale, and if it should be impossible or impracticable for any of such purchasers to take actual delivery of the Mortgaged Property, then the title and right of possession to the Mortgaged Property shall pass to such purchaser at such sale as completely as if the same had been actually present and delivered.

5.8 Certain Aspects of a Sale. The Beneficiary, and any Interest Rate Protection Provider shall have the right to become the purchaser at any sale held by the Beneficiary or by



200301100181

Skagit County Auditor

any court, receiver or public officer, and the Beneficiary, and any Interest Rate Protection Provider shall have the right to credit upon the amount of the bid made therefor the amount payable out of the net proceeds of such sale to it. Recitals contained in any conveyance made to any Purchaser at any sale made hereunder shall conclusively establish the truth and accuracy of the matters therein stated, including, without limiting the generality of the foregoing, nonpayment of the unpaid principal sum of, and the interest accrued on, the Obligations after the same have become due and payable, advertisement and conduct of such sale in the manner provided herein or appointment of any successor Beneficiary hereunder.

5.9 Receipt to Purchaser. Upon any sale, whether made under the power of sale herein granted and conferred or by virtue of judicial proceedings, the receipt of the Beneficiary, or of the officer making sale under judicial proceedings, shall be sufficient discharge to the purchaser or purchasers at any sale for his or their purchase money, and such purchaser or purchasers, or his or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Beneficiary or of such officer therefor, be obliged to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or nonapplication thereof.

5.10 Effect of Sale. Any sale or sales of the Mortgaged Property, whether under the power of sale herein granted and conferred or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever either at law or in equity, of the Grantor of, in and to the premises and the property sold, and shall be a perpetual bar, both at law and in equity, against the Grantor of, in and to the premises and the property sold, and shall be a perpetual bar, both at law and in equity, against the Grantor, and the Grantor's successors or assigns, and against any and all persons claiming or who shall thereafter claim all or any of the property sold from, through or under the Grantor or the Grantor's successors or assigns. Nevertheless, the Grantor, if requested by the Beneficiary so to do, shall join in the execution and delivery of all proper conveyances, assignments and transfers of the properties so sold.

5.11 Application of Proceeds. The proceeds of any sale of the Mortgaged Property, or any part thereof, whether under the power of sale herein granted and conferred or by virtue of judicial proceedings, shall be applied as provided in the Amended Credit Agreement.

5.12 Liability for Deficiency. The Grantor will remain liable for any deficiency owing to the Beneficiary after application of the proceeds of any sale of the Mortgaged Property as set forth in Section 5.11 hereof.

5.13 The Grantor's Waiver of Appraisalment, Marshalling and Other Rights. The Grantor agrees, to the full extent that the Grantor may lawfully so agree, that the Grantor will not at any time insist upon or plead or in any manner whatever claim the benefit of any appraisalment, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Mortgaged Property or the possession thereof, by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but the Grantor, for the Grantor and all who may claim through or under the Grantor, so far as the Grantor or those claiming through or under the Grantor now or hereafter lawfully may, hereby waives the benefit



200301100181
Skagit County Auditor

of all such laws. The Grantor, for the Grantor and all who may claim through or under the Grantor, waives, to the extent that the Grantor may lawfully do so, any and all right to the exemption of homesteads, and to have the Mortgaged Property marshalled upon any foreclosure of the lien hereof, or sold in inverse order of alienation and agrees that the Beneficiary or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property as an entirety or in separate parts. The Grantor, for the Grantor and all who may claim through or under the Grantor, further waives, to the full extent that the Grantor may lawfully do so, any requirement of posting a receiver's bond or replevin bond or other similar type of bond if the Beneficiary commences an action for replevin to recover possession of any of the Mortgaged Property. If any law in this paragraph referred to and now in force, of which the Grantor or the Grantor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

5.14 Costs and Expenses. All costs and expenses (including reasonable attorneys' fees and other legal, management and consulting expenses and including money advanced in connection with any receivership) incurred by the Beneficiary in protecting and enforcing its rights hereunder, shall constitute a demand obligation owing by the Grantor to the party incurring such costs and expenses and shall draw interest at an annual rate equal to the rate of interest applicable to the Term Note after the occurrence of any Event of Default (the "Default Rate").

5.15 Operation of the Mortgaged Property by the Beneficiary. Upon the occurrence of an Event of Default, and in addition to all other rights herein conferred on the Beneficiary, the Beneficiary (or any person, firm or corporation designated by the Beneficiary) shall have the right and power, but shall not be obligated, to enter upon and take possession of any of the Mortgaged Property, and to exclude the Grantor, and the Grantor's agents or servants, wholly therefrom, and to hold, use, administer, manage and operate the same to the extent that the Grantor shall be at the time entitled and in its place and stead. The Beneficiary, or any person, firm or corporation designated by the Beneficiary, may operate the same without any liability to the Grantor in connection with such operations, except for the bad faith or willful misconduct of the Beneficiary or its agents, and the Beneficiary or any person, firm or corporation designated by the Beneficiary shall have the right to collect, receive and receipt for all Rent due with respect to such properties, and to exercise every power, right and privilege of the Grantor with respect to the Mortgaged Property. When and if the expenses of such have been paid and the Obligations paid, said properties shall, if there has been no sale or foreclosure, be returned to the Grantor.

ARTICLE VI

Condemnation and Insurance

6.1 Condemnation. Unless otherwise governed by the terms and conditions of the Amended Credit Agreement, with respect to any proceeds or awards which may become due by reason of any condemnation or other taking for use of the whole or any part of the Mortgaged Property, Beneficiary is hereby authorized, directed and empowered to adjust or compromise the



200301100181
Skagit County Auditor

claim for any such award, to collect and receive the proceeds thereof and to give proper receipts and acquittance therefor. Beneficiary may apply such award or any part hereto the Obligations then due (whether by acceleration, demand or otherwise), to fulfill any of the covenants contained herein or to replace or restore the Mortgaged Property, or may release the same to the Grantor, after deducting any expenses of collection.

6.2 Insurance. In the case of an insured loss, Beneficiary shall have the right, but not the duty, to settle all claims with insurers, collect all insurance proceeds, and/or apply the proceeds, after deducting the costs of collection, in the manner as provided in the Amended Credit Agreement. In the event any foreclosure action or other proceeding hereunder is instituted by Beneficiary, all right, title and interest of Grantor in any or to any policy or policies of insurance then in force shall vest in Beneficiary. In the event of foreclosure sale, Beneficiary is hereby authorized, without the consent of Grantor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Beneficiary may deem advisable to cause the interest of such purchaser to be protected by any such insurance policies.

6.3 Application of Trust Moneys. All moneys received by Grantor:

(a) for application under this Article VI as elsewhere herein provided, or whose disposition is not elsewhere herein otherwise specifically provided for, or

(b) as compensation for, or proceeds of sale of, any part of the Mortgaged Property taken by eminent domain or purchase by, or sold pursuant to an order of a governmental authority, or

(c) as proceeds of insurance upon any part of the Mortgaged Property;

(all such moneys being hereinafter sometimes called "Trust Moneys"), shall be held in trust by Grantor for the benefit of Beneficiary and shall be held and disbursed subject to the Amended Credit Agreement.

To the extent that any Trust Moneys consists of amounts referred to in subpart (c) above, they may be withdrawn by Grantor to reimburse Beneficiary for expenditures made, or to pay costs incurred, by such Grantor to repair, rebuild or replace the property destroyed or damaged, subject to the prior written approval of Beneficiary in each such instance, it being understood that Beneficiary shall have the right, in its sole discretion, to control the application and disbursement of all insurance proceeds received by Grantor, pursuant to the terms of the Amended Credit Agreement.

ARTICLE VII

Miscellaneous Provisions



200301100181

Skagit County Auditor

1/10/2003 Page 19 of 31-11:39AM

7.1 Right to Perform the Grantor's Obligations. Each and every covenant herein contained shall be performed and kept by the Grantor solely at the Grantor's expense. If the Grantor shall fail to perform or keep any of the covenants of whatsoever kind or nature contained

in this Deed of Trust, the Beneficiary, or any receiver appointed hereunder, may, but shall not be obligated to, perform or keep, or cause to be performed or kept, the same in the Grantor's behalf, and the Grantor hereby agrees to reimburse the Beneficiary or such receiver (as the case may be) on demand for all expenses incurred in connection therewith plus interest thereon at an annual rate equal to the Default Rate until paid. The undertaking of such performance by the Beneficiary or such receiver (as the case may be) as aforesaid shall not obligate the Beneficiary or such receiver (as the case may be) to continue such performance or to engage in such performance or performance of any other act in the future, shall not relieve the Grantor from the observance or performance of any covenant or agreement contained in this Deed of Trust or constitute a waiver of default hereunder and shall not affect the right of the Beneficiary to accelerate the payment of the Obligations or to resort to any other of its rights or remedies hereunder or under applicable law.

7.2 Defense of Claims. The Grantor will notify the Beneficiary, in writing, promptly of the commencement of any legal proceedings affecting the lien and security interest hereof or affecting all or any portion of the Mortgaged Property and will take such action, employing attorneys agreeable to the Beneficiary, as may be necessary or appropriate to preserve the Grantor's and the Beneficiary's rights affected thereby and/or to hold harmless the Beneficiary in respect of such proceedings; and should the Grantor fail or refuse to take any such action, the Beneficiary may, upon giving prior written notice thereof to the Grantor, take such action in behalf and in the name of the Grantor and at the Grantor's expense. Moreover, the Beneficiary may take such independent action in connection therewith as it may in its discretion deem proper, the Grantor hereby agreeing that all sums advanced or all expenses incurred in such actions plus interest at an annual rate equal to the Default Rate until paid, will, on demand, be reimbursed, as appropriate, to the Beneficiary or any receiver appointed hereunder. The obligations of the Grantor as hereinabove set forth in this Section 7.2 shall survive the release, termination, foreclosure or assignment of this Deed of Trust or any sale hereunder.

7.3 The Mortgaged Property to Revert. If the Obligations shall be fully paid and the covenants herein contained shall be well and truly performed, then all of the Mortgaged Property shall revert to the Grantor and the entire estate, right, title and interest of the Beneficiary shall thereupon cease; and the Beneficiary in such case shall, upon the request of the Grantor and at the Grantor's cost and expense, deliver to the Grantor proper instruments acknowledging satisfaction and discharge of this Deed of Trust.

7.4 Renewals, Amendments and Other Security. Renewals and extension of the Obligations may be given at any time and amendments may be made to agreements relating to any part of such Obligations or the Mortgaged Property and the Beneficiary may take or may now hold other security for the Obligations, all without notice to or consent of the Grantor. The Beneficiary may resort first to such other security or any part thereof or first to the security herein given or any part thereof, or from time to time to either or both, even to the partial or complete abandonment of either security, and such action shall not be a waiver of any rights conferred by this Deed of Trust, which shall continue as a first lien upon and prior perfected security interest in the Mortgaged Property not expressly released until the Term Notes and all other Obligations secured hereby are fully paid.



200301100181
Skagit County Auditor

7.5 Construction of Instrument as an Assignment. This Deed of Trust shall be deemed to be and may be enforced from time to time as an assignment, chattel mortgage, contract, deed of trust, financing statement, real estate mortgage or security agreement, and from time to time as any one or more thereof.

7.6 Limitation on Interest. No provision of this Deed of Trust or of the Term Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law or which is otherwise contrary to law. If any excess of interest in such respect is herein or in the Amended Credit Agreement provided for, or shall be adjudicated to be so provided for herein or in the Amended Credit Agreement, the Grantor shall not be obligated to pay such excess.

7.7 Unenforceable or Inapplicable Provisions. If any provision hereof, of the Term Note, any Interest Rate Protection Agreement and/or the Amended Credit Agreement is invalid or unenforceable in any jurisdiction, the other provisions hereof and of the Term Note, any Interest Rate Protection Agreement and/or the Amended Credit Agreement shall remain in full force and effect in such jurisdiction, and the remaining provisions hereof shall be liberally construed in favor of the Beneficiary, and any Interest Rate Protection Provider, in order to effectuate the provisions hereof, and the invalidity of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction. Any reference herein contained to a statute or law of a state in which no part of the Mortgaged Property is situated shall be deemed inapplicable to, and not used in, the interpretation hereof.

7.8 Rights Cumulative. Each and every right, power and remedy herein given to the Beneficiary shall be cumulative and not exclusive; and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and so often and in such order as may be deemed expedient by the Beneficiary, and the exercise, or the beginning of the exercise, of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No delay or omission by the Beneficiary in the exercise of any right, power or remedy shall impair any such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing.

7.9 Indemnification. The Grantor shall indemnify and hold harmless the Beneficiary, and any Interest Rate Protection Provider, against, and the Beneficiary, and any Interest Rate Protection Provider, shall not be liable for, any loss, cost or damage, including without limitation, reasonable attorneys' fees, resulting from exercise by the Beneficiary of any right, remedy, power or privilege conferred upon the Beneficiary by this Deed of Trust or any other instrument pertaining hereto, or from the attempt or failure of the Beneficiary, or any Interest Rate Protection Provider, to exercise any such right, remedy, power or privilege. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Grantor hereby agrees to make the maximum contribution to the payment and satisfaction of such losses, costs, damages, and fees which is permissible under applicable law. The obligations of the Grantor as hereinabove set forth in this Section 7.9 shall survive the release, termination, foreclosure or assignment of this Deed of Trust or any sale hereunder.



200301100181
Skagit County Auditor

7.10 No Partnership. Nothing contained in this Deed of Trust is intended to, or shall be construed as, creating to any extent and in any manner whatsoever, any partnership, joint venture, or association among the Grantor and the Beneficiary, or in any way as to make the Beneficiary a coprincipal or joint venturer with the Grantor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

7.11 Partial Releases. No release from the lien or security interest of this Deed of Trust of any part of the Mortgaged Property by the Beneficiary shall in any way alter, vary or diminish the force, effect, lien or security interest of this Deed of Trust against the balance or remainder of the Mortgaged Property.

7.12 Waiver by the Beneficiary. Any and all covenants in this Deed of Trust may from time to time by instrument in writing signed by the Beneficiary be waived to such extent and in such manner as the Beneficiary may desire, but no such waiver shall ever affect or impair the Beneficiary's, or any Interest Rate Protection Provider's rights or liens or security interest hereunder, except to the extent specifically stated in such written instrument.

7.13 Successors and Assigns. This Deed of Trust is binding upon the Grantor, the Grantor's successors and assigns, and shall inure to the benefit of the Beneficiary, and any Interest Rate Protection Provider, its and their respective successors and assigns, and the provisions hereof shall likewise be covenants running with the land.

7.14 Article and Section Headings. The article and section headings in this Deed of Trust are inserted for convenience of reference and shall not be considered a part of this Deed of Trust or used in its interpretation.

7.15 Execution in Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which are identical, except that, to facilitate recordation or filing, in any particular counterpart portions of Exhibit A hereto which describe properties situated in counties other than the county in which such counterpart is to be recorded or filed may have been omitted.

7.16 Special Filing as Financing Statement. This Deed of Trust shall likewise be a security agreement and a financing statement. This Deed of Trust shall be filed for record, among other places, in the real estate records of each county in which any portion of the real property covered by the Lands and the Leases described in Exhibit A hereto is situated, and, when filed in such counties, shall be effective as a financing statement covering Fixtures and As-extracted Collateral located on Coal properties, which Coal properties (and accounts arising therefrom) are to be financed at the mines located on the real property described in Exhibit A hereof. At the option of the Beneficiary, a carbon, photographic or other reproduction of this Deed of Trust or of any financing statement covering the Mortgaged Property or any portion thereof shall be sufficient as a financing statement and may be filed as such. This Deed of Trust constitutes a fixture filing under the Uniform Commercial Code, and the following information is included: (a) Grantor shall be deemed the "Debtor" with the address set forth for Grantor on the first page of this Deed of Trust; (2) Beneficiary shall be deemed to be the "Secured Party" with the address set forth for Beneficiary on the first page of this Deed of Trust and shall have all of



200301100181
Skagit County Auditor

the rights of a secured party under the Uniform Commercial Code; (3) this Deed of Trust covers goods which are or are to become Fixtures and As-Extracted Collateral and shall be effective as a financing statement covering Fixtures and As-extracted Collateral located on Coal properties; and (4) the name of the record owner of the land is the Debtor.

7.17 Notices. Any notice, request, demand or other instrument which may be required or permitted to be given or served hereunder shall be sufficiently given when given in the manner provided by the Amended Credit Agreement at the address set forth therein or, if no address for a recipient is set forth in the Amended Credit Agreement, then at the address as set forth herein.

7.18 CHOICE OF LAW. THIS DEED OF TRUST SHALL BE CONSTRUED, INTERPRETED AND GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA EXCEPT TO THE EXTENT THAT WASHINGTON LAW MAY BE OTHERWISE APPLICABLE TO THE CREATION, PERFECTION AND ENFORCEMENT OF SECURITY INTERESTS, LIENS, APPLICABLE REMEDIES AND WARRANTIES OF TITLE.

7.19 Future Advances; Priority. This Deed of Trust also secures future advances under the Amended Credit Agreement made within twenty (20) years from the date hereof whether direct, indirect, existing, future, contingent or otherwise, which future advances and additional indebtedness or shall have the same priority as if such future advances or additional indebtedness were made on the date of the execution hereof whether or not any debt is outstanding on the date hereof or at the time of any future advance or additional indebtedness. The maximum principal amount of indebtedness secured by this Deed of Trust is \$20,000,000. Nothing herein contained shall be deemed an obligation on the part of Beneficiary or any Interest Rate Protection Provider to make any future advances or additional indebtedness. The Grantor hereby waives any right to require the Beneficiary to release the lien of this Beneficiary with respect to future advances or additional indebtedness.

7.20 Covenants Running with the Land. Each of the provisions of this Deed of Trust shall be deemed a covenant running with the land and shall be binding upon the Grantor, its successors and assigns, and inure to the benefit of Beneficiary, its successors and assigns.

7.21 Use of the Mortgaged Property.

The Mortgaged Property is not used principally for agricultural purposes.

7.22 Appointment of Trustee and Beneficiary.

If Grantor is obligated to execute any document or instrument hereunder and fails or refuses to do so within ten (10) days after written demand by Beneficiary, Grantor hereby appoints each of Trustee and Beneficiary, severally its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, with respect to the execution, acknowledgment, delivery and filing or recording for and in the name of Grantor of any of such documents or instruments.

7.23 ORAL AGREEMENTS DISCLAIMER.



200301100181

Skagit County Auditor

STATUTORY NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

7.24 The Trustee.

(a) Trustee, by its acceptance hereof, covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by it in accordance with the terms hereof. Trustee agrees to take action pursuant to requests and directions from Beneficiary in accordance with the provisions of this Deed of Trust and the Loan Documents.

(b) In the event of Trustee's death, removal, resignation, refusal to act, or inability to act or, in the sole discretion of Beneficiary for any reason whatsoever, Beneficiary may, at any time or from time to time without notice and without specifying any reason therefor and without applying to any court, select and appoint a substitute or successor trustee, and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor without conveyance from the predecessor trustee. Such substitute or successor trustee shall not be required to give bond for the faithful performance of these duties unless required by Beneficiary. Such substitute or successor trustee shall be appointed by written instrument duly recorded in the County where the Mortgaged Property is located, which appointment may be executed by any authorized agent of Beneficiary and if Beneficiary is a business trust or corporation, such appointment shall be conclusively presumed to have been executed with authority and shall be valid and sufficient without proof of any action by the Board of Trustees or Board of Directors or any superior officer of the business trust or corporation. Grantor hereby ratifies and confirms any and all acts which the herein-named Trustee, or its substitutes or successors in this trust, shall do lawfully by virtue hereof. Grantor hereby agrees, on behalf of itself and of its heirs, executors, administrators and assigns, that the recitals contained in any deed or deeds executed in due form by Trustee or any substitute or successor trustee, acting under the provisions of this Deed of Trust, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds and the passing of title thereby. In the event that two or more trustees are named herein, any one of the trustees shall be clothed with the full power to act when action hereunder is required.

(c) At any time upon written request of Beneficiary, without affecting the liability of any person for the payment of indebtedness, Trustee may: (i) consent to the making of any map or plat of said Mortgaged Property; (ii) join in granting any easement or creating any restriction thereon; (iii) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof; and (iv) reconvey, without warranty, all or any part of the Mortgaged Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto." Grantor agrees to pay a reasonable Trustee's fee for full or partial reconveyance plus any recording fees.



200301100181
Skagit County Auditor

The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. Said reconveyance shall be at the sole cost and expense of Grantor.

(d) The Trustee may resign at any time upon giving ten (10) days' notice in writing to Grantor and to Beneficiary.

[SIGNATURE PAGE FOLLOWS]



200301100181
Skagit County Auditor

1/10/2003 Page 25 of 31 11:39AM

[SIGNATURE PAGE 1 of 1 TO DEED OF TRUST]

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Deed of Trust, Assignment of Production, Security Agreement, Financing Statement and Fixture Filing as of the day, month and year first above written.

GRANTOR AND DEBTOR

GREAT NORTHERN PROPERTIES
LIMITED PARTNERSHIP, a Delaware
limited partnership

By: GNP Management Corporation, a
Delaware corporation, its general partner

By: *Dwight L. Dunlap*
Name: Dwight L. Dunlap
Title: Secretary, Treasurer and Chief
Financial Officer

By: *Dwight L. Dunlap*
Name: DWIGHT L. DUNLAP
Title: SECRETARY, TREASURER, & CHIEF
FINANCIAL OFFICER

Mailing Address:

Great Northern Properties Limited Partnership
1658 Cole Blvd.
Building #6, Suite 2
Golden, CO 80401



200301100181

Skagit County Auditor

[ACKNOWLEDGEMENT PAGE 1 OF 2 TO DEED OF TRUST]

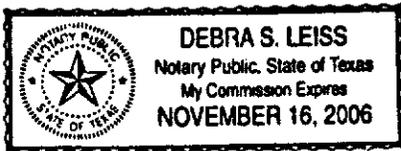
STATE OF Texas

COUNTY OF Harris

On this the 27th day of December, 2002, before me personally appeared Dwight L. Dunlap, to me known to be the Secretary, Treasurer and Chief Financial Officer of the corporation that executed the within and foregoing instrument as general partner of Great Northern Properties Limited Partnership, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument on behalf of said limited partnership.

In witness whereof, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

(Seal)



Debra S Leiss
(Signature of person taking acknowledgment)

Debra S. Leiss
(Printed Name)

Residing at: Houston, TX

Notary Public, State of Tx
(Title or rank)

(Serial number, if any)

My commission expires: 11-16-2006



200301100181
Skagit County Auditor

[ACKNOWLEDGEMENT PAGE 2 OF 2 TO DEED OF TRUST]

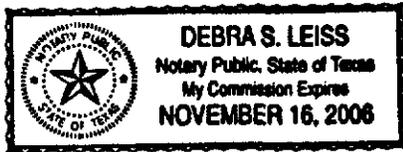
STATE OF Texas

COUNTY OF Harris

On this the 27th day of December, 2002, before me personally appeared Dwight L. Dunlap, to me known to be the Sec, Treas, CEO of the corporation that executed the within and foregoing instrument as general partner of Great Northern Properties Limited Partnership, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument on behalf of said limited partnership.

In witness whereof, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

(Seal)



Debra S. Leiss
(Signature of person taking acknowledgment)

Debra S. Leiss
(Printed Name)

Residing at: Houston, TX

Notary Public, State of Texas
(Title or rank)

(Serial number, if any)

My commission expires: 11-16-2006



200301100181
Skagit County Auditor

1/10/2003 Page 28 of 31 11:39AM

BENEFICIARY AND SECURED PARTY

The name and mailing address of the Beneficiary is:

PNC BANK, NATIONAL ASSOCIATION, a national banking association
One PNC Plaza
249 Fifth Avenue
Pittsburgh, Pennsylvania 15222



200301100181

Skagit County Auditor

Exhibit A

Washington

Twp	Rng	Sec	Description
34N	5E	1	Lots 2,3, SE 1/4 NW 1/4
34N	5E	10	NE 1/4 NE 1/4
34N	5E	11	NE 1/4 NE 1/4
34N	5E	2	SW 1/4
34N	5E	3	Lot 7, E 1/2 SW 1/4
34N	6E	10	W 1/2 NE 1/4; SE 1/4 NE 1/4
34N	6E	3	SW 1/4 SW 1/4
34N	6E	31	FRL. SE 1/4
34N	6E	32	FRL. S 1/2 S 1/2
34N	6E	33	W 1/2 SW 1/4; SE 1/4 SW 1/4; SW 1/4 SE 1/4
34N	6E	34	SW 1/4
34N	6E	4	Lots 5,11,12, N 1/2 SW 1/4; SE 1/4 SW 1/4
34N	6E	5	Lots 5,6,12
34N	6E	6	Lots 7,9,10,11, NE 1/4 SW 1/4; N 1/2 SE 1/4
34N	6E	9	SE 1/4 NE 1/4; W 1/2 NE 1/4
35N	5E	6	Lot 1, SE 1/4 SE 1/4
36N	4E	36	NE 1/4 NE 1/4; S 1/2 NE 1/4; SW 1/4; N 1/2 SE 1/4; SW 1/4 SE 1/4; W 1/2 SE 1/4 SE 1/4, Less property conveyed by Deed dated April 26, 2001.
36N	5E	1	Lot 10, S 1/2 SE 1/4
36N	5E	20	SE 1/4 SE 1/4
36N	5E	21	Lots 4,5,12,13
36N	5E	28	Lot 6
36N	5E	9	Lots 1,8,9



200301100181

Skagit County Auditor

EXHIBIT B

1. Zoning laws, ordinances and similar government regulations;
2. Rights reserved by any governmental authority to regulate the Mortgaged Property or any portion or component thereof;
3. Surface rights with respect to those portions of the Mortgaged Property in which the interest of the Grantor is in the Coal only;
4. Public roads, public and private rights-of-way, oil and gas leases, farming tenancies and other surface leases granted by Grantor, utility and pipeline easements, and other surface and subsurface occupancies which are concurrent with and have no apparent impact upon the current use of the subject interests.
5. The Coal Leases, Other Leases, easements, rights of way and other matters affecting the Mortgaged Property of record in Skagit County, Washington, that are not of such a nature as to be inconsistent with the representations and warranties of Grantor set forth in the Deed of Trust.



200301100181

Skagit County Auditor

1/10/2003 Page 31 of 31 11:39AM