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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17747



In the Matter of

BRIAN C. ROSE

Respondent.

MOTION FOR SUMMARY
DISPOSITION PURSUANT TO
RULE 250 OF THE COMMISSION
RULES OF PRACTICE

The Division of Enforcement hereby moves for Summary Disposition against Respondent Brian C. Rose.

I. INTRODUCTION

On December 27, 2016, the Securities and Exchange Commission issued an Order Instituting Proceedings against Respondent pursuant to Section 15(b) of the Securities and Exchange Act of 1934 ("OIP"). On January 25, 2017, the Division of Enforcement (the "Division") submitted notice establishing that Respondent was served with the OIP by U.S. Postal Service certified mail on January 3, 2017. Respondent's answer was due January 26, 2017. Respondent has not filed an answer. On January 27, 2017, Respondent was ordered to show cause by February 10, 2017, why the proceeding should not be determined on default due to his failure to file an answer or otherwise defend this proceeding. The Division was ordered to file an appropriate dispositive motion by February 24, 2017 if the Respondent did not respond to the order. Respondent has not filed anything in response to the order. Accordingly, the Division hereby moves for summary disposition.

In support of its Motion, the Division submits Respondent Rose's Plea Agreement in *United States v. Brian C. Rose AKA John Hankins*, Case No. 2:14-CR-76, before the United

States District Court for the Eastern District of Tennessee, attached as Exhibit 1; the March 21, 2016 Judgment and June 22, 2016 Amended Judgment, attached as Exhibit 2; Rose's testimony in *United States v. Johnny D. Phillips*, attached as Exhibit 3;¹ the Private Placement Memorandum for the Thacklight Coal Mine LLP, produced to the Division by New Century Coal Inc. ("New Century Coal"), attached as Exhibit 4.

II. STATEMENT OF FACTS

The Division alleges that, during the period January 2011 through June 2014, respondent Rose actively solicited investors and sold them securities in the form of limited liability partnership interests issued by New Century Coal. OIP § II.A.1. Rose acted as an unregistered broker-dealer in connection with the offer and sale of these securities. *Id.*

On December 1, 2014, Rose pleaded guilty to one count of conspiring to commit wire fraud and mail fraud in violation of 18 U.S.C. §§ 1349, 1341 and 1343 in *United States v. Brian C. Rose AKA John Hankins*, Case No. 2:14-CR-76, before the United States District Court for the Eastern District of Tennessee. OIP § II.B.4. In connection with that plea, Rose admitted that he solicited investors for New Century Coal and made material misrepresentations and false statements to investors and potential investors. OIP § II.B.5; Ex. 1, at pp.2-3.

On March 30, 2016, a Judgment in the criminal case was entered against Rose. OIP § II.B.4; Ex. 2. Rose was sentenced to a prison term of 108 months followed by three years of supervised release and ordered to make restitution in the amount of \$14,902,205.04 (joint and several with other co-defendants). OIP § II.B.4; Ex. 2.

¹ Rose's trial testimony is an admission of a party-opponent and is admissible in this proceeding. See Fed. R. Evid. 801(d)(2)(A); *United States v. Hanrahan*, 508 F. 3d 962, 967(10th Cir. 2007).

III. ROSE SHOULD BE BARRED FROM ASSOCIATION AND FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK

Section 15(b)(6) of the Exchange Act authorizes the Commission to censure, place limitations on the activities or functions of, or suspend or bar from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, any person associated, seeking to become associated, or, at the time of the alleged misconduct, was associated or seeking to become associated with a broker or dealer, if the Commission finds it is in the public interest to do so and, among other things, that the person has been convicted within 10 years of the commencement of administrative proceedings under Section 15(b)(6), of an offense specified in Section 15(b)(4)(B) of the Exchange Act. Offenses specified under Section 15(b)(4)(B) include, among others, violations of 18 U.S.C. §§ 1341 and 1343. Acting as a broker-dealer is a sufficient prerequisite to associational bars. *See Vladislav Steven Zubkis*, Rel. No. 34-52876, 2005 WL 3299148 (December 2, 2005); *see also David F. Bandimere*, Rel. No. ID - 507, 2013 WL 5553898 (October 8, 2013); *Edward J. Driving Hawk, Sr.*, Rel. No. ID - 399, 2010 WL 2685821 (July 7, 2010). In other words, the Commission is authorized to impose a collateral bar on Rose if: (1) at the time of the alleged misconduct, he acted as or was associated with a broker or dealer; (2) he has been convicted of one or more of the offenses specified in Section 15(b)(4)(B) of the Exchange Act; and (3) the sanction is in the public interest.

A. Rose Acted as an Unregistered Broker-Dealer.

Section 3(a)(4)(A) of the Exchange Act defines a “broker” as any person “engaged in the business of effecting transactions in securities for the account of others.” Courts have

interpreted this definition to connote “a certain regularity of participation in securities transactions at key points in the chain of distribution.” *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411, 415 (D. Mass. 1976), *aff’d*, 545 F.2d 754 (1st Cir. 1976); *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003). In determining whether a person is engaged in the business of effecting transactions for others’ accounts, courts and the Commission have considered a number of factors. “A primary consideration is whether there has been regular participation in securities transactions at key points in the chain of distribution,” which can be indicated by “[t]he number of customers at issue, the dollar amount of transactions and the number of transactions effected.” *David F. Bandimere*, Securities Act Release No. 9972 at 11. Other factors considered, include whether the person: (1) “actively solicited or recruited investors”; (2) “advised investors as to the merits of an investment or opined on its merits”; (3) “received commissions, transaction-based compensation, or payment other than a salary for selling the investments”; (4) “was an employee of the issuer of the securities”; (5) “was selling or previously sold the securities of other issuers; (6) “was involved in negotiations between the issuer and the investor”; and (7) “handled customer funds and securities.” *Id.* at 12.

1. The Investments Rose Sold were Securities.

Section 3(a)(10) of the Exchange Act defines “security” to include, among other things, “investment contracts.” An investment contract is a security if it involves: (1) investments of money, (2) in a common enterprise, and (3) with profits derived solely from others’ efforts. *SEC v. W. J. Howey Co.*, 328 U.S. 293, 301 (1946). The Commission has held that a “common enterprise” is not a distinct requirement for an “investment contract” under *Howey*. *In re Barkate*, 57 S.E.C. 488, 495 n. 13 (April 8, 2004). According to the Commission, “an ‘investment contract’ under *Howey* is a contract or scheme for the ‘placing of capital or laying

out of money in a way intended to secure income or profit from its employment.” *In re Abbondante*, 58 S.E.C. 1082, 1098 (Jan. 6, 2006) (citations omitted).

The elements of *Howey* are satisfied here. Investors gave New Century Coal money to purchase units of participation which corresponded to a specified percentage of the mining interest in each subject mine. Ex. 3 at 637. Rose testified: “I put an offering document together called a Private Placement Memorandum for that property [Thacklight mine] and began to offer it, make it available to investors or potential investors over the telephone and solicit their investment.” Ex. 3 at 608. Each of the private placement memoranda for the various offerings to investors used the same template and included virtually identical disclosures. The primary differences between them were the names and geographical details relating to the specific mine that was the subject of the offer and the maximum subscription amount being offered. Under the terms of the private placement memoranda, investors expected to receive a *pro rata* distribution of coal mining revenues. Ex. 4 at NCC00197-8. The actual distributions of supposed coal mining revenues to investors were, in large part, simply fraudulent payments of pooled investor funds. Of the approximately \$350,000 that was sent back to investors, Rose admitted that only \$40,000 came from actual coal sales. Ex. 3 at 664. The New Century Coal investments also satisfy the third element of the *Howey* test since investors’ expectations of profits were entirely dependent on the efforts of Rose and his co-defendants. *See* Ex. 4 at NCC 000206 (“The Issuer/Sponsor [New Century Coal] shall have the authority and responsibility for the management and control of all aspects of the Partnership’s business and operations. Other Unit Holders shall have a voice in the day-to-day business operations of the Partnership if desired.”) In fact, investors did not “have a voice in the day-to-day operations,” and it would have been impossible for them to do so since New Century was not legitimately in the business

of developing coal mines and was instead defrauding investors, including by providing them with false reports. Rose testified:

Q: What was fraudulent, if anything, about the operation of New Century Coal as a mining enterprise?

A: From, well the production reports that we produced about the mines to the Securities and Exchange Commission were all fraudulent. They would have been drafted internally to create the delays and the reasons for the delays behind the mining. A lot of the times we would raise the money for the mines and we wouldn't dedicate all of it to the mines. A large majority of the money went to commissions, got spent on my lifestyle, other things that it should have been spent on mining. Consequently the mining side of it was depleted and neglected, therefore the investors did not get what they bought, what they paid for. They didn't get a fair opportunity with their investment.
[Ex. 3 at 664-5].

2. Rose Solicited Investors, Sold Securities, Handled Investor Funds and Received Transaction-Based Compensation.

In connection with his guilty plea in the criminal case, Rose admitted that “[a]s part of the solicitation of investment funds, Rose and others prepared and distributed via United States mail and private interstate carrier documents which included private placement memoranda...” Ex. 1, p.2. Rose admitted that he and others “solicited investors through New Century Coal based upon the promised development of ‘Blue Gem’ coal.” Rose also admitted that he and others “marketed New Century Coal as an issuer/sponsor of partnerships with individual investors for the purpose of placing investors in limited liability partnerships in specific coal mine operations, and as the partnership mine operator for each specific mine.” Ex. 1, p.2. Rose testified that after he put together the offering document, the private placement memorandum, he “began to offer it, make it available to investors over the telephone and solicit their investment.” Ex. 3 at 608. In his testimony, Rose admitted selling securities “in a non-existent mine,” the Thacklight Mine, and admitted that for the Thacklight mine, he raised approximately

\$1.8 million from approximately 40 investors. Ex. 3 at 622. In total, investors who purchased securities from Rose and his co-conspirators lost more than \$14 million. Ex. 2.

Rose admitted receiving transaction-based compensation for these sales. Specifically, Rose testified: “So I and Mr. Sackett devised an offering document to solicit these people. Then we would all keep a commission. And I generally, a third goes to mine development costs, a third goes to overhead and operating costs, then I would keep a third personally.” Ex. 3 at 637. Although not required, the receipt of transaction-based compensation in connection with other factors “is often an indication that the recipient of that compensation is engaged in the business of effecting transactions in securities.” *David F. Bandimere*, at 13.

As established by Rose’s testimony in the criminal case as well as his admissions in his plea agreement, Rose actively solicited multiple investors and recommended they purchase securities offered by New Century Coal. In return, Rose accepted transaction-based compensation in the form of a commission on sales. In doing so, Rose was engaged in the business of effecting securities transactions for the account of others, and therefore acted as a broker within the meaning of Section 3(a)(4)(A).

B. Rose was Convicted.

As alleged in the OIP, on December 1, 2014, Rose pleaded guilty to one count of conspiring to commit wire fraud and mail fraud in violation of 18 U.S.C. §§ 1349, 1341 and 1343 in *United States of America v. Brian C. Rose AKA John Hankins*, Case No. 2:14-CR-76, before the United States District Court for the Eastern District of Tennessee. OIP § II.B.4. On March 30, 2016, a Judgment in the criminal case was entered against Rose. Ex. 2; OIP § II.B.4. Rose was sentenced to a prison term of 108 months followed by three years of supervised release and ordered to make restitution in the amount of \$14,902,205.04 (joint and several with other co-defendants). Ex. 2; OIP § II.B.4.

C. Bars are in the Public Interest.

The Commission considers the following factors when determining whether sanctions are in the public interest: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his or her conduct; and the likelihood that the respondent's occupation will present opportunities for future violations (the *Steadman* factors). See *Vladimir Boris Bugarski*, Rel. No. 34-66842, 2012 WL 1377357 at * 4 & n. 18 (Apr. 20, 2012) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)). The Commission also considers the extent to which the sanction will have a deterrent effect. See *Shield Management Company*, Rel. No. 34-53201, 2006 WL 231642 at *8 & n.46 (Jan. 31, 2006). Consideration of the *Steadman* factors demonstrates that Rose's conduct warrants a severe sanction. The Commission has stated that "conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions." *Chris G. Gunderson*, Release No. 34-61234, 2009 WL 4981617 at * 5 (Dec. 23, 2009) (internal citation omitted). Moreover, considerations of both specific and general deterrence support the imposition of permanent bars.

1. Rose's Violations are Egregious.

Rose's fraudulent scheme was egregious: it violated bedrock antifraud principles that apply throughout the securities industry, including the "'philosophy of full disclosure' of accurate and non-misleading information to investors; the obligation to deal fairly with investors; and the prohibition on self-dealing." See *Ross Mandell*, Rel. No. 34-71668, 2014 WL 907416 at * 4 (March 7, 2014) (internal citations omitted).

Rose was a "co-developer, co-leader, and co-decision maker for New Century Coal from its domestication date through June 17, 2014." Ex. 1, p.2. As part of his scheme to defraud

investors, Rose drafted offering documents, solicited investors and paid himself and others transaction-based compensation for their sales. Ex. 3 at 608, 637, 665, 670-672. As a result of Rose's egregious conduct, investors lost more than \$14 million. Ex. 2. Rose's sentencing took account of the fact that there were more than 10 victims of the fraud and that at least one was a vulnerable victim, both factors that yielded increased offense levels. Ex. 1, p.5. Based on the egregiousness of his conduct, Rose was sentenced to serve nine years in prison. Ex. 2.

2. Rose's Violations were Recurrent.

Rose conducted his fraudulent scheme from January 2011 through June 2014, resulting in over \$14 million in investor losses. Ex. 1; Ex. 2.

3. Rose's Conduct Showed a High Degree of Scierter.

As described in his plea agreement, "at all relevant times, Brian Rose acted with the intent to defraud investors and willfully participated in the conspiracy to commit mail fraud and wire fraud with knowledge of its fraudulent nature." Ex. 1, p.3. Intentional conduct demonstrates a high degree of scierter. *See, e.g., Toby G. Scammell*, Rel. No. 3961, 2014 WL 5493265 at *6 (March 17, 2014).

4. Rose Reluctantly Recognized the Wrongful Nature of his Conduct.

In his testimony, Rose acknowledged the wrongful nature of his conduct and the harm he caused to investors. Ex. 3 at 672-3. However, he did so only after perpetuating an extensive fraud for several years and while he was awaiting sentencing. Rose's isolated statements acknowledging his wrongful conduct provide little evidence of a sincere recognition of the wrongful nature of his conduct and the significant harm he caused. Rose's prior acknowledgment is also undermined by his failure to answer or otherwise participate in these proceedings.

5. The Likelihood that Rose will Engage in Future Violations is High.


As discussed above, Rose engaged in egregious, recurrent violations with a high degree of intent. “[T]he likelihood of future illegal conduct is ‘strongly suggested’ by past illegal activity.” *SEC v. Am. Bd. Of Trade*, 750 F. Supp. 100, 104 (S.D.N.Y. 1990). In this case, Rose successfully operated a fraud over several years and used a large portion of the more than \$14 million taken from investors to fund his lifestyle. In addition, Rose is young and will only be in his forties when released from prison, giving him many years in which to engage in future violations.

Finally, Rose’s failure to answer or otherwise participate in these proceedings suggests that he does not respect the federal securities laws and rules pursuant to which these proceedings were instituted and would be unlikely to respect the federal securities laws and rules in the future.

IV. CONCLUSION

For the foregoing reasons, the Division requests that collateral bars be entered against Rose under Exchange Act Section 15(b) barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and barring him from participating in any offering of penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock.

Respectfully submitted this 24th day of February, 2017.


Jason M. Casey
Polly Atkinson
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office

1961 Stout Street, Ste. 1700
Denver, CO 80294

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **MOTION FOR SUMMARY DISPOSITION PURSUANT TO RULE 250 OF THE COMMISSION RULES OF PRACTICE** was served on the following on this 24th day of February, 2017, in the manner indicated below:

Securities and Exchange Commission
Brent Fields, Secretary
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
(By Facsimile and original and three copies by UPS)

Honorable Cameron Elliot
100 F Street, N.E.
Washington, D.C. 20549
(By Email)

Brian C. Rose
[REDACTED]
P.O. Box [REDACTED]
New Albany, IN [REDACTED]
(by USPS)



UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF TENNESSEE
 AT GREENEVILLE

UNITED STATES OF AMERICA)	
)	No. 2:14-CR-76
v.)	
)	JUDGE GREER
BRIAN C. ROSE AKA JOHN HANKINS)	Plea Agreement per Rule 11c1C

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, Brian C. Rose, and the defendant's attorney, Jerry W. Laughlin, have agreed upon the following:

1. The defendant will plead guilty to the following count in the indictment:
 - a) Count One. Conspiring to commit wire fraud and mail fraud in violation of 18 U.S.C. §§ 1349, 1341, and 1343.

The punishment for this offense is as follows. A maximum term of imprisonment of 20 years; a maximum fine of \$250,000; up to three years on supervised release; \$100 special assessment; forfeiture of the fruits and instrumentalities of the offense; and restitution as ordered by the court.

2. In consideration of the defendant's guilty plea, the United States agrees to move the Court at the time of sentencing to dismiss the remaining counts against the defendant in this indictment.

3. The defendant has read the indictment, discussed the charges and possible defenses with defense counsel, and understands the crimes charged. The defendant is pleading guilty because the defendant is in fact guilty.



[Handwritten signature]

4. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

a. At all times relevant to the indictment, the defendant Brian C. Rose lived in Johnson City, in the Eastern District of Tennessee, and New Century Coal operated out of offices located in Johnson City, in the Eastern District of Tennessee.

b. In 2011, Brian C. Rose and others caused a corporation known as New Century Coal to become domesticated under the laws of the State of Nevada and established an office for New Century Coal at 1009 Lark Street, Johnson City, Tennessee. Brian C. Rose was a co-developer, co-leader, and co-decision-maker for New Century Coal from its domestication date through June 17, 2014.

c. Rose and others solicited investors through New Century Coal based upon the promise of planned development of "Blue Gem" coal. Rose and others marketed New Century Coal as an issuer/sponsor of partnerships with individual investors for the purpose of placing investors in limited liability partnerships in specific coal mine operations, and as the partnership mine operator of each specific coal mine. Each offering was limited to a small number of shares for a specific coal mine.

d. As part of the solicitation of investment funds, Rose and others prepared and distributed via United States mail and private interstate carrier documents which included private placement memoranda (disclosing risks and hazards to potential investors), investor suitability questionnaires (intended to determine investors' suitability for investment in the coal mines), a



combined turnkey mining development agreement and mine operating contract (in order to provide assurance to the investor that he or she has actually invested in a coal mine which is anticipated to produce coal), and a subscription agreement (in order to give the investor an ownership interest in a potentially viable coal mine and other valuable rights in the operation of the mine and oversight of the investment).

e. Rose also participated in the solicitation for the sale of stock of New Century Coal, Inc. In the course of soliciting funds from JP&P Investments, LLC, Rose and others made material misrepresentations of existing facts to that investor in an effort to secure the purchase by the investor of shares of stock in New Century Coal, Inc., for the purchase price of Two Million and No/100 Dollars (\$2,000,000.00), and which purchase price was wired by JP&P Investments, LLC, to New Century Coal, Inc.

f. During the course of the conspiracy to commit mail fraud and wire fraud, defendant and others made material misrepresentations and false statements to investors and potential investors. These misrepresentations and false statements were made by Brian C. Rose, his co-defendants, and others in writing using the public mails and interstate carrier, by electronic mail using the internet, by telephones and telefaxes, and other means of interstate communications and commerce.

g. During the course of the conspiracy to commit mail fraud and wire fraud, defendant diverted investor funds away from the exploration, development, and production of coal and used investor funds to compensate staff, to fund his own personal expenses, and for other uses which were not related to the exploration, development, or production of coal. At all relevant times, Brian Rose acted with the intent to defraud investors and willfully participated in the conspiracy to commit mail fraud and wire fraud with knowledge of its fraudulent nature.

h. Defendant is not admitting or denying any allegations concerning Earth Energy Exploration prior to 2011.

5. The defendant understands that by pleading guilty the defendant is giving up several rights, including:

- a) the right to plead not guilty;
- b) the right to a speedy and public trial by jury;
- c) the right to assistance of counsel at trial;
- d) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;
- e) the right to confront and cross-examine witnesses against the defendant;
- f) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and
- g) the right not to testify and to have that choice not used against the defendant.

6. Pursuant to Fed. Rule Crim. Pro. 11c1C, the defendant and the United States agree as follows:

a. The defendant and the United States agree to the following terms for purposes of calculating the defendant's Advisory Guideline Range under the United States Sentencing Guidelines. In the event the Court declines to accept the parties' stipulated terms, the defendant will have the right to withdraw his guilty plea.:

- 1) Solely for purposes of calculating the defendant's Criminal History Category in accordance with U.S.S.G. § 4A1.1, the instant offense commenced on May 25, 2011.
- 2) The base offense level under U.S.S.G. § 2B1.1(a) is 7;
- 3) The loss amount for purposes of U.S.S.G. § 2B1.1(b)(1) is \$7 million, which yields an increase of 18 offense levels;



4) The offense involved more than 10 victims for purposes of U.S.S.G. § 2B1.1(b)(2), which yields an increase of 2 offense levels;

5) The offense involved a vulnerable victim for purposes of U.S.S.G. § 3A1.1(b)(1), which yields an increase of 2 offense levels;

6) The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive for purposes of U.S.S.G. § 3B1.1(a), which yields an increase of 4 offense levels.

b. The defendant will not be assessed the following sentencing enhancements:

1) The four-level enhancement for an offense which involved 50 or more victims in accordance with U.S.S.G. 2B1.1(b)(2);

2) The two-level sophisticated means enhancement under U.S.S.G. § 2B1.1(b)(1);

3) The two-level enhancement for a large number of vulnerable victims under U.S.S.G. § 3A1.1; and

4) The two-level enhancement for obstruction of justice under U.S.S.G. § 3C1.1.

c. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any conduct or make any statements that are inconsistent with accepting



responsibility for the defendant's offense, including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make such motion or to withdraw such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

d. The defendant and the United States stipulate that the foregoing agreed terms yield a Total Offense Level of 33 and an Adjusted Offense Level of 30, without consideration of any motion for downward departure filed by the United States pursuant to U.S.S.G. § 5K1.1. The parties further stipulate that the defendant's Adjusted Offense Level will not exceed 30 (including consideration of all the foregoing sentencing enhancements and mitigation) and stipulate that the United States may (but is not required to) request a motion to depart downward from that adjusted offense level, which motion lies in the sole discretion of the United States.

e. The Court will impose special assessment fees as required by law; and

f. The Court may order forfeiture as applicable and restitution as appropriate.

No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this plea agreement or withdraw the defendant's guilty plea. The defendant understands that the sentence in this case will be determined by the Court after it receives the presentence report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the



defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

7. The defendant agrees to pay the special assessment in this case prior to sentencing.
8. Unless otherwise limited by an agreed preliminary order of forfeiture, the defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, which are in the possession or control of the defendant or the defendant's nominees that were used and intended to be used in any manner or part to commit and to facilitate the commission of a violation of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) and/or any and all assets and property, or portions thereof, subject to forfeiture as proceeds of the defendant's criminal activities which are in the possession or control of the defendant or the defendant's nominees. The defendant agrees to forfeit the defendant's interest in properties as set forth in a separate agreed preliminary order of forfeiture which will be reviewed by both parties prior to entry and which the defendant may litigate any issues in the order of forfeiture. The defendant further agrees to assist the United States fully in the identification, recovery, and return to the United States of any other assets or portions thereof subject to forfeiture. The defendant further agrees to make a full and complete disclosure of all assets over which the defendant exercises control and those which are held or controlled by a nominee. The defendant agrees to forfeit all interests in the properties set forth in the agreed order of forfeiture and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and the signing of any other documents necessary to effectuate such transfers. The defendant agrees not to object to any civil or criminal forfeiture brought against these properties. The defendant agrees to take all such steps to locate such property and to pass title to the United States before the defendant's sentencing.



9. The defendant agrees that the court shall order restitution, pursuant to any applicable provision of law, for any loss caused to the victims of any offense charged in this case (including dismissed counts) as determined by the court.

10. Financial Obligations. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amounts shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the defendant's counsel and outside the presence of the defendant's counsel. In order to facilitate the collection of financial obligations to be imposed with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

a) If so requested by the United States, the defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.

A handwritten signature in black ink, appearing to be 'JRL', is located in the lower right quadrant of the page.

b) The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

c) If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the U.S. Attorney's office to permit the U.S. Attorney's Office to obtain financial and tax records of the defendant.

11. a) In consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the offense committed, the defendant agrees not to file a direct appeal of the defendant's conviction but retains the right to appeal the sentence imposed.

b) In addition, the defendant knowingly and voluntarily waives the right to file any motions or pleadings pursuant to 28 U.S.C. § 2255 or to collaterally attack the defendant's conviction and/or resulting sentence. The parties agree that the defendant retains the right to raise, by way of collateral review under § 2255, claims of ineffective assistance of counsel or prosecutorial misconduct not known to the defendant by the time of the entry of judgment.

12. This agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement in any way (including but not limited to failing to enter guilty plea as agreed herein, moving to withdraw guilty plea after entry, or by violating any court order or any local, state or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all



federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or speedy trial or double jeopardy defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea in this case.

13. The United States will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. If additional terms are included in the Supplement, they are hereby fully incorporated herein.

14. This plea agreement and supplement constitute the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charges, and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

A handwritten signature in black ink, appearing to be the initials 'BAC' or similar, located in the lower right quadrant of the page.

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY

12-1-2014
Date

By: *Helena Smith*
HELEN C.T. SMITH
Assistant United States Attorney

11-28-14
Date

Brian C. Rose
BRIAN C. ROSE
Defendant

11/28/2014
Date

Jerry W. Laughlin
JERRY W. LAUGHLIN
Attorney for the Defendant

United States District Court

Eastern District of Tennessee

UNITED STATES OF AMERICA
v.
BRIAN C ROSE

JUDGMENT IN A CRIMINAL CASE
(For Offenses committed on or after November 1, 1987)

Case Number: 2:14-cr-00076-001-JRG-MCLC

Jerry Laughlin, Esq.
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s): 1 of the Superseding Indictment
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Violation Concluded	Count
18 USC §§1341, 1343 and 1349	Conspiracy to Commit Wire Fraud and Mail Fraud	June 10, 2014	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- The defendant has been found not guilty on count(s).
- All remaining counts as to this defendant in this case are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

March 21, 2016

 Date of Imposition of Judgment

J. Ronnie Greer

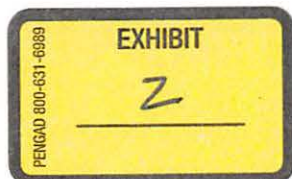
 Signature of Judicial Officer

J Ronnie Greer, United States District Judge

 Name & Title of Judicial Officer

3/30/2016

 Date



DEFENDANT: Brian C Rose
CASE NUMBER: 2:14-cr-00076-001-JRG-MCLC

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

108 months. This sentence shall run consecutive to any sentence that may be imposed in Floyd County, Indiana Superior Court, Docket No. 22D01-1503-Fc-525.

The court makes the following recommendations to the Bureau of Prisons:

- 1. Credit for time served since 6/17/14.
- 2. 500 hours of substance [redacted] from the BOP Institution Residential [redacted] Treatment Program.
- 3. Receive a complete [redacted] while in the custody of the Bureau of Prisons.
- 4. Participate in educational classes and training to learn a trade or marketable skills while incarcerated.
- 5. Designation to the BOP federal facility FCI Ashland, KY or alternatively FSL Jesup, GA.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _ a.m. p.m. on _

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Brian C Rose
CASE NUMBER: 2:14-cr-00076-001-JRG-MCLC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3) years**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district or other specified geographic area without the permission of the Court or probation officer;
2. The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation office;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his/her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the Court;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;;
10. The defendant shall permit a probation officer to visit at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by his/her criminal record or personal history of characteristics and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Brian C Rose
CASE NUMBER: 2:14-cr-00076-001-JRG-MCLC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as he is released from the program by the probation officer.
2. The defendant shall refrain from any use of alcohol.
3. The defendant shall participate in a program of mental health treatment, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer. The defendant shall waive all rights to confidentiality regarding mental health treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the mental health treatment provider.
4. The defendant must have any employment approved by the probation officer and the defendant may not be employed in any business where he has access to funds or where investors are solicited for funds.
5. The defendant shall pay any financial penalty that is imposed by this judgment. Any amount that remains unpaid at the commencement of supervision shall be paid on a monthly basis at the minimum rate of 10 percent of the defendants net monthly income.
6. The defendant shall provide the probation officer with access to any requested financial information.
7. The defendant shall not incur new credit charges on existing accounts or apply for additional lines of credit without permission of the probation officer until the restitution has been paid in full. In addition, the defendant shall not enter into any contractual agreements which obligate funds without the permission of the probation officer.
8. The defendant shall submit his or her person, property, house, residence, vehicle, papers, [computers (as defined in Title 18 U.S.C. § 1030(e)(1), other electronic communications or data storage devices or media,) or office, to a search conducted by a United States probation officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his/her supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: Brian C Rose
 CASE NUMBER: 2:14-cr-00076-001-JRG-MCLC

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 6. The assessment is ordered in accordance with 18 U.S.C. 3013.

	Assessment	Fine	Restitution
Totals:	\$ 100.00	\$ 0	\$ 13,940,264.00

- The determination of restitution is deferred until __. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, if the United States is a victim, all other victims, if any, shall receive full restitution before the United States receives any restitution, and all restitution shall be paid to the victims before any restitution is paid to a provider of compensation, pursuant to 18 U.S.C. 3664.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
See Doc. 538 filed on 3/21/16 for Investors Summary	\$ 13,940,264.00	\$ 13,940,264.00	
TOTALS:	\$ 13,940,264.00	\$ 13,940,264.00	

- If applicable, restitution amount ordered pursuant to plea agreement \$__
- The defendant shall pay interest on any fine or restitution of more than \$2500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
 - The interest requirement is waived for the fine and/or restitution.
 - The interest requirement for the fine and/or restitution is modified as follows:

DEFENDANT: Brian C Rose
CASE NUMBER: 2:14-cr-00076-001-JRG-MCLC

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of **\$13,940,364.00** due immediately
 not later than , or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, F below); or
- C Payment in equal __ installments of \$__ over a period of __, to commence __ after the date of this judgment; or
- D Payment in equal __ installments of \$__ over a period of __, to commence __ after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within __ after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at the time; or
- F Special instruction regarding the payment of criminal monetary penalties:

The government may enforce the full amount of restitution ordered at any time, pursuant to Title 18 U.S.C. §§ 3612, 3613, and 3664(m).

Unless the court has expressly ordered otherwise, if the judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Unless otherwise directed by the court, the probation officer, or the United States attorney, all criminal monetary penalties except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be made to **U.S. District Court, 220 W. Depot St., Suite 200, Greeneville, TN 37743**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names, and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

See Page 7

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: Brian C Rose
CASE NUMBER: 2:14-cr-00076-001-JRG-MCLC

ADDITIONAL JOINT AND SEVERAL

Co-Defendant	Case Number	Total Amount	Joint and Several Amount
David G. Rose	2:14-CR-76(1)	13,940,264.00	13,940,264.00
Robert McGregor	2:14-CR-76(2)	13,940,264.00	13,940,264.00
Jenifer Key	2:14-CR-76(9)	13,940,264.00	13,940,264.00
Thomas J. Berry	2:14-CR-76(10)	13,940,264.00	13,940,264.00
Johnny D. Phillips	2:14-CR-76(11)	13,940,264.00	13,940,264.00
Dallas McRae	2:14-CR-76(3)	13,940,264.00	13,940,264.00
Hugh Sackett	2:14-CR-76(4)	13,940,264.00	13,940,264.00
James Robinson	2:14-CR-76(5)	13,940,264.00	13,940,264.00
Brent Lovall	2:14-CR-76(6)	13,940,264.00	13,940,264.00
Jason Bryant Smith	2:14-CR-76(7)	13,940,264.00	13,940,264.00

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)
)
)
v.) No. 2:14-CR-76
)
BRIAN C. ROSE, DALLAS MCRAE,)
DAVID ROSE, HUGH SACKETT,)
and JASON SMITH)

ORDER AMENDING JUDGMENT

On May 19, 2016 the government filed a “Motion to Amend Judgment & Commitment Orders Pursuant to 18 U.S.C. § 3664(d)(5) and Fed. R. Crim. P. 36” to reflect an increase in the amount of restitution ordered, [Doc. 586]. The government states that the increase is due to two victims submitting amended victim loss claims reflecting more monetary loss than initially reported to calculate the restitution amount. None of the above five defendants have objected to this restitution increase. Pursuant to 18 U.S.C. § 3664(d)(5) and Federal Rule of Criminal Procedure 36, it is hereby ORDERED that the judgments of Brian C. Rose, [Doc. 550], Dallas McRae, [Doc. 565], David Rose, [Doc. 539], Hugh Sackett, [Doc. 554], and Jason Smith, [Doc. 432], are hereby AMENDED to include the following information:

On Page 5, Criminal Monetary Penalties:

The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, if the United States is a victim, all other victims, if any, shall receive full restitution before the United States receives any restitution, and all restitution shall be paid to the victims before any restitution is paid to a provider of compensation, pursuant to 18 U.S.C. 3664.

Name of Payee: See Investor Summary filed as of this date.

Total Amount of Loss: \$14,092,205.04

Amount of Restitution Ordered: \$14,092,205.04

The interest requirement is waived for the restitution.

On Page 6, Schedule of Payments:

Lump sum payment of \$14,092,205.04 due immediately in accordance with the following special instruction regarding the payment of monetary penalties: The government may enforce the full ordered at any time, pursuant to Title 18 U.S.C. §§ 3612, 3613, and 3664(m).

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. Join and Several with the following co-defendants:

Co-Defendant	Case Number	Total Amount	Joint and Several Amount
Brian C. Rose	2:14-CR-76(1)	14,092,205.04	14,092,205.04
Robert McGregor	2:14-CR-76(2)	14,092,205.04	14,092,205.04
Hugh Sackett	2:14-CR-76(4)	14,092,205.04	14,092,205.04
James Robinson	2:14-CR-76(5)	14,092,205.04	14,092,205.04
Brent Loveall	2:14-CR-76(6)	14,092,205.04	14,092,205.04
Hugh Sackett	2:14-CR-76(3)	14,092,205.04	14,092,205.04
Jenifer Key	2:14-CR-76(9)	14,092,205.04	14,092,205.04
Thomas J. Berry	2:14-CR-76(10)	14,092,205.04	14,092,205.04
Johnny D. Phillips	2:14-CR-76(11)	14,092,205.04	14,092,205.04
David G. Rose	2:14-CR-76(12)	14,092,205.04	14,092,205.04
Jason Smith	2:14-CR-76(7)	14,092,205.04	14,092,205.04

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA,
PLAINTIFF,

VS.

NO: CR-2-14-76

JOHNNY D. PHILLIPS,
DEFENDANT.

TRIAL

HONORABLE J. RONNIE GREER, PRESIDING
AS HEARD ON FEBRUARY 8, 2016, FEBRUARY 9, 2016, FEBRUARY
10, 2016, FEBRUARY 11, 2016
AND FEBRUARY 12, 2016

APPEARANCES:

FOR PLAINTIFF: HELEN SMITH, ESQ.
COREY SHIPLEY, ESQ.

FOR DEFENDANT: EDWARD YARBROUGH, ESQ.
JOSEPH ALEX LITTLE, ESQ.



Barringer Court Reporting
P.O. Box 8035, Gray, TN - 423-477-7844

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ROBERT MCGREGOR AND JOHNNY PHILLIPS

AT LARK STREET OFFICE

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12 CASIMIR FOLDER

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1 BRIAN ROSE, after first being duly sworn
2 testified as follows:

3
4 DIRECT EXAMINATION BY MS. SMITH:

5
6 Q. Good morning, Mr. Rose.

7 A. Good morning, Ma'am.

8 Q. How are you?

9 A. I'm fine.

10 Q. Good, I want you to try to move forward to
11 the microphone. And I hope I'm not shouting but I want to
12 make sure everybody can hear me. Please state your name
13 and your date of birth?

14 A. Brian Christopher Rose, 10/19/1979.

15 Q. And how long have you been in federal
16 custody, Mr. Rose?

17 A. Since June 17, 2014.

18 Q. Okay. Now I want you to start out telling
19 us about your history with Johnny Phillips. The first
20 thing you need to do is to identify Mr. Phillips, if you
21 can, in the Courtroom. If you would start with the color
22 of his suit and his tie and the general area he's located?

23 A. He's over your left shoulder sitting in the
24 center at the table with the yellow tie.

25 Q. Okay. Thank you.

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1 A. I met Mr. Phillips, I went to high school
2 with his wife and I guess had a formal relationship and
3 friendship started in 2003 when we went to the Kentucky
4 Derby together.

5 Q. Okay. Did you go to college with Mr.
6 Phillips?

7 A. No. I went to Western Kentucky University
8 in the year of 1998.

9 Q. Okay. And how much formal education do you
10 have?

11 A. Approximately three semesters.

12 Q. Of college?

13 A. Yes.

14 Q. But no degree?

15 A. Right.

16 Q. Your Honor, can I ask the record to reflect
17 he's identified the defendant, Johnny Phillips?

18 THE COURT: Let the record so reflect.

19 Q. Okay. Please explain Mr. Phillips'
20 relation or affiliation with New Century Coal, for example
21 when and how he first became affiliated?

22 A. His relationship with New Century Coal
23 began approximately early part of 2011. Mr. Phillips and
24 myself were working on coal properties and trying to put
25 properties together prior to the formation of New Century

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1 Coal when I formed it in early April, May of 2011.

2 Q. Okay.

3 A. At that point I asked Mr. Phillips for his
4 help in assisting me in certain things that, leases,
5 titles, things of that nature that I really wasn't very
6 good at.

7 Q. Where did you get the idea to go into the
8 coal business?

9 A. High Sackett gave me the idea to go into
10 the coal business at J. Alexander's in 2012. At the time
11 Johnny Phillips and I had had some meetings ourselves
12 working on some natural gas leases in western Kentucky with
13 a man named Danny Thomason of Thomason Petroleum, TPI. And
14 I took Mr. Sackett's idea, because I didn't have a lot of
15 trust or faith in Mr. Sackett. I knew Johnny Phillips came
16 from a coal background, I asked him about getting a coal
17 project that I could fund and asked him for his assistance
18 in locating that and participating that.

19 Q. Was Mr. Phillips fully employed at that
20 time?

21 A. At the time, when him and I were working on
22 the Western Kentucky gas properties, it was right at the
23 time I believe he had quit working with his past employer,
24 known as N Gas or Bill Dougherty out of Lexington.

25 Q. That would be ENGAS?

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1 A. I think it's just the initial N Gas.

2 Q. Okay. So he had left that employment?

3 A. Yes.

4 Q. Did he have other employment?

5 A. Not to my knowledge. I think he was
6 looking and trying different avenues of employment.

7 Q. What other businesses did you have at that
8 particular time when you first got together?

9 A. I had an oil and gas exploration company by
10 the name of Jupiter Energy which had been formed in 2003,
11 and a holding company, JBF Holdings, which was an off shore
12 Louisiana oil and gas development company.

13 And I had a racing company which I operated a Nascar team
14 under called Brian Rose Motorsports based out of Johnson
15 City, Tennessee.

16 Q. Okay. So we're moving forward from 2010,
17 2011. What happened next in your relationship as it
18 regards this business deal that became New Century Coal?

19 A. The next step after the formation of New
20 Century Coal was to identify a coal property that could be
21 marketed that could be put into production to create
22 revenue. And one of the first properties that Mr. Phillips
23 had brought to me was a property by the name of Torchlight
24 also known through Keith Thacker and later named as
25 Thacklight was the name that I gave it. I put an offering

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1 document together called a Private Placement Memorandum for
2 that property and began to offer it, make it available to
3 investors or potential investors over the telephone and
4 solicit their investment.

5 Q. Okay. And how did you find Mr. Thacker?

6 A. I met Mr. Thacker through Mr. Phillips. He
7 had identified Mr. Thacker either, I don't know if Keith
8 Thacker was selling the coal properties over the internet
9 or marketing it directly. There are some websites that
10 directly offer those type of properties. But Johnny
11 introduced me to Mr. Thacker. We set up a meeting in
12 Kentucky. I left Johnson City and drove up through the
13 Kingsport, Gate City area, the four lane. We met at a
14 Chevron station with a McDonald's in it. There was a hotel
15 next to it. We had meetings and went to the Thacklight
16 property. We walked the property, got out and met Keith.
17 He was, seemed to be a reasonable gentleman and a
18 reasonable property and it was real. The property did
19 exist. That was the initial meeting with Mr. Thacker
20 through Johnny Phillips.

21 Q. What time frame are we in that we're
22 talking about right now, just basically?

23 A. That was around spring of 2011, April, May
24 of 2011.

25 Q. Okay. Now earlier in the year did you

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1 develop a business relationship with Mr. Phillips' employer
2 that related to your truck racing business?

3 A. Yes. During the time that Johnny Phillips
4 and myself were working on the western Kentucky natural gas
5 properties and looking for coal property, at the time
6 Johnny was starting he was involved in an insurance agency
7 that wrote everything from general liability policies to
8 Workers' Comp. I was preparing to go to Daytona in
9 February for the ARCA Remax Series. Johnny's employer
10 agreed to sponsor, pay for some tires. We run the
11 insurance company on the hood of the car for the Daytona
12 race and subsequently the Talladega race. They came down,
13 went to the race. I felt like it was, I felt like they did
14 it because it was probably a good avenue to get some
15 exposure on the television. It was probably a good
16 business relationship where some of the entities I
17 controlled and did business through could have gave them
18 some insurance business as well. They gave me \$5,000.00 to
19 pay for tires. We went to Daytona and that was the
20 relationship with them.

21 Q. So did you go to Daytona in February of
22 2011?

23 A. Yes, Ma'am.

24 Q. Did Johnny Phillips go to that race?

25 A. Yes.

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1 Q. Did you go to a Talladega race in April of
2 2011?

3 A. Yes.

4 Q. Did Johnny Philliips go to that race as
5 well?

6 A. Yes.

7 Q. And all he had in it was his employer was a
8 sponsor?

9 A. Yes.

10 Q. Did others who became involved with New
11 Century Coal also attend the Talladega race in April of
12 2011?

13 A. Yes.

14 Q. Who would that be?

15 A. Ms. Jennifer Key was there, Mr. Ray Spears.
16 I know those two were there.

17 Q. Now the name of your truck racing business
18 was?

19 A. Brian Rose Motorsports.

20 Q. It was not John Hankins Motorsports?

21 A. No.

22 Q. Okay. Now what, if anything, did you know
23 about Blue Gem Coal before Johnny Phillips gave you that
24 information?

25 A. Before he introduced me to Mr. Leon Epling

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1 or gave me any information about it I knew absolutely
2 nothing about it. My coal experience was limited prior to
3 2011.

4 Q. What did he tell you about Blue Gem Coal in
5 the context of this business?

6 A. In the context of this business it was a
7 specialty coal that was used for silica alloys and had a
8 low ash and low sulphur content and it brought a premium
9 price. And he introduced me to a gentleman by the name of
10 Leon Epling. Mr. Epling, I believe they had identified
11 some properties for sale, maybe on another website similar
12 to the one that Mr. Thacker was introduced by Mr. Phillips
13 to. We met at The Chop House in Sevierville. That was the
14 first time we went over any technical information. Prior
15 to that it was mostly telephonic conversations. We
16 discussed some very general information about Blue Gem.

17 Q. And who was at this meeting?

18 A. It was myself, Johnny Phillips and Leon
19 Epling.

20 Q. And do you remember when this meeting was
21 approximately?

22 A. Around May 2011, latter part.

23 Q. Okay. So you all meet, you, Mr. Phillips
24 and Mr. Epling, what happens next as far as this Blue Gem
25 Coal deal?

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1 A. The next step was over the next 30 days we
2 went back and forth with the operating agreements to
3 purchase an interest in the properties. And Leon Epling
4 didn't actually control the properties at the time. Leon
5 was just another person in the middle trying to get a piece
6 of the properties as well for not having any money or skin
7 in the game. Johnny uncovered to me who the other partner
8 was who actually owned the properties and his name was Rick
9 Harris. We set up meetings in Corbin, Kentucky, me, Rick
10 Harris, Leon Epling and Johnny. We would travel over to
11 the Hampton Inn there at Corbin, exit 29 off of I75. We
12 worked on operating agreements in the evening to iron out
13 some terms and language for the ownership of the Blue Gem
14 leases. At this point I used a company called Volt
15 Resources and another entity to purchase the interest at
16 the leases. At that time I purchased an ownership of 25
17 percent. My deal with Mr. Phillips was to give him around
18 10 percent of anything or any deals he brought to me that I
19 funded and bought. So subsequently I gave him two and a
20 half percent. My entity owned 22.5 percent. Mr. Epling
21 owned 25 percent and Rick Harris owned 50 percent. That's
22 who made up Kentucky Gem. That was late May or mid-June
23 when we made Kentucky Gem to own the Blue Gem leases.

24 Q. Okay. So the name of this partnership was
25 Kentucky Gem?

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1 A. Yes.

2 Q. And you just told us Rick Harris got 50
3 percent and what did he bring to the partnership, what did
4 he do?

5 A. At the time he owned 100 percent of the
6 coal leases. There were eight properties. His nephew
7 Edward Nance (phonetically) went out and identified the
8 properties and leases them directly from the property
9 owners. And Rick was ultimately selling the properties and
10 selling them to myself or to the entity that I created to
11 purchase the Blue Gem leases.

12 Q. What was that entity?

13 A. I believe it was Volt Resources was the
14 entity. I'm not 100 percent sure on which entity it was
15 that I purchases the leases through. A lot of times I
16 created a bunch of different entities. There were a lot of
17 companies.

18 Q. And you said Mr. Epling had a 25 percent
19 interest?

20 A. Yes.

21 Q. What did he bring to the partnership?

22 A. Leon was representing he was going to do
23 all the work. He was getting kind of a carried interest.
24 I don't think he put up any money. His whole position was
25 he brought it to us.

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1 Q. Okay.

2 A. And in turn he was going to operate the
3 wash plant that was, would actually be the foreman, the
4 licensed foreman.

5 Q. Did he own the wash plant or have a lease
6 on a wash plant?

7 A. No. He'd negotiated a lease with a company
8 called SafeCo that was operated by Mark Ward out of Corbin.
9 At that time, this was the first time we leased the wash
10 plant. We leased it twice. The first time it was through
11 SafeCo, leased it with Leon Epling. He leased it with the
12 entity Mine Games.

13 Q. And that was the one that actually had the
14 lease to operate the wash plant. Where is this wash plant
15 located?

16 A. In Gray, Kentucky.

17 Q. And through the whole course of this deal
18 was the only one wash plant?

19 A. Yes, Ma'am.

20 Q. Okay. You said you had 22.5 percent?

21 A. Yes.

22 Q. What did you bring to the partnership or
23 what did you put into it?

24 A. I forget the number I paid for the leases.
25 I think it was around \$100,000.00, \$125,000.00. I know for

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1 the wash plant specifically I brought \$100,000.00 in a
2 grocery bag and gave it to Leon Epling at Cracker Barrell.
3 Me, Johnny and Leon had lunch and we were going over the
4 lease.

5 Q. Was Mr. Phillips aware you had given Mr.
6 Epling that money that day?

7 A. Yes, Ma'am.

8 Q. Did you tell him that?

9 A. He'd been outside to the vehicle that day
10 when we were leaving. I got it out of my truck. He knew
11 what I was giving him. He knew the dollar amount.

12 Q. I guess you said that Mr. Phillips had a
13 2.5 percent share?

14 A. Yes.

15 Q. You described it as 10 percent of whatever
16 deal you did?

17 A. Yes, Ma'am.

18 Q. What did Mr. Phillips put into the
19 partnership to get that 2.5 percent share?

20 A. It was going to be working oversight for
21 bringing it to me, no capital.

22 Q. And did you all have some sort of written
23 agreement on this 10 percent deal?

24 A. No.

25 Q. Was it a ten percent share on everything

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1 you did or everything he brought to you?

2 A. Everything he brought to me.

3 Q. And what was the understanding of what he
4 was supposed to bring to you, if any? What did you all
5 discuss?

6 A. The parameters I set forth for him to look
7 for were properties that I would call what's called a non-
8 operated working interest or a
9 non-operated ownership interest. That means at the time
10 where someone else would do the actual labor, do the actual
11 mining, do the actual exploration of the oil or the gas. I
12 would just put money or capital into the project then I
13 could be a passive investor or financier.

14 Q. So we're to May, June or July of 2011, I
15 think, I'm not sure. What was the vision, as far as you
16 were concerned, or Johnny Phillips' role at that time as it
17 regards this coal lease deal?

18 A. At the time he was going to be overseeing
19 Leon really. Leon Epling was going to be the one on the
20 ground doing the work for the wash plant. I wasn't going
21 to go to Gray every day to babysit Leon or to watch over
22 Leon to make sure he wasn't stealing the money. So Johnny
23 was going to be the one on the ground because I really
24 didn't know anything about severance taxes and the inner
25 workings of the coal business. And I didn't need the

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1 learning curve to lose a bunch of money.

2 Q. What if anything did Johnny Phillips tell
3 you that he could offer in terms of being the operational
4 person.

5 A. He had the experience. I had confidence in
6 anything Johnny did, leases, putting land hold together,
7 that's what he did. That's what he did with N Gas, his
8 prior employer. I had a lot of faith in his ability to
9 bring leases and evaluate the merits of a coal deal.

10 Q. And what, I anything, did he tell you about
11 his experience and expertise in the coal industry?

12 A. I knew his father was in the coal business,
13 an engineer. He grew up on different coal properties with
14 his father. His brother worked for a public coal company
15 serving as a project manager or engineer as well. He had
16 more experience than anybody I knew.

17 Q. How did Leon Epling get involved? Who
18 brought him in? Who identified him?

19 A. Johnny.

20 Q. What was supposed to be his claim to fame?

21 A. Leon had the properties and had the whole
22 package put together. Rick had the leases and Leon had the
23 wash plant. Without the coal you couldn't sell it anywhere
24 without a wash plant is what we were told.

25 Q. You had no knowledge of Leon Epling prior

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1 to this?

2 A. No.

3 Q. No knowledge of Rick Harris, prior to this?

4 A. No.

5 Q. Okay. Now you had mentioned that you did
6 business as Volt Resources as part of this deal here. What
7 other entities did you all set up or were used in the
8 initial states? What entity did Mr. Phillips have that
9 allowed for him to participate in the initial coal lease
10 deal.

11 A. Highland Resources and/or Highland
12 Holdings, LLC.

13 Q. Where were they located, if you know?

14 A. I think they were a Kentucky LLC. And he
15 used his physical address in Bowling Green, Kentucky.

16 Q. His home address?

17 A. Yes.

18 Q. Okay. Now initially, we got this deal
19 going, what happened?

20 A. At that time we were, had the initial
21 meeting with Keith Thacker with purchasing the property in
22 Kentucky, the steam mine. The negotiations were going back
23 and forth with Mr. Thacker over the property. We had some
24 loose terms. We would email back and forth over ownership,
25 how much capital contributions, what sort of time frame the

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1 cash calls would be. And New Century began to market the
2 Thacklight Mine.

3 Q. When did that begin?

4 A. Started June, July. A man by the name of
5 Stan Belue (phonetically) set up the sales office there on
6 Lark Street. I signed a lease and moved in furniture. I
7 gave Stan all the funding to staff it. At the time Mr.
8 McGregor, Ray Spears, myself and Mr. Loveall were all
9 working and staying up at the race shop of Market Street in
10 Johnson City. They were marketing Thacklight at Lark
11 Street. Stan Belue was offering it and they weren't making
12 any sales. For 60, 90 days it was pretty bare. So at that
13 time the four or five of us, Brent Loveall, Bobby McGregor,
14 myself, we all went to Lark Street to market it ourselves.
15 At that time we started raising money. I think our first
16 sale was in September of 2011. We continued to solicit
17 investments through Thacklight for the next four, five, six
18 months.

19 Q. What happened during this period with the
20 four way partnership or Kentucky Gem? Was there any
21 change?

22 A. Yes. At that time Kentucky Gem, I was
23 putting money in but not seeing much activity. Johnny and
24 I were trying to secure leases outside of what we had with
25 Kentucky Gem and Rick Harris. One of the properties by the

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1 name of Southern Properties also known as King Mountain,
2 Mr. Charlie Taylor. He was actively pursuing that large
3 tract of land. And I felt like Leon Epling was embezzling
4 money out of the wash plant. I gave him \$100,000.00 and
5 put another forty to sixty thousand in it. We were buying
6 somewhere between 500 to 1,500 tons of coal off of a mine
7 that was operated by Denali Energy, which we later bought
8 as Whetstone. And I just felt it was a black hole throwing
9 money in it. I invested all this money and no capital
10 return, little bit of coal sold and the Kentucky Gem
11 relationship started to develop tension. The Kentucky Gem
12 entity and the other partners I felt like weren't doing
13 what they needed to do as partners to move it forward. And
14 me making all the cash calls by myself, carrying the weight
15 for the development of Rick Harris's 50 percent of Mr.
16 Epling's 25 percent, Mr. Phillips' 2.5 percent, I just
17 wasn't comfortable with it anymore. So I told Johnny I
18 wanted to get control of it and make cash calls to the
19 other partners to cash call them out and run them out of
20 the partnership and take control of, pretty much a hostile
21 takeover to get control and ownership of all the coal. We
22 didn't identify a way to do that at first until October of
23 2011 when we had, I believe there was an option on a
24 property called King Mountain. I was out of town and I
25 asked Mr. Phillips if he would circulate a cash call to the

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1 other partners in Kentucky Gem requiring them to put up
2 their portion of ownership of the cash call. I think it
3 was approximately \$100,000.00 that meant that Rick Harris
4 was responsible for \$50,000.00, Mr. Epling, \$25,000.00 and
5 my pro rata share as well. Knowing that if we made that
6 cash call Rick Harris and/or Leon Epling wouldn't be able
7 to make the cash call and it would put them in default. By
8 putting them in default it would open up the opportunity
9 for myself and Mr. Phillips to go around them. I told
10 Johnny I wanted to control the interest of the lease, I
11 want to go around them and asked him to contact Charlie
12 Taylor directly and negotiate the lease for myself. He
13 contacted Mr. Taylor. He was successful in securing the
14 lease for me.

15 Q. And as a shareholder in Kentucky Gem he was
16 well aware then of what the effect would be on your other
17 partners at this time?

18 A. Yes. He knew by them not being able to
19 make the cash call it would make him and myself a larger
20 percentage. At that point it would be 100 percent. It
21 would give Johnny 400 or so percent increase. He would go
22 from 2.5 to 10 or 12 percent of the largest parcel of coal
23 that we would have had.

24 Q. Okay. Did you openly discuss this change
25 in ownership at that time with Mr. Phillips?

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1 A. When we were making the cash call, yes.

2 Q. Okay. Now you talked a little bit about
3 Mr. Thacker and Thacklight Mine. What agreement, if any,
4 did you ever make with Mr. Thacker?

5 A. There was never a contract signed and put
6 in place. It was all done on conversation and what we
7 would, should and could do. There was never a technical
8 contract executed.

9 Q. And yet you sold a lot of shares in a non-
10 existent mine, didn't you?

11 A. Yes.

12 Q. Do you remember how much money you raised?

13 A. Approximately \$1.8 million.

14 Q. And do you remember how many investors you
15 had?

16 A. I would say there was probably 40. That's
17 just a ballpark. I don't remember the exact number.

18 Q. What expenses, if any, did you actually
19 have relating to the non-existent Thacklight Mine
20 operation?

21 A. Very limited.

22 Q. Okay. So I think you said September 9th,
23 2011 was the first date of a sale for an ownership share in
24 Thacklight Mine?

25 A. Yes.

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Q. When had you established the office on Lark Street?

A. May of 2011, executed by Volt Resources with Mitch Cox Realty.

Q. How, if at all, had your management of New Century Coal changed from passive?

A. I was supposed to be removed from the selling and solicitation, securities. I was trying to stay up at the race shop and not being directly involved. When Mr. Belue had failed to secure any investors and it began to lose more money. I was losing money in Kentucky Gem, New Century Coal and racing wasn't turning a profit, obviously, I made the decision that I needed to take charge and take control at New Century. Otherwise everything was going to go down the tubes. I was going to lose all investments and all businesses and be broke.

Q. Okay.

THE COURT: Is this a good transition point, Ms. Smith?

Q. Yes.

THE COURT: Why don't we take a morning break?

(COURT IS IN RECESS)

(JURY IN AT 11:10)

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1 THE COURT: Okay, Ms. Smith, you may continue.

2 Q Mr. Rose, let's move up in time to January
3 2012. Tell us what happened in January of 2012, Mr. Rose?

4 A. In 2012 we started moving away from the
5 thermal or steam markets which would have been Thacklight
6 and began to market some of the Blue Gem. That would be
7 Meadow Creek. Approximately the same time I was introduced
8 to the group of Missouri investors, JW Phillips, Mick
9 Plummer, Charlie Lauderdale, Allen and Jean Christiansen.
10 Ray Spears had spoken to Mr. Lauderdale on the phone
11 numerous times. As their relationship developed he then
12 introduced myself and Mr. McGregor. After a few telephone
13 conversations he invited us to Missouri to meet them in
14 person. And we had dinner and they would bring numerous
15 people from the community who they felt were potential
16 partners for us that we could market some of our coal
17 properties to.

18
19 Q. What significance, if any, was this
20 particular presentation in Missouri in 2012 to you and to
21 New Century Coal?

22 A. Previously in the three to four months we
23 had been raising money in smaller dollar amounts,
24 \$30,000.00, \$40,000.00 amounts at a time. And often times
25 it's hard to grow a company or do anything of significance

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1 if it comes incrementally. It goes to commissions,
2 etcetera. The group in Missouri has said that they had the
3 funds, abilities to operate and purchase one full mine and
4 if we did right by them we wouldn't need other investors.
5 They kind of dangled the carrot out to us about what they
6 could do financially. And in turn I was at a point where I
7 and New Century needed the capital to move forward. So we
8 set up the meeting and agreed to move forward, go to
9 Missouri.

10 Q. What time was that chronologically?

11 A. I think it was at the end of January, first
12 part of February 2012.

13 Q. And at that time did you have any coal
14 mines in production?

15 A. Nothing in production, no, Ma'am.

16 Q. Did you have any coal mines in development?

17
18 A. No, the only thing we were doing at that
19 time was permitting.

20 Q. Obtaining permits?

21 A. Submitting paper, applications and
22 technical reports to the Kentucky Department of Natural
23 Resources.

24 Q. Who did that on behalf of New Century Coal
25 at that time?

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1 A. At that time a gentleman by the name of
2 Jamie Collins was preparing the reports and an engineer by
3 the name of Forrester Hamilton was stamping them with his
4 engineer certification on them.

5 Q. Okay. Now in January of 2012 what role, if
6 any, did Johnny Phillips have with any of these mines?

7 A. At the time he owned the two and a half
8 percent of Kentucky Gem through that ownership and it would
9 have been approximately 10 percent in King Mountain. He
10 hadn't been doing a lot of work at the time and New Century
11 didn't have a lot of money to pay him extra at the time.
12 Johnny and I would talk, I need lunch money, I can't do
13 this for free. At the time we weren't raising much money
14 and I wasn't comfortable putting more of my capital into it
15 because I was about broke.

16 Q. Who said, "I need lunch money?"

17 A. Johnny would ask for lunch money or bill
18 money when he would go spend time in Corbin or London or do
19 titles at the Courthouse.

20 Q. Okay. So we did this deal in Missouri.
21 Tell the Court what happened over the next couple of days?

22 A. Couple days leading up to it everybody is
23 trying to figure out their role, who is going to do what?
24 Then we identify who everybody is. Then we identify what
25 role each salesman, myself or upper management are going to

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1 play and present when we were meeting the group of
2 investors. And I was John Hankins. I took the assumed
3 name John Hankins. Bobby McGregor took Jim Robinson, III.
4 We called him JR3 because it's what, you can meet the
5 owner's son and we developed a lie, it's just fraud. Bobby
6 was Jim Robinson's son, that way they were close to a
7 family business. I then was not comfortable with a lot of
8 the technical stuff because I hadn't operated a mine. I
9 didn't have the expertise. I asked Johnny to go and
10 participate in the meeting along with Mr. Hugh Sackett. I
11 asked Johnny to go. I needed him. At first he didn't want
12 to do it. I convinced him that I needed him to do it and I
13 would compensate him with commission for doing it. I asked
14 him if he could fulfill the role, he asked who he was going
15 to be at the meeting. I told him to just be yourself, be
16 KIS. He was a partner in Kentucky Industrial Services
17 which operated the wash plant. We all went to the meeting.

18 Q. How did you get there?

19 A. We chartered a King Air out of Tri Cities.
20 We touched down in Mountain Grove at a very small airport.
21 When we touched down we received some electronic
22 communication via on the telephone, it was text or
23 forwarded email from Mr. Thacker telling us that he was
24 getting some pressure from another group. I guess he had
25 told the property to, or had sold the Thacklight Mine to.

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1 He said, you know, quit marketing my property immediately.
2 You need to cease and desist from marketing the property.
3 I asked Johnny to be quite about it. I said don't say
4 nothing because if Bobby and Ray or other people who were
5 going to this meeting learned that all of the sudden we
6 don't own that property, then when it comes to the sales
7 presentation they're going to flop. They're not going to
8 withstand the pressure. They were already very nervous
9 about going and presenting because Ray Spears had never
10 sold in person, face to face sales before. They didn't
11 have the experience that maybe myself or Bobby McGregor had
12 previously.

13 Q. So who went?

14 A. Myself, Ray Spears as Brock Hamilton, Bobby
15 McGregor is Jim Robinson, III, or JR3, Hugh Sackett and
16 Johnny Phillips.

17 Q. Now prior to this time how many times had
18 Johnny Phillips met Bobby McGregor?

19 A. A handful of times.

20 Q. And how...

21 A. Four, five, six times.

22 Q. And how had he been introduced to him?
23 What was his persona?

24 A. Bobby McGregor.

25 Q. And how many times had he met Ray

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1 Spears?

2 A. Five, six, seven times as well.

3 Q. How did he know Mr. Spears?

4 A. He had met both of them in Kentucky,
5 Indiana, in the Louisville area prior to 2011.

6 Q. And I think you testified earlier he
7 had known you since 2003 when you went to the
8 Kentucky Derby together?

9 A. Yes, Ma'am.

10 Q. How had he known you?

11 A. As Brian Rose.

12 Q. So what explanation, if any, was
13 provided to Johnny Phillips about the use of these
14 other names?

15 A. We explained why Bobby McGregor was
16 using Jim Robinson, III, it was to build credibility
17 with the investors. We were going there and didn't
18 have a President. Jim Robinson was there in title
19 but had never done anything with the coal business
20 for us at that point. Myself as Brian Rose couldn't
21 do it because my father had committed fraud for tax
22 evasion and mail and wire fraud.

23 Q. What objections, if any, did Mr.
24 Phillips have to traveling with people using alias
25 identities?

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1 A. I don't think he had any objections.
2 He might not have liked it but he did it.

3 Q. Okay. And you mentioned that you
4 agreed, you offered him some sort of financial
5 incentive. Was that just something you decided or
6 did you negotiate that?

7 A. I probably offered him half a point or
8 one point, knowing myself. I can't remember if he
9 negotiated and bartered for more. I think three to
10 four percent was fairly customary. I considered it
11 to be somewhat of a frontier. Other people that went
12 along, Matt Sherman, when he prepared presentations
13 would have done the same.

14 Q. What was he expected to do for this
15 percentage?

16 A. He would be identified as Kentucky
17 Industrial Services and represent who bought our
18 coal, our thermal markets and represent that that's
19 where our cash flow came from. When the investors
20 looked at us, you know, he needed to be able to
21 identify his experience and be a third party at that
22 meeting who isn't New Century Coal to give us
23 credibility. He can say as a coal buyer that I've
24 known New Century Coal for a long time and this is
25 what they do, they're good people and it was somewhat

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1 of an endorsement.

2 Q. At that time had you sold any coal?

3 A. No.

4 Q. Had the wash plant washed any coal?

5 A. We purchased some coal, somewhere less
6 than a thousand tons from Denali Energy at the
7 Whetstone Mine and had washed a small amount.

8 Q. Now if you could just summarize the
9 events at the sales meeting at Mountain Grove, what
10 happened and just the dynamics of the group?

11 A. There was about 15 people, residents of
12 Mountain Grove. It was set up with tables in almost
13 like a U shape. That way we each could go around in
14 a circle and announce who we were, what our positions
15 were, our experience and kind of an explanation of
16 where we come from, how we got here. We talked a
17 little bit about New Century Coal and a little bit
18 about yourselves. How long we'd been at the company
19 and our titles. Then they, as potential investors
20 went around and did the same as well.

21 Q. What did Mr. Phillips say about himself
22 when it was his turn?

23 A. He talked about, they asked him how he
24 got involved with New Century Coal. He told them that
25 he knew me for X number of years, ten to 15, college

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1 associates together. He stated I grew up with his
2 wife and we had a long term relationship and
3 friendship.

4 Q. And did he, what kind of answers did he
5 provide, if any, to questions that were asked by the
6 potential investors?

7 A. They just asked, you know, he
8 identified himself as Kentucky Industrial Services as
9 a coal partner, his background, his father was an
10 engineer. He explained purchasing our coal. I think
11 they questioned how long have you been purchasing
12 coal from them and what sort of volume do you do on a
13 monthly basis. He answered back it was around ten to
14 12 thousand tons. It wasn't an enormous 30,000 to
15 50,000 ton mark. It was something realistic that it
16 provided us cash flow in a business model that, from
17 an investor standpoint, they would feel confident
18 that the doors weren't going to close next week.

19 Q. What, if any answers did, if he was asked,
20 did Mr. Phillips give regarding his financial statement in
21 New Century Coal or any of its affiliated partnerships?

22 A. We all represented that we were all
23 partners or had what would be referred to as skin in the
24 game, had a vested interest in New Century Coal and/or its
25 partners.

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1 Q. And all those statements were false,
2 weren't they?

3 A. Yes.

4 Q. You said you negotiated a commission of
5 four percent. I forgot to ask four percent of what?

6 A. Four percent of the dollars that they
7 invested as group or three to four percent of what they
8 gave us. In exchange for him going whatever we yielded out
9 of those meetings I would give him three to four percent
10 commission.

11 Q. How did that commission compare to what you
12 had arranged, if anything, with Bobby McGregor?

13 A. Bobby would typically get 20 percent.
14 There was 20 percent to be divided up between a fronter
15 and/or the closer, the person who sold and got the final
16 compensation.

17 Q. And what, if anything, was false about
18 Johnny Phillips' statements to those investors at Mountain
19 Grove, Missouri in January of 2012?

20 A. I think the only thing that was accurate
21 was that he had known me for ten to fifteen years. His
22 family background was accurate but the misrepresentation of
23 running coal or purchasing coal and offering that
24 credibility.

25 Q. What, if anything, did Mr. Phillips say

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1 when you called yourself by John Hankins in front of these
2 investors?

3 A. Nothing. We would even practice it a
4 little bit, going over the names.

5 Q. And the same thing happened with Ray
6 Spears/Brock Hamilton?

7 A Yes, Ma'am.

8 Q. And the same thing did not occur, I guess,
9 there were no comments made regards Bobby McGregor, also
10 known as Jim Robinson, III?

11 A. Correct.

12 Q. We did have business cards made for the
13 meeting with those names and titles on there as well that
14 we passed around.

15 Q. Now what was the result of the trip to
16 Mountain Grove, Missouri?

17 A. Charlie Lauderdale invested, Mick and
18 Brenda Plummer invested, Dr. Phillips invested and Allan
19 and Jean Christianson invested.

20 Q. Do you know or do you remember about how
21 much you raised in that one trip?

22 A. Just from that trip it was approximately
23 around four to five hundred thousand.

24 Q. Dollars?

25 A. Yes. I believe Mick and Doc, they each

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1 put in \$144,900.00 a piece and Brenda made a
2 subsequent investment, Brenda Plummer, for their two
3 kids, a son and daughter. I think it was
4 approximately another hundred or \$120,000.00.

5 Q. Okay.

6 A. And Allan and Jean, I think was thirty
7 or forty thousand approximately.

8 Q. Just in general from the time Mr.
9 Philllips was involved with you in the coal deal, how was
10 Mr. Philllips paid? That's sort of a two part question.
11 Who decided what he would receive and how was it
12 distributed to him?

13 A. Him and I would decide, talk about it. For
14 that specific meeting, he was like I'm not going to go for
15 free. I told him I'd give him a few points. He always
16 wanted to be compensated for his time because he has a
17 family to support. And I was taking away from his other
18 business. Any time he dedicated to coal was less time he
19 was working on insurance. So I would be the one,
20 ultimately, that would decide through dialogue with him.
21 What was the other half of the question?

22 Q. How did you pay him?

23 A. Well, on the percentage, I created a
24 number. I told him they invested approximately
25 \$400,000.00. I didn't get into the specifics.

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1 Q. So I guess what I'm saying is how many
2 times, if any, did Mr. Phillips submit an invoice to you?

3 A. I never got invoices. If invoices were
4 ever provided they would have been provided to Ms. Key.
5 Jennifer Key would have asked for them.

6 Q. Okay. So we're back from, did you spend
7 the night?

8 A. No.

9 Q. You flew back that same day?

10 A. Yes.

11 Q. What happened in February of 2012? Was
12 there an event that you attended with some folks from New
13 Century Coal? If not, that's fine.

14 A. I, in February of 2012...

15 Q. That's okay. Can you explain to all of
16 us what the plan was for New Century Coal other than
17 just selling directly to investors? What was the
18 short term long term plan?

19 A. Okay. The short term plan was to raise
20 enough capital to get each of the mines into
21 production by offering a small percentage of the
22 mines, say 20 percent. And by putting the mines into
23 production we would then have cash flow that we could
24 roll up into a public shell company to take it
25 public. This would allow us to all cash out, I guess

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1 you could refer to, to liquidate the coal properties
2 and to walk away from the complete transaction to
3 sell it. There's not a lot of places to sell ten,
4 twenty, thirty million dollars worth of coal
5 properties. And without the production you couldn't
6 sell them. And we didn't have the capital to put it
7 into production and our own pockets. So the only way
8 to do it was to offer it through investments in
9 different partnerships on a mine by mine, property by
10 property basis. And so we began doing an LLP for
11 each mine and offering say 20 to 25 percent of the
12 property incrementally in units. Each unit would own
13 somewhere between one to two percent of the mine for
14 fifty to one hundred thousand dollars. This was a way
15 to bring capital to put the mines into production but also
16 to cover everybody's living costs and to cover our own
17 expenses in the interim. It could take a year to three
18 years before we ever saw coal production. I couldn't go
19 without a job and Bobby McGregor couldn't go without an
20 income and Ray Spears couldn't go without an income. So I
21 and Mr. Sackett devised an offering document to solicit
22 these people. Then we would all keep a commission. And I
23 generally, a third goes to mine development costs, a third
24 goes to overhead and operating costs, then I would keep a
25 third personally.

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1 Q. So tell us about this public offering and
2 what happened?

3 A. Okay. I met a group called Casimir
4 Capital in New York. My contact there was Steven Silver.
5 So I flew to New York. I took a regular offering document,
6 just a Meadow Creek Mine, LLP with me when I met Steven.
7 He said that looked great but I'm thinking somewhere, ten
8 to 20 million dollars, not just one mine, let's roll us
9 your whole company and sell the whole company and take it
10 to the Toronto Stock Exchange.

11 Q. Why the Toronto Stock Exchange?

12 A. The reason for the Toronto Stock Exchange
13 over say the New York or an American market is because you
14 don't have the due diligence that's required on the Toronto
15 Stock Exchange. You can roll up the leases in the coal
16 mines into a Toronto Stock Exchange listed company without
17 the due diligence or the scrutiny that you need for the
18 American markets. We could avoid a lot of compliance
19 issues that we would have had with the American markets.
20 And it probably wouldn't have passed in the American
21 markets. The due diligence required to verify what the
22 asset is would not have passed the American compliances.

23 Q. Why is that?

24 A. Because the reserves were overstated and
25 inaccurate. Our cash flow was inaccurate. Our cash flow

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1 was inadequate and the exposure from the investors in the
2 partnerships from using the fraudulent names and doing the
3 roll up, it would have never worked. It wouldn't have
4 passed scrutiny and due diligence.

5 Q. Okay. So you go talk to Mr. Silver and
6 what happens after that?

7 A. After that Mr. Silver then introduces me to
8 a public shell company by the name of Albion Petroleum and
9 a gentleman who is the chair board, David Shaw. And we
10 have a couple telephone conferences and Steven and David
11 Shaw fly in from Canada and New York to visit in Kentucky.
12 They fly into Tri Cities and we then go over to the
13 properties in a King Air. We chartered a King Air and took
14 them to site visits. We went to see T&T Energy's
15 property and the Red Bird sanctuary, eastern Kentucky
16 area. And we then went to Meadow Creek Mine. And at
17 that point we were mining. We were auguring some
18 steam coal off of the Meadow Creek Mine. And it was
19 really the only time that we had run any production.
20 They...

21 Q. When was that?

22 A. It as July, August of 2012.

23 Q. Okay. Thank you. How many times did
24 Mr. Silvers and/or Mr. Shaw come to visit you in
25 Kentucky?

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1 A. They only came to the mine sites for
2 one visit. They were scheduled for a second visit in
3 June of 2014 before I was arrested to finalize some
4 things. They only had one visit to Kentucky.

5 Q. Okay. And what role, okay, when, if
6 ever, did you tell your individual investors, Allen
7 Christianson, Mick Plummer, about the IPO side of it?

8 A. As soon as I came back from the trip
9 from New York. We started to, myself and Mr. Sackett
10 started immediately discussing it. I told him there
11 was a lot of opportunity. Mr. Hugh Sackett tried to
12 always try to take a company or assets public with me
13 since 2003 and 2004. He's probably tried it six or
14 seven times to roll us assets I had and take it to a
15 shell. I don't know if that was a dream or a fantasy
16 he had or what. So he started telling me that that's
17 what we needed to do. So through dialogue he recommended
18 doing an offering. He asked me if I thought we could raise
19 the money by selling stock. I told him we definitely can,
20 especially with a group like Casimir Capital. We'll have
21 the ability to call all the investors in the mines and give
22 them an opportunity to get in on a ground floor basis.
23 We'd say hey, we're now a company with seven or eight mines
24 and we're going to go public. If you want to get in now at
25 ten, twenty, thirty, forty, fifty cents, it's going to be

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1 worth two or three dollars in years to come. We developed
2 a story and put an offering together offering shares to
3 those investors.

4 Q. How much about the IPO deal with Casimir
5 Capital and Albion Petroleum did Mr. Phillips know?

6 A. At first it was very limited. He didn't
7 have much involvement in the offering to the existing
8 investors. When we were soliciting them he did not
9 participate in that. I needed Johnny Phillips for, I
10 couldn't be the president being Brian Rose and my track
11 record plus lying and already committing fraud to the
12 investors, I couldn't go the market place as John Hankins
13 or as Brian Rose because then it ultimately would be
14 committing a fraud and telling on myself. I had to find a
15 president. I had to find someone who could serve in a
16 capacity to lead the company. Someone I felt had a degree,
17 had an education, a coal background. I asked Mr. Phillips
18 if he would do that. We had many conversations about it.
19 It wasn't a one day deal. Finally there was a conference
20 coming up in Canada, in Toronto that Casimir had invited us
21 to. And the point of the meeting was to meet the board of
22 directors for Albion Petroleum which was currently listed
23 on the Toronto Stock Exchange. The purpose of the meeting
24 was to sell the board of directors on us and who we were.
25 That way they would give us their shares and we would give

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1 them the assets and ultimately we would own the company. I
2 asked Mr. Phillips if he would serve as the president of
3 this entity, in this company?

4 Q. Do you remember when that was?

5 A. Early part of 2013, the conference was in
6 March of 2013 and the dialogue was between December to
7 February. December of 2012 to February of 2013 is when
8 things started picking up momentum about us going
9 public.

10 Q. How many conversations, if any, did you
11 have with Mr. Phillips about the IPO thing after that
12 trip by Mr. Silver and Mr. Shaw in the summer of
13 2012?

14 A. We probably would do an update every
15 two or three weeks, maybe four. I would just keep
16 him abreast of what was going on and where are we at
17 with the due diligence. At the time we were
18 underwriting a technical report. The technical
19 report was a report prepared by a third party
20 independent engineering firm who would say we had X
21 amount of coal reserves in the ground or there is 1
22 million tons of coal there to be mined. We enlisted
23 a company out of Charleston, West Virginia by the
24 name of Norwest to prepare this technical report. It
25 was called a 43-101. And they prepared the report.

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1 They had to go to the mines. At that time Mr.
2 Phillips went over to the mines to open the gates, show
3 them the properties. Dallas McRea and/or Thomas Berry both
4 went over to the properties during several trips to help
5 the engineering firm write and prepare the report. It took
6 them probably six to eight months to prepare the report
7 with three or four of their engineers in house.

8 Q. And at any time did you have a discussion
9 about what he would get out of this?

10 A. What I did, I asked him, we talked a
11 salary. For assuming this title as president we talked
12 about a salary of [REDACTED] annually. I told him he'd
13 need to be over at the mines at least two to three days a
14 week. Not just be like Dallas McRea or Jim Robinson in
15 title. I needed him to actually do what he was capable of
16 and be in charge of getting coal production. And in turn I
17 told him I'd make a twin engine plane available for him to
18 transport him if necessary because I needed him over there
19 in the properties. We also discussed, at the time I
20 controlled 100 percent of the leases pretty much through
21 Volt Resources. I was going to be selling those reserves
22 back to the shell company. So I loaded the company with
23 debt. I loaded it with approximately, a little short of \$5
24 million in debt. That way when the stock exchange or the
25 investors funded it then I would be able to draw down the

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1 \$5 million in debt. Mr. Phillips then reminded me that he
2 also owned a part of the coal mines and he wanted his
3 portion. Brian, if you're going to get this, don't forget
4 about your buddy, I got two and a half percent and I've got
5 more of King Mountain than I do those. And so the number
6 was \$350,000.00 to buy down the debt and make him whole for
7 either the royalties and/or his ownership interest in those
8 properties.

9 Q. So when you say you loaded it down with
10 debt, real debt or just debt on a piece of paper?

11 A. There as no contracts. It was all just
12 debt on a piece of paper. There was no formalized
13 documents setting out purchase prices. It was all just
14 debt listed to take the capital once it was put into the
15 company.

16 Q. Okay. Did you ever meet with him in 2012
17 or 2013 to discuss this, was it over the phone or what?
18 How did it happen?

19 A. We met numerous times. Specifically the
20 conversations about the debt and what I loaded and did for
21 him was over the telephone. Any time he came to Johnson
22 City, which was just a handful of times in the office, we
23 were working on a royalty interest to carve out for his
24 kids and my kids. We were going to create a trust and load
25 all the coal properties, somewhere between two dollars to

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1 four dollars a ton royalty interest. That way not only did
2 we get the debt or the up front money when we sold the
3 company but then we would also get a royalty interest on
4 each property. So when, who we sold it to, if they mined
5 coal, every ton they would owe us between two and four
6 dollars per ton.

7 Q. And what meeting, if any, did you ever have
8 in Bowling Green in December of 2012?

9 A. In December 1st of 2012...

10 Q. Are you okay? Do you need a little break?

11 THE COURT: Mr. Rose, if you need a minute
12 we'll take a recess.

13 A. All right. I apologize.

14 Q. Do you need a little water?

15 A. Unrelated to the case in December in
16 Bowling Green I met my current fiance and I had a kid that
17 passed away, unrelated, sorry.

18 Q. Thank you. So it's December of 2012?

19 A. Yeah. I met Johnny. We went over to,
20 first I think we went to Montana Grill, had drinks, talked
21 about going public and talked about the coal leases, where
22 we were and what we needed to do to move it forward.
23 Talked about how do we get more productions, how do we get
24 Jamie Collins to get permits back faster, how could he help
25 me and how could we operate more efficiently. The past

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1 three or four months him and I hadn't been working very
2 good together. And I think at that time the insurance
3 business was starting to take off for him. He was working
4 really hard at the insurance deal. And I didn't want to
5 have to pay out a salary at the time. So we didn't have a
6 ton of communication from July to December. But now that
7 the going public thing was coming back to the front I
8 needed him. I needed someone who could serve in that
9 capacity. So we met, hung out for three, four, five, six
10 hours. We talked about what we needed to do go to public.
11 I believe that's when the first dialogues about me wanting
12 him to be the president, or me wanting him to be one
13 of the main people because I couldn't do it and I was
14 going to have to step down.

15 Q. What did Mr. Phillips respond?

16 A. He wanted to know more about it. He
17 was specific that he didn't want to, I wasn't just
18 going to leave and abandon him with the burden of all
19 the investors and the headache of what we had done
20 through raising the money. And he then had the
21 dialogue about compensation. We discussed how I,
22 yes, he'd still get his portion of the debt that I
23 had loaded into the company, all the terms, a little
24 bit more. It was just another day of our
25 conversation, updating.

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1 Q. We didn't talk every day. Bobby
2 McGregor and people in the office I'd talk with
3 three, four times a day so they would know a lot more
4 firsthand about the changes. Johnny Phillips and I
5 may go a week without talking especially when money
6 was tight and I didn't want to give him any bill
7 money

8 Q. And you mentioned, I think you called
9 it N.S. 43-101, is that correct?

10 A. Yes, 43-101.

11 Q. What was that and how was that related, if
12 at all, to the public offering in Toronto?

13 A. In order to do the reverse merger you have
14 to have a third party estimate the reserves of how much
15 coal is in the ground. You have to be able to demonstrate
16 that to the markets to give it a valuation or to give an
17 approximate value of what the coal or the company is worth.
18 That way Albion would know how many shares to give us in
19 exchange for our coal properties. So it is a mandatory
20 compliance issue that's issued by the Toronto Stock
21 Exchange.

22 Q. And you had mentioned earlier about the
23 debt that you loaded thing with debt and you carved out
24 some debt to compensate him, what, if anything, did Mr.
25 Phillips know about his fake debt?

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1 A. He just knew that that was the dollar
2 amount that was associated with it for his percentage of
3 ownership in those coal properties. That's how we'd
4 renumerate him to get his chunk of change, I guess you
5 could call. I had loaded approximately \$4.65 million, just
6 short of \$5 million for myself. He had brought me to the
7 dance, I guess you could say. And that was my compensation
8 back for his percent of ownership of the mines.

9 Q. What happened in March of 2013?

10 A. March of 2013 was the PDAC conference in
11 Toronto. I asked Johnny, I told him that he really needs
12 to be there, the board of directors were set up. Steven
13 Silver had set up meetings with the board of
14 directors of Albion Petroleum. One was an attorney
15 in Toronto, two were venture capitalists from the
16 Calgary and Toronto area. So we flew into Toronto.
17 The morning meetings were at Casimir Capital's
18 Toronto office. We had a Power Point presentation
19 that Steven Silver had put together with very large
20 Excel spreadsheets and reserve estimates, approximate
21 valuations of our coal leases. In the morning time
22 we met with the attorney on the board of directors
23 for Albion. It was just myself and Mr. Dallas McRea
24 at that meeting. It went very well. Steven was
25 excited. I was introduced as John Hankins. Dallas

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1 was Dallas McRea and everybody gave high-fives and
2 were hand shaking. That day we had more meetings
3 scheduled. The meetings were in more of a social
4 atmosphere. We first went to dinner at a steakhouse,
5 I think it's called Bones where Casimir paid for
6 dinner. Then we went to a social event. I can't
7 remember how Johnny got to where we were if he met us at
8 the restaurant or I picked him up. Somehow later in the
9 day from ten o'clock in the morning to six o'clock in the
10 evening Johnny had flew in on a separate flight and met
11 Dallas and myself. We went to the social event. My whole
12 plan in transitioning Dallas McRea as president and putting
13 Johnny in as a face and a name and credibility-wise that
14 could lead New Century Coal or the new shell company then
15 at that point on the TSEx. I introduced him to Steven and
16 Jeb. Jeb was on the board of directors for Albion. I
17 separated myself with Johnny to specifically get one on one
18 time with Steven because Steven controlled everything from
19 the capital standpoint. If the money was coming from
20 Shanghai or if he was bringing a private investor group out
21 of Canada through Albion on the Toronto Stock Exchange, I
22 really needed to get Steven on board and like Johnny.
23 Steven and I were really close from a standpoint of
24 friendship, drinking or business. But at the same time he
25 still only knew me as John Hankins. I could not go to the

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1 market place as John Hankins of a public company. It would
2 have been detrimental beyond...

3 Q. You also would have been caught, wouldn't
4 you?

5 A. Yes, that's exactly right. That's what I
6 mean by detrimental. It would have been fraud on the
7 markets. Now you'd take what we had done privately in a
8 small eastern Tennessee area to raising capital to fraud
9 on the markets. Immediately people would say that's Brian
10 Rose that raced Nascar that's really John Hankins that's
11 really New Century Coal.

12 Q. How long did this social event in Toronto
13 last, if you recall? An hour, two hours, three?

14 A. Six, seven, eight.

15 Q. Casual social event?

16 A. Yes, Ma'am.

17 Q. How did you introduce yourself to people?

18 A. As John Hankins.

19 Q. What, if anything, did Johnny Phillips say
20 when you introduced yourself as John Hankins?

21 A. He didn't comment on the John Hankins part.
22 I was too busy trying to build his resume up to them and
23 tell them about his background and who he was. I'd already
24 spent a day or two drinking and visiting and business. I
25 was selling him to them at that point. I wanted them to

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1 like him more than me so they didn't want anything to do
2 with John Hankins.

3 Q. At any time during that meal in Toronto did
4 Mr. Phillips withdraw from all of this?

5 A. No, Ma'am.

6 Q. Did he go back to his room and say I don't
7 want to be a part of this?

8 A. No, Ma'am.

9 Q. Did he tell you, I don't want to have
10 anything to do with this?

11 A. No, Ma'am.

12 Q. He never did, did he?

13 A. No, Ma'am.

14 Q. Okay. Let's go forward to the money
15 show in Las Vegas in May of 2013. Who went on this
16 trip on behalf of New Century Coal?

17 A. To the money show in Las Vegas. We had
18 a booth set up for New Century Coal. Bobby McGregor
19 went to the Exhibit, Brent Loveall went to the
20 Exhibit, Joey Buckles went, I believe even Matt
21 Sherman went, Ray Spears went and I believe that's
22 about it.

23 Q. Why did Johnny Phillips go?

24 A. I wasn't going. If technical questions
25 came up or anything about the coal mining process or

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1 anything about the leases that was of substance none
2 of them could answer it except Johnny. He's the only
3 one, next to me, that knew the leases. Everything
4 else, Dallas had done, was pretty much in title. He
5 had went to the leases a time or two. Johnny was the
6 only one with any professionalism or background in
7 the coal industry or knowledge of leases who could
8 talk intelligently about it. He, next to myself he
9 was the only one I felt comfortable with or
10 knowledgeable enough or professional enough to do it.

11 Q. Let's go forward to a meeting in Corbin,
12 Kentucky with Mick Plummer and Dr. JW Phillips on October
13 29th of 2013. Do you remember that event?

14 A. Uh-huh (affirmative).

15 Q. What happened at that meeting?

16 A. So Mick and Doc, they had invested \$2
17 million dollars approximately in March of 2013. And Mick
18 was supposed to be put on the board of directors and have a
19 voting right. So Mick was wanting to call a board of
20 directors meeting. So Doc, Mick and two pilots flew
21 over and we had a board meeting at a place called
22 David's Steakhouse right off of I75, exit 29 in
23 Corbin. I knew the tone of the meeting was going to
24 be, okay, we've been with you all for approximately
25 18, 19 months. We don't have coal coming out of the

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1 ground yet. We've gotten \$2.4M, \$2.5 million dollars
2 invested currently. Where have you spent it, how is
3 it going and show us where you're at. So we prepared
4 reports to hold a regular board of directors meeting
5 demonstrating cash flow in, cash flow out. Demonstrating
6 what the next 90 to 180 days of capital expenditures we
7 would have, meaning what type of equipment we might need to
8 buy, permits we needed, how much cash is it going to take
9 to operate the business for the next six months. We
10 prepared reports for those and demonstrating also where we
11 spent Mick and Doc's \$2 million dollars. And we had a
12 board meeting at David's. At the meeting was myself, Mr.
13 Sackett, Ray Spears, Johnny Phillips, Robert McGregor,
14 Thomas Berry, Mick and Doc, Mick Plummer and Dr. Phillips.
15 I think that was it.

16 Q. You invited Mr. Phillips? How did Mr.
17 Phillips come to be there?

18 A. I invited Johnny Phillips because they had
19 met him previously in the Mountain Grove trip when they
20 invested initially. The reason I asked Johnny and told him
21 I needed him there was because they would want to know
22 where are the coal markets. And if the coal markets came
23 up during the meeting or they questioned how is the Obama
24 Administration affecting the coal market. I wanted Johnny
25 Phillips there as a third party, not New Century Coal to

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1 say it because I could say it all day along. But if
2 there's a third party vendor there who is saying, yes, I'll
3 buy your coal and the market is still strong and Blue Gem
4 Coal is still in demand.

5 Q. So what happened at the meeting?

6 A. Mick wanted to take control of the meeting.
7 Mick kind of took charge. We had a tentative itinerary
8 that I had Vicky Buckles type up. Mick ran the meeting.
9 He had a whole list of things he wanted to go over and
10 cover. So we passed out the vendor synopsis and use of
11 proceeds, where we used and spent their money and what our
12 next cash flow needs for the next 90 to 180 days were.
13 That was going to be the basis for why we were going to ask
14 them for more money to say here's where we are, here's
15 where we need to get over the next 90 to 180 days and it's
16 going to require another \$800,000.00, \$1 million dollars,
17 can you write a check for it.

18 Q. What, if anything, did Johnny Phillips say
19 at that October 2013 meeting with Mr. Plummer and Dr.
20 Phillips.

21 A. He didn't address them like he did at the
22 February meeting personally. In the February meeting he
23 had a lot more dialogue. In this meeting he talked just
24 very general about the coal markets and still purchasing
25 coal, still being in demand, just more of a reassurance of

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1 the coal markets and his ability to move the product.

2 Q. What, if anything, did Johnny Phillips
3 receive for his participation in this meeting?

4 A. That was at the same time we were securing
5 the wash plant. Specifically not related to that meeting
6 but Johnny Phillips and myself had reached an agreement, if
7 he secured the wash plant I would give him \$25,000.00. We
8 were going to offer the wash plant, a royalty interest and
9 I needed him to secure, again, for New Century Coal and
10 myself as a way to move Blue Gem Coal back to the
11 marketplace. He set up a meeting outside of the board of
12 directors meeting. It was sometime during that time
13 period. He set the meeting up with Safeco and Mark Ward in
14 Corbin, Kentucky. Myself and Johnny went to Safeco's
15 office and sat down, met Mark and told Mr. Ward that we
16 wanted to lease the wash plant. Then we all rode with
17 Mark, went over to the wash plant, walked it over.

18 Q. How were Mr. Plummer and Dr. Phillips'
19 investment, if at all, how was that related to he wash
20 plant?

21 A. At the time we were soliciting them for
22 approximately an additional million dollars. We allocated
23 some of that money to the wash plant and we allocated some
24 of that for a D10 dozer. We identified the need for the
25 capital from Mick and Doc, to those areas. At that time we

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1 did not secure the funding from Mick and Doc, for that
2 additional million.

3 Q. Okay. Thank you. So what happened on
4 November, I'd say nine through ten or eleven 2013 in
5 Johnson City?

6 A. Starting in the summer of 2012 the SEC
7 launched an investigation in July of 2012. Matter of fact
8 it was July 1st, week of July 4th. We had submitted
9 thousands and thousands of documents over the course of 18
10 months to the SEC. My ownership and control of the leases,
11 who was president, who ran the company, how were we
12 offering, how we were soliciting investors, where the money
13 was being spent, bank records. Then they wanted to start
14 deposing, taking Depositions of management at New Century
15 Coal. Dallas McRea was the first one to be deposed. Mr.
16 Sackett was in charge of practicing, drilling and
17 rehearsing with Dallas McRea to prepare testimony. And
18 Michael O'Neal, which was the attorney for New Century Coal
19 at the time, Mr. O'Neal and Mr. Sackett would daily
20 critique Dallas' answers to prepare him for the testimony.
21 I would spend time in the evenings once we got out of work
22 to go over Dallas' testimony and how he would be deposed
23 to the SEC. Dallas flew to Denver. And he was then
24 deposed for, I know at least one day if not two by the SEC
25 with Michael O'Neal, the counsel for New Century Coal.

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1 During that time Dallas was not able to continue lying and
2 continue the fraud without mixing up his lies. He
3 testified in the first half that he didn't know who wrote
4 the checks, the second half of the checks he said he got
5 them from Jenny Key. He was all over the place. Bottom
6 line was Dallas wasn't ever in the office so Dallas didn't
7 know what the answers were. When he went in there he
8 couldn't learn them fast enough and he just lied and messed
9 up. When Dallas came back from Denver Michael O'Neal
10 called Mr. Sackett. Mr. Sackett called myself and told us
11 that we had serious problems. And that they weren't going
12 to buy anything about Dallas' testimony. And if we didn't
13 what this on our front doorstep and have more than just an
14 injunction then we better get our arms around it pretty
15 fast. Mr. O'Neal didn't know who was in charge, he did
16 but he said he didn't. Mr. O'Neal has been a private
17 attorney for me for probably ten years. He said we better
18 find out who the real president is because Dallas McRea
19 won't work. So Sackett said let's digest and talk about it
20 over the weekend. Monday Mr. Sackett called a meeting. I
21 called my father. My father had been out of prison
22 approximately six months. I knew my father had been
23 through it so I enlisted my father's help and drug my
24 father into it all.

25 Q. Did you have a meeting?

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1 A. Yes, we set up a meeting at the Carnegie
2 Hotel. We were just going to eat lunch then the next thing
3 you know is we had a board room downstairs. I asked Johnny
4 Phillips to come over. It was myself, Johnny Phillips,
5 Bobby McGregor, David Rose, my father, Hugh Sackett, I
6 can't remember of Ray Spears was there or not. I know
7 those five were present. The meeting was damage control.
8 It was what Dallas did and what can we do to fix it and
9 what can we do to correct the wrong or the lying to the
10 SEC. Bottom line somebody was going to have to step up. I
11 was asking Bobby if he could demonstrate to the SEC his
12 role, his leadership of NCC. At the time Bobby had been
13 [REDACTED]
14 [REDACTED] and was [REDACTED] about doing anything.
15 And my dad said you've got to find somebody who is going to
16 stick, no matter who it is. Sackett was scrambling around
17 because he has a permanent injunction and he couldn't be
18 involved with anything selling securities. I didn't want
19 to get drug in the middle of it. So at that time I'd
20 received a few million dollars from New Century Coal and I
21 knew that they were going to want to know who was Volt
22 Resources. My plan was to ask Johnny Phillips to explain
23 who Volt Resources was. At the meeting Johnny Phillips was
24 adamant that he was not on board, necessarily, with what
25 was going on with the SEC. He was, he was very fearful of

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1 what would end up in a problem format for him. I remember
2 when we took a break fro lunch and Johnny and I walked out
3 into the hallway and he said, "This isn't ending up in my
4 lap." Bobby was like, "It's not ending up in my lap."
5 Nobody was going to follow any story that everybody had
6 already said. So somehow we elected Jim Robinson to come
7 back in at the meeting and assume the role of president for
8 Dallas McRea in exchange for capital. I forget, it was a
9 few hundred thousand dollars is what was negotiated.

10 Q. This was in November of 2013?

11 A. Yes.

12 Q. Now after that meeting, what, if anything,
13 did Johnny Phillips do regarding New Century Coal, its
14 partnerships or its investors?

15 A. After the meeting from there forward. We
16 focused on securing the wash plant. We brought some
17 investors in from town to the wash plant. Mr. Odens and
18 Mr. Jepson both came. And at that point we started
19 securing funding for the wash plant. Johnny Phillips
20 continued to help me identify what things at the wash
21 plant, along with Bill Woods, needed to be replaced.
22 Johnny Phillips, at the time was then, I asked him to
23 be the squeaky wheel on Jamie Collins, getting more
24 permits done and just continued to work on securing
25 additional leases. There was a couple different

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1 tracks that he was specifically looking to lease and
2 get. One was over by the church a funeral home
3 owned. Johnny Phillips was actively pursuing that
4 lease. It was a large track of land. Him and I went
5 to visit Appalachian Collieries and Jeff Samples out
6 of Knoxville, Tennessee, had a large boundary of
7 7,000 acres, I believe. We were paying them an
8 \$8,000.00 a month royalty. We paid it for six or
9 eight months and threw away about \$60,000.00 or
10 \$70,000.00 on the property. And Johnny Phillips was
11 my point of contact with Jeff Samples. I plugged
12 Johnny Phillips in to kind of be my buffer to handle
13 Jeff Samples, where's my money checks or phone calls
14 and to keep them from putting us in default so we
15 lost the lease. We paid that least until April of
16 2014. Also, during that time he created an entity,
17 either Blackstone or Blackrock, I forget the name.
18 It was an LLC that leases the wash plant from Safeco
19 that then in turn leased it to myself for New Century
20 Coal. And the purpose to carve out a royalty or
21 himself. I think he was going to mark it up a dollar
22 or two. In turn I think that's how we memorialized
23 the \$25,000.00 as well. At the time I'd already
24 given him about \$15,000.00, I think.

25 Q. When were you arrested on the indictment?

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1 A. June 17th, 2014.

2 Q. So from November of 2013 to June of 2014,
3 what was going on with New Century Coal?

4 A. We quit raising money for the partnerships
5 specifically but we started to raise money for the wash
6 plant and additional operating capital at Whetstone. And
7 about March or April we put a \$175,000.00 bond up at
8 Whetstone. We spent a few hundred thousand dollars more to
9 get the road certified. We bought a truck, mining
10 equipment. From a money raising standpoint we shifted to
11 funding the wash plant to get it up and going and continue
12 to work on the other Depositions for the SEC. Me, Mr.
13 Sackett, Mr. McGregor and Ray Spears were all going to be
14 deposited.

15 Q. And what happened to the IPO in that time
16 frame, November 2013 to June 2014?

17 A. During that time frame we continued to
18 raise money for the IPO. We solicited Mr. Jepson and Mr.
19 Odens. They put \$2 million dollars in. We sold them a
20 four dollar royalty at Steel Hollow on one of the
21 leases. And also common shares of New Century Coal
22 along with a, I believe a ten dollar royalty at the
23 wash plant which would pay them back their capital as
24 a loan. It was a royalty that went through but the
25 way I looked at it was if I could make them whole on

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1 the wash plant and get them their principle back, to
2 structure it that way. We took the money and spent
3 it the wrong way.

4 Q. So after June the 17th of 2014 it's all
5 done. You all stopped at that point?

6 A. Yes, Ma'am.

7 THE COURT: Ms. Smith, why don't we take a
8 lunch break? I'm told the roads are clear. Let's
9 try to resume at 1:30. That's an hour and ten
10 minutes from now. We'll start back as close to 1:30
11 as we can. Please remember my instructions as
12 conduct as Jurors. During this case you are not to
13 discuss the case with anyone or permit anyone to
14 discuss the case with you or talk about it in your
15 presence. Do not read or listen to anything touching
16 on this case in any way. Don't do any research or
17 investigation on your own. And very important,
18 Ladies and Gentlemen, maintain an open mind about the
19 issues in this case and you have heard all the issues
20 in the case and you retire with the other Jurors to
21 deliberate your verdict. Assemble back in the Jury
22 Assembly room. Leave your notebooks in your seat,
23 please. We'll see you after lunch.

24
25 (COURT IS IN RECESS)

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1 (JURY IN AT 1:40)

2
3 THE COURT: Ms. Smith, you may continue.

4 Q. Mr. Rose, I think we've kind of moved
5 forward here. Please tell us what, if anything, was
6 fraudulent about New Century Coal as it was marketed to
7 individual investors?

8 A. When marketed to the individual investors
9 we misrepresented and it was fraudulent to state who the
10 actual ownership and controllers were. Who the president
11 was, it wasn't Jim Robinson and Dallas McRea, it was
12 myself. The ownership of leases, Thacklight, we didn't own
13 it. Meadow Creek, we oversold it. We sold more interest
14 than the partnership owned. We misrepresented the annual
15 rate of return based upon production numbers that were not
16 feasible. We misrepresented and lied about the year in
17 which New Century Coal was formed, stating that it was a
18 2006 company. In fact it was formed in 2011 and was a
19 shell company that was purchased and formed in 2006. We
20 lied about the use of proceeds and how the money would be
21 spent. We misrepresented ourselves, who we were as
22 individuals. We made representations about delays that
23 were nothing more than us stalling, trying to buy time.

24 Q. What about the production of coal? Did you
25 overstate the actual production of coal?

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1 A. Yes. We sent out distributions and
2 dividends of revenue somewhere around \$350,000.00 to
3 \$380,000.00. We only produced around \$40,000.00. We said
4 we sold it for sixty eight or seventy two dollars a ton to
5 match what the steam market was and we actually only sold
6 some fines (phonetically) at around \$40.00 a ton. We said
7 we'd mined some seven thousand six hundred tons in those
8 distribution statements when in fact it was closer to 700
9 to 1,000 tons. We created internal press releases that
10 overstated our assets, overstated the reserves which were
11 recoverable.

12 Q. Okay. Thank you. Regarding the day to day
13 operation of New Century Coal and the actual devotion of
14 resources to the exploration, production and development of
15 coal, what if anything was fraudulent about that, the
16 operation side?

17 A. Can you ask that question again?

18 Q. What was fraudulent, if anything, about the
19 operation of New Century Coal as a mining enterprise?

20 A. From, well the production reports that we
21 produced about the mines to the Securities and Exchange
22 Commission were all fraudulent. They would have been
23 drafted internally to create the delays and the reasons for
24 the delays behind the mining. A lot of the times we would
25 raise the money for the mines and we wouldn't dedicate all

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1 of it to the mines. A large majority of the money went to
2 commissions, got spent on my lifestyle, other things that
3 it should have been spent on mining. Consequently the
4 mining side of it was depleted and neglected, therefore the
5 investors did not get what they bought, what they paid for.
6 They didn't get a fair opportunity with their investment.
7 They could not realize a rate of return based on our
8 performance in the mining and exploration side of it.

9 Q. How did Johnny Phillips benefit from the
10 fraudulent operation of New Century Coal?

11 A. He directly benefitted from the three and
12 four percent that he received from the commission from our
13 trip to Mountain Grove, Missouri. He benefitted as well
14 from the reverse merger, from the debt that was loaded into
15 the company for the three hundred and fifty thousand. He
16 benefitted from any salary money that I paid him for his
17 services. The income and money was derived based on
18 principles which were fraudulent and lies to investors just
19 like Mick Plummer and Mr. Phillips.

20 Q. What, if anything did Mr. Phillips
21 contribute in the way of funds or investment or capital for
22 New Century Coal or any of its partnerships?

23 A. He had no capital costs or no funds that he
24 contributed to New Century Coal or myself directly or
25 indirectly.

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1 Q. And just summarize for us how the initial
2 public offering related to the fraudulent scheme?

3 A. The fraud that was committed through the
4 LLP members which owned a portion of the mine continued as
5 they bought shares and were given shares in the public
6 shell. We gave them shares of New Century Coal
7 demonstrating a list of other shareholders which was
8 fraudulent and misrepresented. And the fact that under the
9 current structure without the audited financials the
10 reserves which were overstated which the engineering
11 reports were prepared by, there was no way for it to go to
12 the marketplace in its current structure. It could not
13 happen.

14 Q. Okay. Based on everything you know about
15 New Century Coal what was the level of Johnny Phillips'
16 involvement in the fraudulent investor scheme known as New
17 Century Coal?

18 A. He was not a person that was management or
19 day to day operations. He was not one who made decisions
20 for the company. I consider Johnny a very good person who
21 got drug into poor decisions by myself and who I asked him
22 to do things out of character for me. I asked him to
23 fulfil a role that exposed himself in New Century. And he
24 was very competent at what he did do and very good at it.
25 And unfortunately as a leadership and one who financed my

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1 company I put him in a bad position in asking him and
2 others, my other
3 co-Defendants to participate and I should have stopped it
4 and shouldn't have went on with it and should have made
5 better decisions. Instead I just, we kept on going.

6 Q. And he knew, didn't he?

7 A. Yes, Ma'am.

8 Q. He never said I don't want to be part of
9 this, did he?

10 A. He said he didn't want to get wrapped up in
11 selling securities but he did not step out of New Century's
12 involvement.

13 Q. Thank you. If you could estimate how many
14 business ventures over the years have involved you and Mr.
15 Phillips, not just the two of you but others as well?

16 A. We went to conferences down in Texas and
17 looked at probably 20, 30 natural gas deals to develop. We
18 were core drilling on some of the Addington's properties,
19 which is a large family in the coal business, very
20 successful in 2010. We were developing resources on their
21 property. We looked at real estate development stuff. We
22 would always bounce things off of each other, any
23 investment in any capacity.

24 Q. How much money did Johnny Phillips invest
25 in those business ventures?

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A. None.

Q. Okay. How many times did Johnny Phillips complain to you about his compensation that he received in New Century Coal?

A. A bunch.

Q. What suggestions did you make, if any, to increase his compensation?

A. I would always try to pay him as little as possible. He would always ask for a lot more than possible. Somehow along the way I agreed to give him lunch money is what we always called it. I don't know any other way to put it. I would demand more time and effort and he would demand if he was going to devote the time and resources he needs to get a lot larger, I think he was looking for a larger salary than what I could commit to from a dedicated role at that time.

Q. How many times, if any, did he complain that Brent Loveall and Bobby McGregor were making a whole lot more money than he was?

A. He would often hear when we came back from Missouri, he would know they were going to make \$50,000.00 or \$75,000.00 and he would say, "Look, if it wasn't for me you wouldn't even have Blue Gem Coal. I got you the deal," you're taking care of the degenerate or, poor descriptive adjective of what they might have been, when he should have

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1 been compensated more. He's probably right. He should
2 have been compensated more for actually getting the leases
3 and stuff. But the way the money raising business goes, it
4 was a money raising business. It wasn't a coal operation.

5 Q. I'm going to switch a little bit and ask
6 you to summarize your use of entities, what you call shelf
7 or shell corporations to move money that the investors pay
8 in?

9 A. The shelf corporation would be an entity
10 that was often formed and is dormant. A shelf corporation,
11 you may start a company in 2016 in Nevada and place it on
12 the shelf. This means you don't transact any business in
13 it and two, three, four years down the road you sell that
14 company. It might have cost you \$1,000.00 to form it but
15 someone will pay for an aged company that's four or five
16 years old to make it look like the business has been
17 around, they'll give you ten or fifteen thousand dollars
18 for it which is pretty much all profit. It's called a
19 shelf company. The shell company, the difference between
20 the two, shell company in reference, being in the vendor
21 synopsis or the reports that we gave to Mick Plummer or Dr.
22 Phillips at the board of directors, a lot of the companies
23 on the vendor report listed say, Volt Resources,
24 \$922,000.00 it received, KIS received \$30,000.00,
25 Appalachian Energy, which is Bobby McGregor received

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1 \$35,000.00, those are shell companies. That means they
2 perform no real services. There wasn't anything that they
3 did, contracted business-wise or related to the mines. It
4 was nothing more than a LLC that was formed to divert money
5 to the salesman and/or Hugh Sackett, and/or myself to
6 others to take the commissions out and get them to everyone
7 who was involved in committing th fraud and whoever was
8 involved in selling or getting a commission. The shell was
9 nothing more than a vehicle to divert the funds to.

10 Q. Thank you. What, if anything, did you do
11 to encourage your associates at New Century Coal to set up
12 these shell companies to divert funds?

13 A. When the SEC subpoenaed it, starting
14 subpoenas in June or July of 2012, Brent Loveall got paid,
15 I think, seven hundred and something thousand in the year
16 of 2012, 2012, I believe it was. If Mr. Loveall has
17 received \$700,000.00 in compensation that year, when the
18 SEC were going over financials it would have sent up red
19 flags. Why is a person like Brent Loveall who is a non-
20 registered broker receiving \$700,000.00? And in order to
21 create a entity to pay it to so that red flag wouldn't go
22 off, they each created an LLC. That way the SEC or any
23 attorney general for any state wouldn't be able to notice
24 it was a salesman and we were violating securities laws, it
25 was a way to skirt the edge of the securities laws in each

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1 state. I'm trying to keep it as understandable as
2 possible. When you sell interest in a mine it is a
3 security. And it is regulated under what's called a
4 Regulation D Law from 1933, meaning you have to be
5 registered, you have to maintain a license, you have to
6 work at a broker dealer or a principle office like Paine
7 Webber or Merrill Lynch. Instead none of our
8 representatives were licensed. So the only way they could
9 get paid a big commission, ten or 20 percent which was a
10 lot of money in Mr. Loveall's case, was to create a shell
11 company that made it look like they were performing
12 services in the field or they were actual contractor or
13 they were doing something for the money. That's the
14 purpose of the shell.

15 Q. Thank you. What accounts, if any, did
16 Johnny Phillips have which received money derived from wire
17 fraud and mail fraud related to New Century Coal?

18 A. I believe the only entities that he ever
19 received was either Highland Resources, Highland Holdings
20 or himself personally.

21 Q. What was the source of any funds that you
22 authorized to be paid to Johnny Phillips during the
23 course of this conspiracy and scheme?

24 A. From money raised into the partnerships
25 by the investors then paid out of New Century Coal to

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1 him.

2 Q. What, if anything, did Johnny Phillips
3 know about the fraudulent source of payments he received?

4 A. He knew that money came directly from the
5 investors, especially after we got back from Mick and Doc,
6 the trip to Missouri. The commission that I paid him the
7 three or four percent was directly tied to that percentage.
8 So he knew that I was compensating him for his efforts in
9 that trip. That's what the commission and the money came
10 from.

11 Q. Let's change gears a little bit. What is
12 your status in this criminal proceeding here today?

13 A. I have pled guilty in my own case, in this
14 conspiracy to commit mail and wire fraud and I'm awaiting
15 sentencing. I was arrested on an indictment in June of
16 2014 and I'm awaiting sentencing in this case. Sentencing
17 is set for March 21st in this Courtroom.

18 Q. Thank you. You've admitted to several
19 instances of untruthfulness today and fraud and misleading,
20 right?

21 A. Yes, Ma'am.

22 Q. How do we know that you're telling the
23 truth here today?

24 A. The past 21 months has been the worst
25 experience anyone could ever go through. I've lost

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1 everything in life. The one thing that you think you might
2 be able to hold onto is some integrity or truthfulness to
3 your life. In a lot of regards I've lost that. And this
4 is about closure for me and moving forward with my life and
5 being able to get back to being a father someday. It's
6 about the victims, the investors, the victims now being
7 able to have closure in their life and being able to move
8 forward. This has been twenty something months and I have
9 every motivation to myself to get it off my chest and be
10 able to sleep at night and not have the nightmares and not
11 have all the problems. I just want it over with. I want
12 it over with for everyone who is involved. I've come to be
13 as open and truthful as a person can be on any question
14 about anything.

15 Q. How since your arrest and guilty plea, how
16 have you assisted The United States in the collection of
17 assets which derived from this fraud scheme?

18 A. Starting in 2014 I started meeting with the
19 agents on the case and I tendered, located about
20 \$600,000.00 in cashier's checks for them. I've enlisted
21 the efforts of other attorneys to try and sue former
22 business partners of mine to recover assets from. I've
23 disclosed everything that my family, myself, my ex-wife
24 had. My kids have gone without a home. I've debriefed
25 with the agents. I've spent hours after hours going over

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1 assets, having special meetings on how to liquidate the
2 coal leases to help the victims in the case recover as
3 much money as possible. I've met with the US
4 Attorney from Knoxville, Ms. Evolta. (phonetically),
5 over asset recovery and spent a full day with her
6 going over assets, where they were and who had them.
7 I've done everything possible that a person could do
8 to try and get as much back to the people who were
9 lied to, betrayed, manipulated and mislead. That's
10 the only way, at the end of the day, that I can get
11 it off my chest to know that yes, I did wrong, and
12 the only way for them to be made partially whole at
13 best.

14 Q. How many phone calls have you made
15 since you've been in custody since June 17th of 2014?

16 A. Countless, a bunch.

17 Q. Thousands maybe?

18 A. Probably, no telling.

19 Q. Have you been completely when you made
20 those telephone calls?

21 A. In all the telephone calls I've, I
22 would have to hear each phone call and listen to it.
23 I can't recall each conversation. There could be
24 conversations before my plea, before I admitted my
25 guilt and before I took acceptance of responsibility,

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1 that were misleading because it was during the
2 process of investigation before I pled guilty.

3 Q. At any time did you ever offer Mr.
4 Phillips the opportunity to work the phones like
5 Brent Loveall and Bobby McGregor?

6 A. Yes. Sometimes he would make reference
7 about the compensation that they received. I would
8 tell him all you got to do is get on the phone. He
9 would make the comment, yeah, I need to, I've got X,
10 Y, Z, I need to get this bill caught up or get this
11 out from over my head. He didn't do it thought.

12 Q. What, if anything, did Johnny Phillips know
13 about the expenditure of investor's funds on what you call
14 your lifestyle?

15 A. He would not have known directly what was
16 spent of, you know, a race horse that I bought for
17 \$300,000.00, would he have known that it came directly from
18 the investor's money or did it come from my other
19 businesses, oil and gas assets. He would not have known
20 but there's no way really to not know that the investors
21 money was being spent frivolously. For example, after Mick
22 and Doc, they invested and we all took a trip to New
23 Orleans to the casino and the final four. It just
24 coincided with inside a couple weeks after their investment
25 did we take a fifteen or twenty thousand dollar trip.

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1 Q. This would have been, final four, is that
2 basketball?

3 A. Yes, Ma'am.

4 Q. This would have been when?

5 A. In 2012.

6 Q. And that was the finals of NCAA?

7 A. Yes, Ma'am.

8 Q. And you used investor money for this?

9 A. Yes, Ma'am.

10 Q. Thank you. Your Honor, I have several
11 documents that I just, I'm just going to ask him to
12 identify them all and move them into evidence. I'm not
13 going to put every one on the presenter because we'll run
14 out of time.

15 THE COURT: Go ahead.

16 Q. Okay. There are two of them that I want
17 him to...

18 THE COURT: There's no objection to these, Mr.
19 Yarbrough?

20 MR. YARBROUGH: No, Your Honor.

21 THE COURT: All right, we'll mark them. Start
22 with 201.

23 Q. When you get to the one that I think should
24 be started out number 204, Mr. Rose, would you let me know?
25 It should be 204, 205 and 206 together. What is Exhibit

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1 204, Mr. Rose?

2 A. It is an email.

3 Q. That's fine. That's the one I want you to
4 look at. Okay.

5 A. Okay.

6 Q. So Exhibit 204, 205 and 206, explain what
7 these three documents relate to what you call the hostile
8 takeover or reverse takeover or whatever?

9 A. This would be an email. It looks like an
10 email sent in September originally to Doug Moses, which was
11 at an engineering firm in Corbin, Kentucky. Approximately
12 14 days later, I guess Johnny Phillips sent it to Jenny to
13 use it as an address to circulate the election letter to
14 the four people below. This was for the Taylor lease,
15 which is also known as King Mountain. When I was asking
16 Johnny Phillips to cash call the other three partners, all
17 the partners actually, that way, we knew Rick Harris and
18 Leon would not make the cash call and we could go around
19 them and circumvent their ownership and get control of 100
20 percent of the lease.

21 Q. And whose signature, what do the other
22 documents include?

23 A. Exhibit 205 is the election letter to Mr.
24 Berry, which was an entity I controlled. And there was a
25 trust set up for my kids. And I told Johnny that we needed

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1 to send an election to myself as well along with, 206 would
2 be one to Rick Harris, to cash call him for his portion and
3 to make an election. So I think the purpose was is we sent
4 these out certified mail, that way under Kentucky law we
5 would have good service of process. That means that once
6 they were served with the election the operating agreement
7 said that they had so many days to make the election. If
8 they did not elect to participate and/or did not submit
9 their capital call or their money back with their election
10 then they would forfeit their rights, title or any claim
11 they may have to that property in the future. If they
12 didn't say yes and here's my check then they were out of
13 it. This was the election that was sent with that so we
14 could get more ownership and myself and Johnny would own
15 the lease 100 percent.

16 Q. Who sent those letters out to members of
17 the partnership?

18 A. It looks like that Johnny generated the
19 elections but I don't know who actually sent the certified
20 mail. It looks by this email that he might have told Jenny
21 to send it or he circulated the certified letters himself.
22 I don't know who went to the post office and paid the
23 postage.

24 Q. What is your understanding of what Johnny
25 Phillips understood he was doing when he sent that out?

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1 A. I asked him to form the election so we
2 could make sure Rick Harris and Leon Epling didn't meet the
3 cash call so we could get 100 percent control of the lease.

4 Q. Did he express any objection to this plan?

5 A. No.

6 Q. Thank you. And this document would be
7 titled, Overriding Royalty Interest Assignment, it should
8 be Exhibit 212. What is that document, Mr. Rose?

9 A. This is a royalty assignment covering all
10 the coal leases that I bought with Volt Resources that Volt
11 sold to New Century Coal. This is the royalty that was
12 carved out for Highland Holdings and, yeah. It was an
13 override for royalty interest from Volt Resources to
14 Highland Holdings covering the leases that were purchased
15 from Rick Harris.

16 Q. Who drafted that document?

17 A. I believe Johnny Phillips drafted the
18 document. I might have sent him the original or we had a
19 royalty interest document that Everett Nance had done.

20
21 Q. Uh-huh (affirmative).

22 A. And then Johnny went in and inserted all
23 the Highland information and the leases and the dollar
24 amount per tonnage and he would have circulated it to Mr.
25 Thomas Berry for execution then sent it to the New Century

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1 Coal office to let Vicky, the secretary, notarize it.

2 Q. And what was the financial consequences for
3 Mr. Phillips by the execution of this document?

4 A. With this document when coal was mined off
5 of the New Century Coal properties he would have been paid
6 a royalty back to Highland Holdings at a rate of \$2.75 for
7 all the leases that were purchased from Rick Harris and
8 \$2.00 for the King Mountain and \$2.00 for the Whetstone
9 property.

10 Q. And what, if it had worked, if you all had
11 mined coal, what would have been the financial consequences
12 to him as a result of this?

13 A. Well, at two dollars a ton, just one the
14 property, King Mountain, there was approximately eight or
15 nine million tons. Even if we only recovered three or four
16 million tons, you know, it would have been six, seven,
17 eight million. Denali Energy is probably another three or
18 four hundred thousand and all the Blue Gem Leases from
19 Everett Nance and Rick Harris was another few million. If
20 it had worked and if we had mined, 60 percent recovery rate
21 and sold the coal and all the stars lined up it would have
22 been ten, \$15 million.

23 Q. And what capital did he infuse into the
24 company in order to get that?

25 A. He didn't put any capital in for this.

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Q. Your Honor, if I may admit these Exhibits.

THE COURT: Exhibits 201 to 229 are admitted.

(WHEREUPON EXHIBIT NUMBER 201, AGREEMENT COAL LOGIC AND WASH BIRD AND HIGHLAND ENERGY JUNE 17, 2011, WAS ADMITTED)

(WHEREUPON EXHIBIT NUMBER 202, AGREEMENT NAV VET TRUCKING AND KENTUCKY GEM, LLC JUNE 17, 2011, WAS ADMITTED)

(WHEREUPON EXHIBIT NUMBER 203, AGREEMENT COUGAR ENERGY, NAV VET TRUCKING AND ENTERPRISES, MINE GAMES, SILVERBIRD AND HIGHLAND HOLDINGS, WAS ADMITTED)

(WHEREUPON EXHIBIT NUMBER 204, EMAIL HIGHLAND HOLDINGS ELECTIONS, WAS ADMITTED)

(WHEREUPON EXHIBIT NUMBER 205, FOUR LETTERS DATED 10/12/2011 HIGHLAND HOLDINGS ELECTIONS, WAS ADMITTED)

(WHEREUPON EXHIBIT NUMBER 206, THREE FEDEX SHIPMENT CONFIRMATIONS, WAS ADMITTED)

(WHEREUPON EXHIBIT NUMBER 207, KIS CHECKING UPDATED 12/10/2011, WAS ADMITTED)

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1 (WHEREUPON EXHIBIT NUMBER 208, FIVE KENTUCKY INDUSTRIAL
2 SERV. PURCHASE ORDERS, WAS ADMITTED)

3
4 (WHEREUPON EXHIBIT NUMBER 209, LETTER TO PARTNERS
5 REFERENCING THACKLIGHT MINE 6/4/2012, WAS ADMITTED)

6
7 (WHEREUPON EXHIBIT NUMBER 210, NORWEST CORP TECH REPORT
8 10/4/2012, WAS ADMITTED)

9
10 (WHEREUPON EXHIBIT NUMBER 211, LETTER AND ACCOUNTING
11 11/1/2012, WAS ADMITTED)

12
13 (WHEREUPON EXHIBIT NUMBER 212, OVERRIDING ROYALTY INTEREST
14 ASSIGNMENT 4/1/2013, WAS ADMITTED)

15
16 (WHEREUPON EXHIBIT NUMBER 213, REASSIGNMENT OF COAL LEASES
17 4/1/2013, WAS ADMITTED)

18
19 (WHEREUPON EXHIBIT NUMBER 214, MEETING AGENDA 10/29/2013,
20 WAS ADMITTED)

21
22 (WHEREUPON EXHIBIT NUMBER 215, ITINERARY 10/29/2013, WAS
23 ADMITTED)

24
25 (WHEREUPON EXHIBIT NUMBER 216, VENDOR SYNOPSIS 2/1/2013,

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1 WAS ADMITTED)

2
3 (WHEREUPON EXHIBIT NUMBER 217, 9/30/2013, WAS ADMITTED)

4
5 (WHEREUPON EXHIBIT NUMBER 218, 90 DAY EXPENSE REPORT, WAS
6 ADMITTED)

7
8 (WHEREUPON EXHIBIT NUMBER 219, USE OF PROCEEDS 90 DAY
9 BUDGET AS OF 10/15/2013, WAS ADMITTED)

10
11 (WHEREUPON EXHIBIT NUMBER 220, PROFIT AND LOSS STATEMENT
12 2012, WAS ADMITTED)

13
14 (WHEREUPON EXHIBIT NUMBER 221, USE OF PROCEEDS, WAS
15 ADMITTED)

16
17 (WHEREUPON EXHIBIT NUMBER 222, FORM 1120 FOR 2012, WAS
18 ADMITTED)

19
20 (WHEREUPON EXHIBIT NUMBER 223, THREE LETTERS DATED JULY
21 2013, WAS ADMITTED)

22
23 (WHEREUPON EXHIBIT NUMBER 224, CASIMIR CAPITAL FOLDER, WAS
24 ADMITTED)

25

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1 (WHEREUPON EXHIBIT NUMBER 225, WHETSTONE EQUIPMENT CASIMIR
2 FOLDER, WAS ADMITTED)

3
4 (WHEREUPON EXHIBIT NUMBER 226, WASH PLANT CASIMIR FOLDER,
5 WAS ADMITTED)

6
7 (WHEREUPON EXHIBIT NUMBER 227, DEBT CASIMIR FOLDER, WAS
8 ADMITTED)

9
10 (WHEREUPON EXHIBIT NUMBER 228, LAND ACQUISITIONS CASIMIR
11 FOLDER, WAS ADMITTED)

12
13 (WHEREUPON EXHIBIT NUMBER 229, STEEL HOLLOW CASIMIR FOLDER,
14 WAS ADMITTED)

15
16 Q. Have they been admitted, Your Honor?

17 THE COURT: Yes, they have.

18 Q. Mr. Rose, I'm sure that Mr. Yarbrough has
19 some questions for you. Thank you.

20 THE COURT: Mr. Yarbrough?
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CROSS EXAMINATION BY MR. YARBROUGH:

Q. Good afternoon, Mr. Rose.

A. Good afternoon, Sir.

Q. What is your legal name?

A. Brian Rose.

Q. Did you at any time change your legal name?

A. Yes, Sir.

Q. What was that?

A. In 2013 I had an attorney file a use of name under John Hankins in Sevier County, Tennessee.

Q. And why did you do that?

A. At the time I'd been using John Hankins for New Century Coal fraudulently and it was a way to legitimize and try to minimize the exposure to myself for committing the fraud.

Q. Assuming, Mr. Rose, somebody like yourself probably had a lot of friends at that time?

A. Okay. Yes, Sir.

Q. Friends and associates?

A. Yes, Sir.

Q. How did you explain that to them?

A. They all knew me as Brian Rose still. They didn't, in my personal life I used Brian Rose. To investors and business I used John Hankins.

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1 Q. How were you able to keep those two
2 separate?

3 A. It was like living a double life, very
4 tough.

5 Q. Kind of hard to do, isn't it?

6 A. Yes, Sir.

7 Q. Requires to you remember when you see
8 somebody on the street or in the room, say does this person
9 know me as Brian Rose or John Hankins, is that the way you
10 do it?

11 A. Yes, Sir. Correct.

12 Q. Did you ever mess up?

13 A. I believe once or twice with Appalachian
14 Collieries. I talked to one of their partners, there were
15 two of them, Jeff Samples, I talked to him as John Hankins
16 and one of the other gentleman as Brian Rose, yes, Sir.

17 Q. What did they say about that?

18 A. They didn't catch it. I caught it. It
19 wasn't good.

20 Q. How many years did you go by John Hankins?

21 A. You're talking approximately from the
22 meeting in February of 2012 in Missouri is when I started
23 using it until I was arrested in June of 2014.

24 Q. A little more than two years?

25 A. Yes, Sir.

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1 Q. So two years living, as you said, a double
2 life, is it true that you only messed up the one time?

3 A. Yes, Sir. To my knowledge.

4 Q. So you're the type person, Mr. Rose, are
5 you not, that is able to think quickly on your feet and say
6 whatever is necessary to keep the scam going, are you not?

7 A. I would consider myself a person who does
8 think quick on his feet. Yes, Sir.

9 Q. And in order to pull off something like
10 having two names, that's very difficult, isn't it?

11 A. It was like living a double life.

12 Q. Yes, Sir. Now one of our witnesses this
13 morning mentioned that you said a prayer at the meeting in
14 Missouri, is that true?

15 A. We probably prayed before every meal, yes.

16 Q. Is that something you do all the time or
17 were you just trying to impress the investors?

18 A. I usually try to bless the food myself and
19 stop at least to say a prayer. I make a much more
20 conscious effort today than I did back then. But most of
21 the time when we met any investors in a group setting we
22 would say a prayer.

23 Q. My question is, Sir, more directly, had you
24 not investigated the background of Mr. Odens and found out
25 that he was active in a church out in California?

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1 A. I did not know that until I met him for, I
2 believe it was the first or second time, I believe he told
3 me that.

4 Q. Right. Is it not true you were trying to
5 impress him when you said that prayer?

6 A. No, that is not true.

7 Q. Why were you saying it?

8 A. Because I wanted to pray and say thank you
9 for my food.

10 Q. But you just said a moment ago that's not
11 something you normally did back then?

12 A. I always bless food and I always bless food
13 with partners as well.

14 Q. So you would have done that at these other
15 meetings in Knoxville, Corbin and Toronto and all the other
16 places we talked about?

17 A. Anytime I pause for a second and remember
18 where my food came from or how I got it I say a prayer.

19 Q. I'm asking about a public prayer?

20 A. That's what my answer is, Sir.

21 Q. I see. Now Mr. Rose, a moment ago Ms.
22 Smith asked you a very poignant question about what you
23 thought you had done that constituted fraud in this case.
24 Remember that question?

25 A. Yes, Sir.

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1 Q. And you went down a list of what you
2 thought were fraudulent actions in this operation of New
3 Century Coal, is that right?

4 A. Yes, Sir.

5 Q. If I miss something I want you to help me
6 but I'll try to be complete. You said overselling, the
7 company was overselling the stock, what did you mean by
8 overselling?

9 A. In an offering document you have a private
10 placement memorandum which is a Reg D compliance document
11 which outlines what you are offering. That means if you
12 were offering 20 percent of the Whetstone mine you offer it
13 in the form of units. Each unit might own two percent and
14 there would be ten units. If you sell more than that ten
15 units then that would be overselling it.

16 Q. Overselling?

17 A. Yes, Sir.

18 Q. All right, who did that?

19 A. Who did...

20 Q. Who did the overselling?

21 A. Who oversold it or who wrote the
22 document?

23 Q. Let's start with writing the document?

24 A. That document was drafted by Mandy
25 Ward, Hugh Sackett and myself.

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1 Q. And who actually did the selling?

2 A. People like Brent Loveall, Bobby
3 McGregor, what would be a term called the closers.

4 Q. Okay. You also mentioned there was
5 some fraud in the ownership of Thacklight Mine. And
6 actually didn't you prepare a document that was made
7 to look just like Torchlight and used a lot of the
8 same numbers and Mr. Thacker had given you, did you
9 prepare that?

10 A. If you take the marketing materials for
11 the offering, is that what you're referring to?

12 Q. Yes.

13 A. Those would have been pulled from Mr.
14 Thacker's numbers or what Mr. Thacker represented to
15 us and then if it wasn't sufficient, what Mr. Thacker
16 gave, if it didn't have large enough reserves, I
17 would then at the print shop edit it and increase the
18 reserves or increase the amount of tonnage that could
19 be mined.

20 Q. It is you that did that?

21 A. In the marketing materials, yes, Sir.
22 Myself and/or Mr. Sackett.

23 Q. You're saying that Mr. Thacker was
24 aware of it?

25 A. No. Once he sent the document to me

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1 electronically with those, the coal seam names and
2 the reserves associated with that he would have not
3 known that I changed it. He never saw any offering
4 or marketing materials.

5 Q. So you alone did that?

6 A. Yes, with Mr. Sackett, Sir.

7 Q. You said there was misrepresentation of the
8 annual rate of return, who did that?

9 A. The salesman or anyone who solicited the
10 investment.

11 Q. Who prepared the documents to try to backup
12 that misrepresentation?

13 A. Myself, the print shop and Hugh Sackett.

14 Q. Hugh Sackett was a key figure in all
15 this, apparently, isn't that true?

16 A. Yes, Sir. I learned from Hugh Sackett
17 and my father.

18 Q. Let's stop a second and go to that, Sir.
19 How did Hugh Sackett know so much about doing things like
20 this?

21 A. Hugh Sackett has raised money since the
22 eighties. He had a brokerage firm in 1982 or 1983 that he
23 raised about six or seven hundred million for and got a
24 permanent injunction because of it. The SEC gave him a
25 lifetime ban from soliciting investments. He was a

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1 principle at that brokerage firm in the eighties.

2 Q. So you learned a lot of these things
3 from Hugh Sackett?

4 A. Yes, Sir.

5 Q. The next one was misrepresentation of
6 the age of the company. Who actually thought of
7 that?

8 A. I don't know where I learned it from
9 but it was a practice that you buy a shelf
10 corporation and give it history. I believe I told Ms.
11 Key what year and which one to buy because it was
12 about three or four thousand dollars cheaper to buy
13 it in Wyoming and domesticate it to Nevada versus
14 buying a Nevada company. I told Ms. Key to do that.

15 Q. So that was you as well?

16 A. I told Ms. Key to buy it, yes, Sir.

17 Q. Ms. Key actually carried it out but you
18 told her how to do it?

19 A. Yes, Sir.

20 Q. And you said there was a
21 misrepresentation of proceeds, does that mean sales
22 of product?

23 A. No, misrepresentation of use of
24 proceeds. The use of proceeds is a document, it has
25 vendors listed, it's a vendor report. At the meeting with

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1 Mr. Phillips and Mr. Plummer we demonstrated how we spent
2 two million dollars. A lot of the companies listed on
3 there were shell companies and/or salesman that got nothing
4 more than a commission.

5 Q. Who created that document.

6 A. At my direction it was Ms. Buckles
7 and/or Jenny Key. I believe it was Ms. Key, not Ms.
8 Buckles.

9 Q. Were either Ms. Buckles or Ms. Key
10 charged in this case?

11 A. Ms. Key was, Sir.

12 Q. Not Buckles?

13 A. No, Sir.

14 Q. Do you know why?

15 MS. SMITH: Objection, Your Honor, he has no,
16 there's no basis for him to know why or why not someone...

17 Q. If he knows.

18 THE COURT: The question is do you know why, do
19 you know?

20 Q. The question was do you know why?

21 A. No, Sir.

22 Q. Okay. You said there was
23 misrepresentation of who you were, I guess that's the name
24 thing again, right?

25 A. Yes, Sir.

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1 Q. And that was you and Bobby McGregor who
2 pretended to be JR, III, is that right?

3 A. Yes, Sir.

4 Q. And then Ray Spears, I guess?

5 A. Yes, Sir.

6 Q. He made up a name also?

7 A. Yes, Sir. He used Brock Hamilton.

8 Q. Why did he do that, do you know?

9 A. He did it at, he changed his name in
10 Tennessee Court because I told him if you're going to use
11 Brock Hamilton you need to go change your name, at least
12 try to legitimize it or at least cover the track and reduce
13 the amount of the fraud.

14 Q. Did Bobby McGregor also change his name
15 legally?

16 A. Yes, he did, Sir.

17 Q. So actually all three of these name changes
18 were legally done?

19 A. Yes, Sir.

20 Q. Then you said misrepresentation of buy
21 time, I'm not sure I understood that, did I misunderstand
22 you? It was some type of, you mentioned the word time when
23 you mentioned the fraud. I'm sorry, I didn't get a good
24 note on it. Can you remember what that was? Could that be
25 when you bought pieces of equipment or spend investment

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1 proceeds? You just don't know what that one is.

2 A. No, I don't know what the time, I'm trying
3 to think how to relate it to the word time.

4 Q. Okay. I'm sorry.

5 A. I can't remember the word time.

6 Q. Okay. Then you said there was a false
7 distribution report. What is that.

8 Q. We paid to partners in Meadow Creek,
9 Whetstone and Thacklight. We paid out about
10 approximately \$350,000.00 to \$380,000.00. It was to
11 represent coal that was sold and coal that was mined.
12 However, the amount that was mined was about ten
13 percent of what we said. The price at which it was
14 sold was roughly 50 percent of what we represented to
15 the partners who we sent the money to.

16 Q. Who prepared that?

17 A. Matt Sherman did.

18 Q. And Matt Sherman was not charged either,
19 was it?

20 A. No, Sir.

21 Q. You said there was internal press release.
22 I didn't understand if it was released to the press how is
23 it internal?

24 A. We would draft them internally, create
25 press releases and then go to the print shop at Shell Media

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1 and release them over the wire. It would be an internal
2 press releases that we then sent out over the wire through
3 a third party.

4 Q. Who did that?

5 A. Myself and Ray Spears.

6 Q. You said you overstated assets?

7 A. Yes.

8 Q. What were the assets you overstated?

9 A. Mining equipment as well as the reserves
10 and the marketing materials solicited to each LLP.

11 Q. Who did that?

12 A. The asset list, I believe it was Bobby
13 McGregor or myself. And in the offering, in the, it was
14 myself as well, Sir.

15 Q. Then the last one that I wrote down or
16 recall, you may add to the list, was the value of New
17 Century Coal, how was that misrepresented?

18 A. The valuation of New Century Coal?

19 Q. Yes, Sir.

20 A. It was misrepresented because we took the
21 reserve reports and represented to investors and
22 spreadsheets on reserves that we didn't own and assigned
23 value to them that was not true and assigned reserves
24 associated with them that were not real.

25 Q. And who did that?

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1 A. The reserve reports with inflated numbers I
2 assigned myself, that would be myself and or Bobby
3 McGregor and Hugh Sackett.

4 Q. Is there any other way that you can think
5 of that you committed fraud with respect to New Century
6 Coal besides the ones you mentioned earlier to Ms. Smith
7 and the ones we've just gone through?

8 A. Now I remember your time question. It was
9 the one that we didn't mention was the documents that was
10 prepared to the SEC and the investors to buy yourselves
11 time when they were asking questions and we were misleading
12 them as to why their mines were not in production and to
13 why there were delays.

14 Q. So the buy time does make sense now?

15 A. Yes, Sir.

16 Q. And who did that?

17 A. That was Ray Spears, myself and Bobby
18 McGregor and Hugh Sackett.

19 Q. Any other way you can think of that fraud
20 was committed?

21 A. We said the representation of the names?

22 Q. Yes, we talked about that. You, Mr.
23 Spears and Bobby McGregor.

24 A. Overstating the asset, the valuation. We
25 had a financial report that was sent to potential investors

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1 that were buying stock and we often times, when soliciting
2 that, I know at one time there was a tax return circulating
3 to Mr. Plummer and Dr. Phillips that represented
4 financials, a fraudulent tax return. The tax return
5 itself reflected around \$38 million in revenue.

6 Q. Who did that?

7 A. Ms. Key prepared it based upon a
8 financial statement that had been previously provided
9 by Ray Spears, Bobby McGregor and I worked with Ms.
10 Key to put it in an actual return to cover up the other
11 work product.

12 Q. And Ms. Key had been charged but she hadn't
13 pled guilty, right?

14 A. That is correct, Sir.

15 Q. Any other way you can think of that fraud
16 was committed?

17 A. The equity register that reflects the
18 shareholders that we sent to the SEC and the other
19 investors on the board of directors was fake.

20 Q. Would that also be something that you
21 prepared?

22 A. It was done by Hugh Sackett. He was the
23 corporate secretary.

24 Q. Right.

25 A. And I reviewed the work product and worked

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1 on putting it in a final form before we produced it to SEC.

2 Q. All right. Any other way you can think of
3 that fraud was committed?

4 A. I believe that's it, Sir.

5 Q. That's it?

6 A. That's all I can think of off the top of my
7 head, Sir.

8 Q. Okay. It took us a while and you
9 remembered them, did you?

10 A. It did take a while...

11 Q. I'm just saying you remembered them all,
12 did you not?

13 A. I remember every one that I can recall,
14 Sir.

15 Q. Okay. Of course you realize that Johnny
16 Phillips was not mentioned, do you not?

17 A. Yes, Sir. He did not draft those
18 documents, Sir. The majority of everything I spoke about
19 was Mr. McGregor and myself.

20 Q. He was not directly involved in any of
21 those things you just named?

22 A. He was involved in representations to Mick
23 and Doc, about names when we went to Missouri.

24 Q. Let me ask you about that, Sir.

25 A. And the synopsis at the board of director

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1 meeting which made the shell vendor...

2 Q. How, I'm sorry, I don't mean to
3 interrupt you. When you say that he misrepresented
4 are you saying that you heard Johnny Phillips say to
5 some third party that's John Hankins or that's Brock
6 Hamilton, are you saying that he did that?

7 A. I'm saying during that meeting he
8 probably addressed me as John Hankins.

9 Q. That's not what I asked you, Sir. You
10 said that he misrepresented...

11 A. To someone else?

12 Q. Yes.

13 A. I don't know if he went over to Mr.
14 Plummer and said, by the way this is John Hankins...

15 Q. Yes, and you said you don't know that.
16 I'm asking what you do know?

17 A. What I do know is that he called me
18 John Hankins during the meeting.

19 Q. I understand that, Sir. You're not
20 saying that he stated to some third party,
21 particularly an investor, that's who that is, you
22 didn't hear him do that at any time, did you?

23 A. Not in the presentation that you're
24 saying. More in the format that I'm saying.

25 Q. And if people are using other names and

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1 they're telling him for purposes of this trip we're
2 using these names and those names ultimately become
3 legal, what are you saying the misrepresentation is?

4 A. The misrepresentation is any material
5 fact in which an investor has a right to know before
6 they make a decision. It was a material fact for an
7 investor to know that my father was just getting out
8 of prison, that I had previous security violations
9 and I was manipulating who I was to hide these.
10 That's a material fact.

11 Q. Okay. And who made that misrepresentation
12 besides you?

13 A. The other people that were there that
14 addressed me as John Hankins acknowledge that
15 misrepresentation in my opinion.

16 Q. I see. In your opinion, and apparently
17 you've been studying some law in the last 21 months...

18 A. No, Sir.

19 Q. ...that it's a misrepresentation if I know
20 you to be John Smith and you say hey, all right, today I'm
21 going to be John Roberts, and I don't say anything that
22 I've misrepresented something, is that what you're telling
23 this Jury?

24 A. Ask that again, Sir, please?

25 Q. If you tell me, if I know your name is

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1 really John Smith and you tell me that right now I'm going
2 to be John Roberts and I stand around and don't say
3 anything while you introduce yourself as John Roberts, are
4 you telling the Jury that I've misrepresented something?

5 A. If you use a fake name to address somebody
6 else you misrepresent who you are.

7 Q. Who I am or who you are?

8 A. All I'm saying is that if you use a fake
9 name to address somebody else you misrepresent who you are.

10 Q. When you first met with the FBI Mr. Rose,
11 did you tell the truth?

12 A. From the very first meeting I had with the
13 FBI I told 100 percent the truth.

14 Q. One hundred percent?

15 A. Yes.

16 MS. SMITH: Objection, Your Honor, he's met
17 with the FBI several times including the day he was
18 arrested. I think he needs to verify the day he's talking
19 about.

20 THE COURT: I think he just said that every
21 time he's talked to the FBI he's told the truth.

22 Q. That's a good idea, Your Honor, I'll
23 accept the amendment. The first day that you got
24 arrested and you talked with the FBI were you
25 truthful that day?

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1 A. No, Sir.

2 Q. Pardon?

3 A. The answers I gave the FBI and the
4 secret service the night of my arrest were very
5 ambiguous and very indirect and were very evasive.

6 Q. Then were they inaccurate?

7 A. I can't recall. I would have to see
8 the questions and the answers I gave, Sir.

9 Q. I'm sorry, Your Honor, he's right there
10 were a lot of meetings. I'll have to sift through to
11 see if I do. I don't think I do. Why don't we look
12 for that Mr. Rose and we'll come back to it.

13 A. Yes, Sir.

14 Q. After being evasive with the secret
15 service and the FBI on the first night did you change
16 your approach to them at some later time?

17 A. After I entered a guilty plea, that's
18 when I had a, what I would refer to as a come clean
19 tell all, don't hold anything back.

20 Q. Okay. And your guilty plea was entered
21 on what date?

22 A. It was entered on January 15th, Sir,
23 the 12th or the 15th.

24 Q. Actually before the guilty plea there
25 was a Detention Hearing, Mr. Rose, wasn't there?

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1 A. After I was arrested June 17th there
2 was a Detention Hearing approximately, I think,
3 somewhere between three and seven days after.

4 Q. Okay. There was another one October
5 the 6th of 2015, was there not, where you testified?

6 A. Yes, Sir.

7 Q. Had you already been truthful with the
8 agents before you went to that detention Hearing?

9 A. I had already debriefed and went over
10 assets, my role in the conspiracy, prior to that
11 date, yes, Sir.

12 Q. Your statement to the FBI on or about
13 December 4, 2014, is that the one you're referring to
14 or is that much later, isn't it. You'd already
15 spoken to them before the Detention Hearing you said?

16 A. I believe you have it confused, Sir.

17 Q. Yes.

18 A. The Detention Hearing was a Detention
19 Hearing in 2015.

20 Q. That's right. So you had already come
21 clean with the FBI and told them the truth before the
22 Detention Hearing took place?

23 A. I'd already told them about my role in
24 the conspiracy and anyone else involved prior to my
25 Detention Hearing in 2015.

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1 Q. I'll ask you, Sir, if it's not true
2 that in your initial statements to the agent that is
3 summarized in many pages, you never mention Johnny
4 Phillips?

5 A. Ask that question again, I'm sorry?

6 Q. Isn't it true that in your original
7 statement to the agents, which was quite lengthy, you
8 never mentioned Johnny Phillips?

9 A. The very first time I debriefed with
10 the agents Mr. Phillips was not mentioned, Sir.

11 Q. Then later on when you were trying to,
12 I guess the Detention Hearing was on a Motion by you
13 to obtain bond, is that correct?

14 A. Yes, Sir.

15 Q. Do you remember telling Judge, I
16 believe it was in this Courtroom before Judge Greer,
17 is that correct?

18 A. Yes, Sir.

19 Q. Right. And do you remember telling him
20 substantially what you said here, maybe a little
21 different, that your biological name that you adopted
22 was in 1980 when you were born and you moved in 2012
23 or 2013 to honor that name, do you remember telling
24 the Judge that?

25 A. No. In my initial Detention Hearing in

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1 2014 after my arrest the change for the legal name
2 and the basis for the legal name, where John Hankins
3 came from was from my biological parents.

4 Q. But haven't you just told the Jury
5 today that the purpose for the name change was to
6 avoid any identification with your father and it was
7 for the purpose of fraud?

8 A. The reason I changed the name legally
9 was to cover up where I had committed the fraud, to
10 mislead the people and doing it without a legal name
11 change. So I made Motion a year later to try to go
12 back and cover up the lies I told to the investors
13 and to minimize my exposure.

14 Q. May it please The Court I'd like to
15 pass the transcript to him to he can read this, page
16 25 of the transcript of October 6, 2015? Read it to
17 yourself, Sir and see if it helps you recollect how it
18 happened in front of Judge Greer? Does that help?

19 A. I see the question and I see where I've
20 referenced a biological parent and making a legal change.

21 Q. Right.

22 A. Because, the document that reflected in the
23 Sevier County Court, that's exactly what the document says.

24 Q. You don't say anything about changing your
25 name because you wanted to defraud investors or

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disassociate yourself from your father, do you?

A. No, the document in Sevier County doesn't say that.

Q. What was the question that you were answering?

A. The question was, "Do you have any documents with any other names?"

Q. Yes. And you had a driver's license?

A. No, Sir.

Q. You never had a driver's license in John Hankins?

A. No, Sir.

Q. What documents did you have?

A. That's the only document.

Q. The Court Order?

A. The Court Order that shows that I changed it to reflect biological name.

Q. Did you have to swear under oath when you got that Order, Mr. Rose, that you were not defrauding creditors?

A. I don't, I know I signed something saying something about creditors and committing any future fraud and committing, I don't know if it was sworn in or a signed document.

Q. In Tennessee in order to get a name change

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1 you have to swear that you're not doing it to defraud
2 creditors and others, isn't that true?

3 A. I don't know if that's true by Tennessee
4 law.

5 Q. You remember signing something to that
6 effect?

7 A. Yes.

8 Q. That was false too, wasn't it?

9 A. Yes, Sir. I believe it says something
10 about defrauding creditors or trying to avoid Judgments.

11 Q. Right, which is exactly what you were
12 doing?

13 A. I was not avoiding Judgment on a creditor,
14 no, Sir.

15 Q. No defraud a creditor?

16 A. It wasn't a creditor who I defrauded.

17 Q. You don't think an investor is also a
18 creditor, someone who is giving you money to invest?

19 A. My understanding of a creditor would be
20 somebody who you went and applied for a mortgage or a
21 loan and how their credit is listed on your house or
22 you have a Judgment outstanding against you, they are
23 a creditor.

24 Q. Okay. I won't debate that with you.
25 If we could have the transcript back, please? Just

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hand that to the Clerk? On that very same page, Mr. Rose, you were asked about your [REDACTED] use, were you not?

A. I believe I was during that Hearing.

Q. Remember what you told the Judge about that?

A. No, Sir. I do not recall.

Q. Whether you remember what you told the Judge or not, do you know what your [REDACTED] use history is?

A. It's quite extensive.

Q. Quite extensive. Tell the Jury all the [REDACTED] that you have used?

A. I've [REDACTED] at a very young age. I've done [REDACTED], [REDACTED], [REDACTED] [REDACTED], I've done [REDACTED], in 2003 I was suspended from Nascar for [REDACTED].

Q. Has it caused you [REDACTED] problems?

A. It has created a situation when I was [REDACTED] [REDACTED] of about two to three weeks. I can't remember the year but yes, Sir. It caused an issue because I was having [REDACTED] [REDACTED] When I stopped [REDACTED] [REDACTED] an

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1 [REDACTED] Dr. Ball, gave me a
2 [REDACTED] for them in Louisville, Kentucky. I was
3 taking them daily along [REDACTED] in the
4 evenings after work. When I [REDACTED] it created
5 [REDACTED]. It took me
6 a while [REDACTED]. Therefor I went to an
7 [REDACTED] three days a week to [REDACTED]
8 and [REDACTED].
9

10 Q. Do you remember being asked in the Hearing
11 whether you reported [REDACTED] [REDACTED]
12 provider in June of 2013?

13 MS. SMITH: I'm going to object, Your Honor, I
14 don't know where this is going and how...

15 Q. This is going to his mental state and his
16 ability to remember, Your Honor.

17 MS. SMITH: I don't know how that shows
18 memory.

19 THE COURT: I don't see how that goes to
20 memory.

21 Q. The answer, if Your Honor please...

22 THE COURT: Sustained, Mr. Yarbrough.

23 Q. Were you suicidal, Mr. Rose?

24 MS. SMITH: Objection, I don't know how this
25 goes to memory.

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Q. In June of 2013 were you suicidal?

THE COURT: Just a minute, Mr. Yarbrough, you've got to wait on me to rule on the objection. Why are you offering this?

Q. To prove, Your Honor, that this man was [REDACTED] and it might reflect upon [REDACTED] to recall truthful information.

THE COURT: It might?

Q. Yes, I think the Jury is entitled to know that.

THE COURT: Sustained.

Q. Mr. Rose, when you were making up financial reports and committing fraud on the investors did you ever have meetings with Mr. Sackett and Bobby McGregor and some of the other principles and discuss how you could do it better?

A. That is a very vague question. I don't know if you mean how to do what better, how to commit the fraud better, how to raise money better, how to make the marketing material more attractive, if you could be a little more specific, Sir?

Q. I'll be happy to, Sir. Did you ever meet with Mr. Sackett to learn how to phony up financial reports better?

A. No, Sir. Not to my knowledge.

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1 Q. Did you ever meet with Bobby McGregor or
2 Mr. Loveall to help them misrepresent things to investors
3 so they could make more money?

4 A. Bobby McGregor and I had a meeting when
5 we were preparing the distribution statements and two or
6 three times back and forth along with Matt Sherman's
7 original to make it look more presentable, and/or to make
8 it better.

9 Q. So you met...

10 A. We did work on documents together, yes.

11 Q. And you did that for the purpose of getting
12 money from these folks, in some cases millions of dollars,
13 that you're not entitled to?

14 A. Yes, Sir.

15 Q. Is that right?

16 A. Yes, Sir.

17 Q. How long was it after your arrest in June
18 2014 before you decided to go to The Government and tell
19 the truth?

20 A. I believe I didn't meet with The Government
21 until December of that year, Sir, of 2014.

22 Q. Would that be about six months?

23 A. Yes.

24 Q. During that interval, that six month
25 interval, were you simply in jail and talking to no one?

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1 A. I was in jail and I talked to cell mates,
2 other inmates and family, friends.

3 Q. But not agents, right? Didn't talk to the
4 agents?

5 A. Correct.

6 Q. You didn't talk to a representative of the
7 Federal Government?

8 A. Correct.

9 Q. What occurred for you to have a change of
10 heart to talk to The Government about this case?

11 A. If I told you it would be discussing
12 discussions I had with my attorney that would be
13 attorney/client privilege, information and conversations on
14 why I decided to plead guilty. I don't see how or why what
15 me and my attorney discussed would impact you or your
16 client. I'll ask if I have, Mr. Judge Greer, if I have to
17 disclose my conversation with my attorney to him?

18 THE COURT: I believe the question is what
19 caused you to have change of heart and start being honest?

20 A. It was conversations that I had with my
21 attorney.

22 Q. I'm not asking for what you said to your
23 attorney, even though that may become relevant, we don't
24 know. The Judge would have to rule on that.

25 A. Okay.

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1 Q. But I'm going to ask you Sir that what
2 really happened was that your lawyer explained to you the
3 only way you were going to get any kind of a sentencing
4 break in this case was to cooperate with the government?

5 A. My attorney actually told me the biggest
6 break in everything that I could get was the three points
7 from the acceptance of responsibility was more than worth
8 anything and if I sacrificed those three points at the high
9 end of the guideline it would be detrimental. He
10 recommended, based on the facts of the case, what he knew,
11 that my acceptance of responsibility was the most important
12 thing.

13 Q. I'll have to ask you to clarify that, Mr.
14 Rose. I didn't catch it. I'm afraid the Jurors might not
15 have either. I think the question was isn't it true that
16 your attorney explained to you that the only way for you to
17 get a sentencing break in this case was to cooperate with
18 The Government?

19 A. No. My attorney told me that the
20 acceptance of responsibility was the main thing that I
21 needed to focus on.

22 Q. You're saying that the advice that you got
23 was you could get the three points off for acceptance of
24 responsibility without cooperating with The Government?

25 A. My attorney made the recommendation that

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1 based on the facts of the case and how important acceptance
2 of responsibility was on that guideline, it was his
3 professional opinion he told me to accept my plea. It
4 didn't have anything to do with cooperation.

5 Q. So without a deal you just decided it was
6 worth to get the three levels and go ahead and plead guilty
7 to the indictment?

8 A. I pled guilty because I was guilty.

9 Q. But I asked you if it's true that you
10 decided that it was worth it for you to go ahead and plead
11 guilty and get those three levels without a deal?

12 A. If you plead guilty you get three levels
13 off for acceptance of responsibility to avoid the Trials
14 and to avoid, for better service of The Courts, they give
15 you a break. My attorney made a recommendation that I do
16 that.

17 Q. And up until that time, Sir, isn't it true
18 that you had told the agents nothing about Johnny Phillips?

19 A. In what time are you specifying, Sir?

20 Q. Any time between when you were arrested and
21 when you decided to plead guilty?

22 A. That is correct, up until that time when I
23 entered my plea I had not debriefed with The Government.

24 Q. Right. But then you did debrief, isn't
25 that right?

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A. Yes.

Q. Who was present at that meeting, the first meeting?

A. There was at least three agents each time. I would need you to show me a document, a memoranda of that meeting for me to remember which agents were there.

Q. Mr. Rose you've testified about specific things that happened in 2011, have you not?

A. Yes, I have.

Q. And in 2012?

A. Yes, Sir.

Q. And in 2013?

A. Yes, Sir.

Q. And the meeting with the agents was at the very end of 2014, was it not?

A. Yes, Sir.

Q. But you can't remember that?

A. Because there were three or four days back to back and the agents rotated dependant on which agency it was. I can tell you what was discussed during the meetings but I can't specifically cite which agent was on which day, I can't do.

Q. Remember when you were being questioned by Ms. Smith earlier, Mr. Rose, that you told the Jury that you had asked Johnny Phillips to do things that were out of

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1 character for me, pointing to yourself, do you remember
2 that answer?

3 A. I remember saying out of character, yes,
4 Sir.

5 Q. Did you mean out of character for yourself
6 or out of character for him?

7 A. I asked of Mr. Phillips to do things that
8 were out of character for himself, Sir.

9 Q. You knew him to be a person of good
10 character, did you not?

11 A. Yes, Sir.

12 Q. A good family?

13 A. Yes, Sir.

14 Q. A friend?

15 A. Yes.

16 Q. And someone, didn't you say repeatedly
17 during your direct examination, that you needed him?

18 A. I wouldn't have gotten the coal leases
19 without him, Sir.

20 Q. You needed him for his knowledge, right?

21 A. Yes, Sir.

22 Q. You needed him for, what you referred to on
23 another occasion as a squeaky clean personality or
24 character or something to that effect, do you remember
25 saying that?

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1 A. Yes, Sir.

2 Q. And he is squeaky clean, isn't he?

3 A. Anything that Mr. Phillips did was because
4 I asked him, I enlisted or asked for his efforts. He is a
5 person of good standing and moral value and I brought him
6 down. I asked him to do stuff that I regret and I have to
7 live with.

8 Q. Right after you said that about his
9 character you said that your knowledge of this fraud was
10 greater than any other person, isn't that correct?

11 A. I would say I know more than anyone else,
12 yes.

13 Q. And at times that included lying to or
14 misrepresenting things to your own associates, didn't it?

15 A. Yes, Sir. We often times misrepresented
16 things to each other.

17 Q. Why would you do that?

18 A. For example, say an investor invested
19 \$100,000.00. Bobby McGregor may tell somebody it was
20 \$50,000.00 that way he had to pay them a lesser percentage.

21 Q. So no honor among thieves, is that it?

22 A. There was no honor among us when we were
23 splitting up or doing commissions and stuff, Sir.

24 Q. And because you needed him for his
25 knowledge of the coal industry and these other things we've

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1 discussed, would you say it's fair to describe your
2 relationship with Johnny Phillips that you actually used
3 him?

4 A. I used Johnny Phillips for his expertise
5 and to bring me deals and pay them and to be a partner,
6 someone I could turn over a project to and it get done.

7 Q. On several different occasions a moment ago
8 and during direct you said something about the money. You
9 said you and Mr. Phillips used the term lunch money when
10 talking about his salary, remember that?

11 A. Yes.

12 Q. Do you have any idea how much Johnny
13 Phillips was actually paid in the almost four years he was
14 associated with you?

15 A. From October of 2011 to June 2014 I believe
16 it's close to around [REDACTED].

17 Q. Pretty close, about [REDACTED], which if
18 you divide it out it would be less than \$15,000.00 a year,
19 right?

20 A. About twenty, yes, Sir.

21 Q. And you knew that he had other work that he
22 was trying to do to make ends meet, the insurance business,
23 right?

24 A. Yes, Sir.

25 Q. And sometimes he had work involving highway

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1 signs, I believe, were you aware of that?

2 A. Yes, Sir.

3 Q. So you knew Mr. Phillips was having to do
4 other work outside of what you required him to do in order
5 to make his living, isn't that right?

6 A. Yes, Sir. Insurance would have been first
7 and coal stuff would have been second as far as hours of
8 the work week.

9 Q. And yet, Sir, isn't it true that Mr.
10 Phillips was actually going out into the coal mine fields
11 on a regular basis, going to county seats and searching
12 titles, acquiring leases and signing them and having them
13 recorded and doing real work to make it possible for you to
14 mine coal, isn't that true?

15 A. Yes, Sir.

16 Q. And yet you were paying him something like
17 minimum wage while Mr. Loveall you said made [REDACTED] in
18 2012, is that right?

19 A. That's correct.

20 Q. And I'm going to ask you again, Sir, if you
21 would not agree then if you were using him?

22 A. If you compare what Mr. Loveall made and
23 what Mr. Phillips did, they are not comparable. One was
24 directly related to commission-based compensation, the
25 other one was based upon services. The only difference was

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1 he earned a 2.5 percent interest and a \$2.00 royalty
2 interest and it wasn't as much as about the money in the
3 interim as it was a bigger, end result for him and myself.
4 It was the end picture, looking at the larger number, how
5 to cash out at the end through royalties.

6 Q. You do not see it as unfair, Mr. Rose, that
7 the man that was actually doing work, legitimate work to
8 develop coal mining was paid the least whereas...

9 MS. SMITH: Your Honor, I don't know the
10 relevance of this. He's not charged with being unfair to
11 somebody.

12 Q. It goes to his character, Your Honor.

13 THE COURT: Rephrase the question.

14 Q. Are you telling this Jury, Sir, that it was
15 not inappropriate for you to withhold money from Mr.
16 Phillips while these other people were making the kind of
17 money they were making?

18 A. What I'm telling everybody in this
19 Courtroom is Brent Loveall got paid a commission for
20 sitting on the phone and dialing three to 400 dials a day
21 working 14 hours a day and eating in the office and running
22 the phone room which came with direct compensation for
23 money he raised versus what Johnny Phillips was doing in
24 the field one day a week. It was two different things. I
25 can't compare what Mr. Phillips did to what Mr. Loveall

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1 did. What Johnny Phillips did was more directly related to
2 coal mining activities.

3 Q. Yes, Sir.

4 A. And the recordation of the leases and
5 securing the leases.

6 Q. Yes, Sir.

7 A. No doubt I wish we would have allocated and
8 spent the money more usefully on those resources, on those
9 type of activities versus the choices I made at the time.

10 Q. Yes, Sir. Thank you. And you pointed out
11 toward the end of your testimony that because of that
12 royalty agreement you had with them, the only way he was
13 going to make any money was if you had produced coal, sold
14 it and made a profit, isn't that true?

15 A. Yes.

16 Q. And that's royalties and the percentage
17 ownership would have been just a percentage of profit and
18 if you don't make a profit, a percentage of zero is still
19 zero, isn't it, Sir?

20 A. Yes.

21 Q. The way Mr. Phillips was being paid, the
22 only way for him to realize any additional profit would be
23 for the business to be successful, isn't that true?

24 A. The only way Mr. Phillips got compensated
25 during the whole time and/or the possibility in the future

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1 was either a, if he participated in the meetings like
2 Mountain Grove and someone made a direct investment. I had
3 a prior agreement of three or four percent. Also, and/or
4 the debt that was loaded to the company. The last would
5 have been tied directly to the success of the company.

6 Q. Do you have any idea how many leases Mr.
7 Phillips actually negotiated?

8 A. Brought to me or that he actually secured?

9 Q. Let's just say bought, let's make it easy,
10 how many?

11 A. He at least bought me six or seven leases.

12 Q. One of them was the Blue Gem Mine, wasn't
13 it?

14 A. Six of the seven were Blue Gem properties.

15 Q. And Blue Gem Coal is real, isn't it?

16 A. Yes, Sir.

17 Q. And the potential for profit for Blue Gem
18 Coal, if it's done right, is in fact great, is it not?

19 A. Correct.

20 Q. A moment ago you were talking about
21 with Ms. Smith you effort to help The Government to
22 reclaim assets but I didn't hear you mention any
23 financial benefit for The Government on the sale of
24 the Blue Gem lease, why didn't you do that?

25 A. We had a meeting in May of 2015 in

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1 which...

2 Q. Did you say 2015?

3 A. Yes. In May of 2015 the attorney from
4 the US Attorney's Office out of Knoxville came down.
5 That meeting was Agent Worsham, Agent Adams and a
6 female agent. That meeting was about the liquidation
7 of the assets. I proposed during that meeting a
8 couple of different ways to market the properties
9 and/or liquidate them to recover the assets and it
10 was never done. They indicated that if it would have
11 been done that there was a big process to go through
12 to find a way to market it fairly. There has to be a
13 Court ordered sale, etcetera. That's where it was
14 left.

15 Q. Isn't it true, Sir, that that lease had
16 real value?

17 A. Five of the Blue Gem leases by
18 themselves I gave \$700,000.00 for to Rick Harris.

19 Q. Right.

20 A. That was just for his 50 percent. I own
21 the other 50 percent. And King Mountain is not included in
22 that number.

23 Q. And those leases were just allowed to
24 expire?

25 A. Two or three of them are still good, Sir,

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1 and the other three or four expired, yes.

2 Q. And is it your testimony that it was just
3 because it was too much trouble?

4 A. It's my testimony that I'm not in charge
5 of it and I don't get to tell how to do it. The answer I
6 was given as to why it was not done is because there's a
7 formal process that has to be followed. And where that
8 formal process is at I have no idea.

9 Q. Mr. Rose, I want to talk to you a few
10 minutes about your present status. You testified on Direct
11 that the last 21 months while you were incarcerated was the
12 worst that anybody could go through, is that what you said?

13 A. Yes, Sir.

14 Q. Isn't it true that as a result of that you
15 would do almost anything to get out?

16 A. I wish it was that simple that I would be
17 able to walk free but I'm not naive enough to think that
18 there's anything that I can do that would turn me free
19 today. It has been the worst twenty one months of my life.
20 I had a [REDACTED]. I watched my other
21 three [REDACTED]. I've read every victim statement
22 that's been entered into this Court, every victim impact
23 statement. I see how it's affected their life. I would
24 rather not see my friends and people I value and know what
25 grief and heart ache it's done to their family and the

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1 hurt. It has been the worst 21 months of my life.

2 Q. And you'd like to get out, true?

3 A. And some day I will, yes.

4 Q. And isn't it true that you've been granted
5 an opportunity to have what's called a 5K downward
6 departure?

7 A. In my plea agreement I signed I would be,
8 acceptance of my responsibility and if I would aid in any
9 investigation for prosecution of any other defendants that
10 The Government would have the opportunity to file a Motion
11 if they chose to. They did not make any promises whether
12 they would or wouldn't.

13 Q. And the way that thing reads, Mr. Rose,
14 isn't it true that it reads that it's all them, they have
15 all the power and you have none in that agreement?

16 A. I can't file the Motion.

17 Q. Right. And you can't make them do it,
18 right?

19 A. Correct.

20 Q. So the only way you can get the possibility
21 of reduction of your sentence is to please the agents of
22 The United States government, true?

23 A. In order for them to file a Motion they
24 expect for me to testify truthfully. Even if they file the
25 Motion I believe Judge Greer has the right to determine

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1 whether I've been truthful or not.

2 Q. Right.

3 A. I don't know how else to put it, the buck
4 stops here.

5 Q. Right, but the only way for you to even
6 have that Hearing is for them to file it. They've let you
7 know in uncertain terms that you have to give substantial
8 assistance to The United States government to get that
9 filed, right?

10 A. They are the only ones who can file it.

11 Q. Yes. And right after you made that deal
12 isn't it true that agents came to you in the jail at
13 Washington County and presented you with a list of names
14 that if you could provide information against those
15 individuals that you might go a long way toward making your
16 deal, isn't that true?

17 A. Yes, Sir.

18 Q. Do you remember what your reaction was to
19 seeing that list?

20 A. Uh-huh (affirmative).

21 Q. What was it?

22 A. Yes, Sir. I remember what it was.

23 Q. What was it?

24 A. Sickening, heart felt hurt.

25 Q. Why?

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1 A. Because one of the people on it is dead
2 now. The other person on it is my father. The other
3 person on it was my best friend of 26 years. Mr. Phillips
4 wasn't on that list.

5 Q. He was not?

6 A. No, he was not. Johnny Phillips was not on
7 that list at that time.

8 Q. Who was on that list that did leases?

9 A. Thomas Berry was on that list. He was the
10 only one who had any involvement with leases.

11 Q. Who on that list had anything to do with
12 production?

13 A. Can I interject something into the record?

14 Q. That's up to the Judge.

15 THE COURT: The question is is there anyone on
16 that list with involvement in production of coal, I guess.

17 Q. Production of coal.

18 A. Not that I recall, Sir.

19 Q. Then can you think of any reason why you
20 would tell Mr. Berry in a phone call that one of those
21 persons was an employee that did exactly what they've
22 always done and you know leasing and production?

23 A. Because Mr. Berry was the only one who had
24 anything to do with leases.

25 Q. But you are talking to Mr. Berry.

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A. Right.

Q. So it couldn't be him, could it, Sir?

A. No, I actually believe the conversation was about him and their interest in him and me letting him know, you know, that he would be moved from the category to a witness to a target.

Q. Do you remember what you said to him?

A. I don't remember. I'd have to look at it.

Q. If I showed you a transcript of the telephone call of October 13, 2014 would it help you?

A. Yes, Sir. It would. I've read the transcript, Sir.

Q. All right. We have the actual recording here if you'd like to hear it in your own voice. But after looking at that do you not recall saying to Mr. Berry that the person was an employee, did exactly what they'd always done, leasing and production?

A. Yes, Sir.

Q. And you're telling this Jury you're talking about Mr. Berry, the same man you're talking to?

A. Yes, Sir. Johnny Phillips wasn't on that list.

Q. What least did Mr. Berry do?

A. All of the leases were in Volt Resources name and I put Mr. Berry as the president and controlling

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1 signature of Volt and always had him in charge of the
2 leases. This specific conversation was specifically about
3 Mr. Berry. About the fifth line of the first one you see
4 me refer to B. Easy and Crow's counterpart. B. Easy is Mr.
5 Loveall and Crow's counterpart is Bobby McGregor. And
6 what I was telling Mr. Berry is someone, if they debriefed
7 with The Government they would probably implicate Mr.
8 Berry. And he was to follow his lie of all he ever did was
9 leases and production. That's why he got money through
10 Volt.

11 Q. How did Mr. Berry get a lease?

12 A. He got a lease through Volt that I
13 transferred...

14 Q. You gave it to him?

15 A. I put it over, actually, I was the original
16 signor on Volt Resources.

17 Q. But what you say here, Sir, doing exactly
18 what they've always done, leasing and production, leasing
19 means to acquire the lease, does it not?

20 A. Yes, Sir.

21 Q. And he didn't acquired a lease, did he?

22 A. No. But that's what, in a vendor synopsis
23 report that I provided to Mick and Doc, at the board
24 meeting in 2013 I represented that he was Volt Resources
25 and that's what he did.

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1 Q. Isn't it also true that you're saying to
2 Mr. Berry in this conversation that some of the people on
3 that list didn't do anything?

4 A. Correct.

5 Q. But you were asked to give The Government
6 information to get an indictment on some of these people,
7 weren't you?

8 A. Correct.

9 Q. I'm sure your attorney, Sir, explained to
10 you the way that you get the maximum benefit of your deal,
11 did he do that?

12 A. Him and I had talked about my debriefing
13 and our conversations were very straightforward. He
14 thought there might be benefit. He thought it may be very
15 risky to debrief with them and questioned it but left the
16 decision up to me, Sir.

17 Q. Let me rephrase my question. Did your
18 attorney not explain for you the way to get the maximum
19 benefit from your deal, yes or no?

20 A. I had language put in the 11C1C pleading
21 about the potential for a 5K Motion versus doing it in the
22 subsequent paragraphs around the end of it. I had them
23 write it up on the front. My discussions with my attorney
24 about it were very limited. He said yes, you can benefit
25 but at the same time he was not confident I would get a

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1 benefit from it and that I did not need to count on
2 anything that I debriefed with them about.

3 Q. So you're telling this Jury that you did
4 not realize that if you gave The Government information
5 that they could use to prosecute additional people, that
6 that would benefit you in your quest for a shorter
7 sentence?

8 A. No, I did realize that. Yes.

9 Q. All right. So when the agents came to you
10 just a week after your plea for the debriefing you gave
11 them information about, I believe, eight different people,
12 did you not?

13 A. The first times we debriefed it was more
14 about myself and the Defendants on the original indictment.
15 Johnny Phillips at that time had not been mentioned.

16 Q. I'll pass this up to you, Sir, this is a
17 report of investigation on December the 4th, 2014, again
18 for you to look at it and refresh your memory.

19 A. Okay.

20 Q. You see that?

21 A. Yes, Sir.

22 Q. The first person you started talking about
23 is Mr. Berry, isn't it?

24 A. Yeah, I don't recall if this was the very
25 first meeting. I think this may have been the second

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1 meeting.

2 Q. Okay.

3 A. I could be wrong.

4 Q. How many different individuals are you
5 giving the agents new information on six months after you
6 were arrested?

7 A. The list that was referenced in the phone
8 call is not who was mentioned in this interview here. This
9 was a subsequent list which I was never given on a piece of
10 paper but during the interview they asked me about these
11 people.

12 Q. Okay. Let's quit beating around the bush.
13 Tell the Jury who was on the first list?

14 A. The first list?

15 Q. Yes.

16 A. It was Matt Sherman, David Rose, Terrance
17 McAfree, Michael O'Neal and Thomas Berry, those five.

18 Q. And at least three of those, maybe
19 more, are mentioned in that statement, are they not,
20 one of them being your father?

21 A. David Rose, Thomas Berry, Michael
22 O'Neal, three of the five.

23 Q. Three of the five.

24 A. Yes.

25 Q. When were you given another list?

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1 A. I wasn't given a subsequent list. They
2 asked orally that day. I'd never been given Rick
3 Harris, Johnny Phillips, Mandy Ward Rose.

4 Q. Who is that?

5 A. My step-mother. I don't know if it's
6 legal or not. I don't know if they're married or
7 not.

8 Q. So you're telling me you did not get
9 the first question about Johnny Phillips from any of
10 these agents until December the 4th, 2014?

11 A. Correct.

12 Q. Until that time his name had not come
13 up in any of your interviews?

14 A. I'd only had one discussion prior to
15 that and I believe it was just a couple days before.

16 Q. But realizing you could help yourself
17 you decided to give information on him as well, is
18 that right?

19 A. No, how it evolved was I believe Bobby
20 McGregor around Halloween debriefed and they gained
21 quite a bit of new evidence. Then when I signed a
22 Plea Agreement Hugh Sackett debriefed. I think at
23 that time that's how Johnny Phillips got mentioned.

24 Q. Were you able to communicate with Hugh
25 Sackett or Bobby McGregor during the intervals?

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A. No, Sir.

Q. Were they incarcerated too?

A. No, Sir. I still have yet to speak with either one of them during this process.

Q. They were out on bond?

A. Yes, Sir.

Q. But you didn't have any calls with them?

A. No, Sir.

Q. So you're telling the Jury that the agents brought up Johnny Phillips name for the first time on December the 4th and you made the statements that are in that report?

A. Yes, Sir.

Q. And Mr. Rose, I just asked you, Sir, if it's not true that after 21 months behind bars you would say almost anything about anybody to get out?

A. No, Sir. It's not true.

Q. What was the relationship with Mr. Thacker on the Torchlight mine. Was he aware that you were marketing that?

A. I don't think he was aware of it at first. I think he grew aware of it because he got phone calls placed to him. That's why he told us that we needed to cease and desist from offering it.

Q. Did you prepare an option agreement for the

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1 lease on the Thacker Mine?

2 A. I believe we exchanged some sort of draft
3 of agreement to memorialize it and none was ever executed
4 nor was any money tendered to fulfil that obligation. I
5 did send him some money, about \$800.00 to maybe \$1,200.00
6 on a Green Dot Card.

7 Q. I'm going to ask you if you don't remember
8 it was actually \$1,400.00 to pay an environmental fee?

9 A. Okay. And I think a car payment or
10 something.

11 Q. And you sent a copy of the option agreement
12 to Johnny Phillips?

13 A. Okay.

14 Q. May we look at Exhibit 180, Your Honor.
15 I think that's right. It should be an email. If it's not
16 an email it's not right. Do you recognize that?

17 A. Okay.

18 Q. Did you prepare that?

19 A. I think Hugh Sackett must have prepared
20 it because it's got EBITDA, that's something he usually
21 inserts in his documents.

22 Q. If Mr. Thacker testified the other day that
23 that was in his emails that said you emailed it to Johnny
24 Phillips, would that be true?

25 A. If I originated it with the word EBITDA,

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1 that's something Hugh Sackett always inserted in his
2 agreements, then I would have gotten it and sent it to
3 Johnny Phillips but I haven't seen the chain of emails and
4 I don't recall where it originated from.

5 Q. I'm going to ask you, Sir, if it's not true
6 that the reason that you sent that agreement to Mr.
7 Phillips was to lead him to believe that you actually were
8 acquiring an option on the Torchlight Mine?

9 A. If I sent it to Johnny Phillips, the reason
10 I sent it to anybody or why Johnny Phillips would have sent
11 it to me is because our intention was to acquire an
12 interest in the Torchlight Mine.

13 Q. Right, so that the marketing effort
14 that you did with respect to Torchlight Mine, in your
15 mind at least, was a legitimate thing?

16 A. Initially, yes. Then when Mr. Thacker
17 told us to cease and desist and we continued to offer
18 and solicit it without making an addendum to the PPM
19 (phonetically) that's where it became fraudulent.

20 Q. Mr. Rose, I'm going to ask you a few
21 general questions here at the end. Did you or did
22 you not set out from the very beginning in this
23 enterprise?

24 A. No, Sir.

25 Q. You did not?

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1 A. Not from day one.

2 Q. And even though there was some lying
3 going on in the midst of it all you were still trying
4 to do legitimate coal production, were you not?

5 A. There was legitimate operations even
6 though we were committing fraud and raising funds.

7 Q. You had some pretty sophisticated
8 investors, didn't you?

9 A. Yes, Sir.

10 Q. You had Dr. Phillips and Mr. Jepson,
11 Mr. Odens, people who did research and came and
12 looked at what you had and after acquainting
13 themselves with all of that, deciding to put a
14 substantial amount in your enterprise, isn't that
15 true?

16 A. Yes.

17 Q. So would you not agree, Sir, that it
18 was something that looked legitimate and could have
19 actually been legitimate if it had just been handled
20 better?

21 A. It could have been.

22 Q. But earlier when I asked you
23 specifically about that fraud and you named all the
24 things that were done and the people who did them,
25 until I pointed out that you had never mentioned

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1 Johnny Phillips you had not, had you?

2 A. I didn't talk specifics of who did
3 what, I just mentioned where the fraud occurred and
4 what it was.

5 Q. You gave names, didn't you, Hugh
6 Sackett, Spears?

7 A. When you went down the list about who
8 did what, most of that was about creation of
9 documents. The only documents I ever had him create
10 or do anything for were in leases and/or the Highland
11 Holding elections.

12 Q. And isn't it true, Sir, that's because
13 Johnny Phillips was a land man, he was out in the
14 field, not out in the office committing fraud?

15 A. Johnny Phillips was a land man, Sir.
16 The only time that Johnny Phillips participated in any
17 money raising was to Mountain Grove. He didn't work
18 in the office. He may have come to Johnson City five
19 times.

20 Q. You're saying the only time he did
21 anything fraudulent in your mind was when he went to
22 Missouri and let you be called by a different name in
23 front of those investors, is that it?

24 A. The board of directors meeting in which
25 we used the shell corporation then represented Mr.

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1 Berry to be fraudulent and then we represented to the
2 wash plant about...

3 Q. I thought the wash plant was
4 legitimate?

5 A. It was but we didn't allocate the money
6 that was raised for it to the wash plant.

7 Q. You didn't mention that earlier. Are
8 you saying he knew about that?

9 A. No, what I'm saying is the wash plant
10 wasn't above board with how we used proceeds,
11 solicited it to investors and marketed it to some
12 people.

13 Q. Johnny Phillips dedicated a good portion of
14 four years of his life to helping you build an enterprise
15 that would be profitable and legitimate, isn't that true?

16 A. He dedicated quite a bit of time to making
17 the business be successful while at the same time we
18 committed fraud and lied about it.

19 Q. No further questions.

20 THE COURT: Any redirect?

21 MS. SMITH: I do just briefly, Your Honor.
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REDIRECT EXAMINATION BY MS. SMITH:

Q. Were the name changes that you told Mr. Yarbrough about the ones that you and Bobby McGregor did, were they in effect when you went to Mountain Grove Missouri in January of 2012?

A. No.

Q. Okay. He gave a list of people then asked you who prepared these false documents. I'm going to give you another list, Thomas Berry, David Rose, Dallas McRea, Jim Robinson, how many false documents did they prepare?

A. David Rose prepared many offering documents as well as contracts. I'm not sure if Mr. Berry did any documents.

Q. How about Mr. McRea?

A. He probably worked with myself and Hugh Sackett in the editing of the PPM before the solicitation was made, he would always go over it and get everybody's approval based on what the information was and the marketing materials.

Q. And how about Mr. Robinson?

A. The preparation of the documents to the SEC, Mr. Robinson was involved with. He didn't become overly involved in the office work until around 2014. That's when the SEC investigation was going on at which

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1 time he helped fabricate documents.

2 Q. But Mr. Berry prepared no documents and yet
3 he pled guilty too, didn't he, to conspiring?

4 A. Yes, Ma'am.

5 Q. He also asked you, isn't it true that you
6 used Johnny Phillips. How many of your
7 co-Defendants did you use during the course of this scheme?

8 A. I believe I took advantage of every
9 co-Defendant that's in this case with me. I could have
10 been a better leader and decision maker.

11 Q. How much money did David Rose derive from
12 New Century Coal?

13 A. Approximately \$30,000.00.

14 Q. And did he plead guilty to conspiring to
15 commit mail fraud?

16 A. Yes, Ma'am.

17 Q. That transcript that he showed you, I don't
18 know if it was given a number yet. Your Honor, this may
19 be something we need to address out of the presence of the
20 Jury. I don't know if it's been admitted or anything but I
21 think...

22 THE COURT: It had not even been marked for
23 identification.

24 Q. Okay. Thank you. Could I ask that the
25 witness see that again? I want you to check the date that

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1 shows up on there. Reconsider what you said earlier, and
2 to make sure that everything in here is what you said at
3 that time. See if you want to reconsider? Remember I
4 asked about all the phone calls you made while you were in
5 custody and whether you were truthful. Is there anything
6 else you want to add about what you said?

7 A. I, at the time of this date I hadn't
8 debriefed with The Government yet. There had only been
9 dialogue between my attorney and your office. And this
10 call was about a list of five names that had been given to
11 me prior to me pleading. And I was talking to Mr. Berry
12 about...

13 Q. But that list, was it given to you by your
14 attorney?

15 A. Yes, Ma'am.

16 Q. It wasn't given to you directly by any law
17 enforcement officers, was it?

18 A. No, Ma'am.

19 Q. Okay. Thank you. I have no further
20 questions, Your Honor.

21 THE COURT: Mr. Yarbrough, any recross?

22 MR. YARBROUGH: Yes, Your Honor.

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RECROSS EXAMINATION BY MR. YARBROUGH:

Q. Mr. Rose, do you keep all your records pertaining to your case?

A. Yes. Yes, Sir.

Q. Do you throw stuff away?

A. Sometimes I throw stuff away.

Q. You throw the list away?

A. I still have the list.

Q. You still have it?

A. Yes.

Q. Where is it?

A. It's in my Discovery documents that I have kept.

Q. All right.

A. They're at the detention center.

Q. Your Honor, would it be appropriate for me to request an instanter subpoena for that list and have it produced tomorrow?

THE COURT: I don't think it will be here tomorrow.

Q. I'm sorry, Tuesday, that's even better.

THE COURT: You can certainly issue a subpoena for it.

Q. We would like to request that, Your Honor.

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THE COURT: Now it is a xerox copy, Sir.

Q. As long as it's an authentic reproduction,
is that what it is?

A. Yes, Sir.

Q. Thank you.

THE COURT: All right, Mr. Rose. Thank you
very much. You may be excused.

THIS COMPLETES THE TESTIMONY OF BRIAN ROSE AS PRESENTED ON
FEBRUARY 12, 2016 AS PRESENTED IN THIS CASE.

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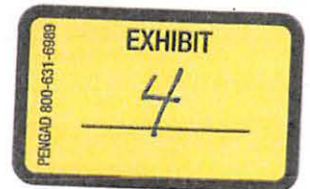
PPM No. _____

Confidential Private Placement Memorandum

July 15, 2011

Thacklight Coal Mine, LLP

This partnership is offering 40 units at \$80,000 each
for a total offering of
\$3,200,000.00



New Century Coal Inc., 1009 Lark Street, Ste. 1A, Johnson City, TN 37604

855-4USCOAL (487-2625)

www.newcenturycoal.com



NCC00160

Record of Receipt

This document serves as record of my receipt of the Private Placement Memorandum dated July 15, 2011, for New Century Coal Inc., formed in October, 2006 (the "Company"). I received a copy of the document dated July 15, 2011, containing an investment summary, business plan, Turnkey Mining Development Agreement and Mine Operating Contract, Accredited Investor Questionnaire and Subscription Agreement.

Important Notices

I understand that this offering has not been registered with the Securities and Exchange Commission nor any State Division of Securities and is not required to be so registered.

The Offering is not underwritten and is being offered on a "best efforts" basis by the Company through its officers and directors. The Company has set a Maximum Subscription amount of \$3,200,000. All proceeds from the sale of Units will immediately be available for use by the Company at its discretion. The Company may pay commissions up to 10% of the price of Units sold. New Century Coal Inc. reserves the right to pay expenses not related to this Offering from the proceeds of this Offering.

I agree to maintain in confidence the information set forth in this document, together with any other non-public information regarding the Company obtained from the Company or its agents, during the course of the proposed offering, and to return this private placement memorandum and all enclosed subscription documents to New Century, Inc. if you decide not to purchase any of the interests hereby offered.

Important Information

THE OFFERING WILL TERMINATE ON THE EARLIER OF (i) THE DATE WE HAVE ACCEPTED SUBSCRIPTIONS FOR FORTY (40) Units, (ii) THE DATE WE DECLARE THAT THE OFFERING IS TERMINATED, OR (iii) OCTOBER 30, 2011, WITH THE OPTION TO EXTEND THE OFFERING FOR UP TO THREE (3) ADDITIONAL SIXTY (60) DAY PERIODS.

WE ARE OFFERING THE INTERESTS SUBJECT TO ACCEPTANCE, PRIOR SALE, AND WITHDRAWAL, CANCELLATION OR MODIFICATION OF THE OFFERING AT ANY TIME. THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY, TO OR FROM, ANY PERSON WHERE IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SOLICITATION, OR TO ANY PERSON THAT DOES NOT MEET THE INVESTOR SUITABILITY STANDARDS SET FORTH HEREIN IN THE SUBSCRIPTION AGREEMENT PROVIDED HEREIN.

WE EXPECT TO RECEIVE REIMBURSEMENTS AND PROFITS FROM THIS OFFERING, INCLUDING A MANAGEMENT FEE AND IN SOME CASES AN OVERRIDING ROYALTY INTEREST OR OTHER INTEREST AT NO COST TO THE SPONSOR AND OTHER COMPENSATION FROM THE PARTNERSHIP AND FROM THE OPERATIONS OF THE PARTNERSHIP MINE.

BY ACCEPTING DELIVERY OF THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM (THE "MEMORANDUM"), YOU ARE AUTOMATICALLY MAKING THE REPRESENTATIONS AND AGREEMENTS SET FORTH HEREIN AND IN ALL ENCLOSED SUBSCRIPTION DOCUMENTS.

WE PREPARED THE INFORMATION IN THIS MEMORANDUM FOR THE CONFIDENTIAL USE OF PROSPECTIVE INVESTORS IN CONNECTION WITH THIS OFFERING. ANY REPRODUCTION OF THIS MEMORANDUM, IN WHOLE OR IN PART, IS PROHIBITED. BY ACCEPTING DELIVERY OF THIS OFFERING MEMORANDUM, YOU AGREE TO RETURN IT AND ALL ENCLOSED SUBSCRIPTION DOCUMENTS TO US IF YOU DO NOT DECIDE TO PURCHASE ANY OF THE INTERESTS HEREBY OFFERED. NOTWITHSTANDING THE PRECEDING, YOU MAY DISCLOSE TO ANY AND ALL PERSONS, WITHOUT LIMITATION OF ANY KIND, THE TAX TREATMENT AND TAX STRUCTURE OF THE PARTNERSHIP AND THE TRANSACTION AND ALL MATERIALS OF ANY KIND THAT ARE PROVIDED TO YOU RELATING TO SUCH TAX TREATMENT AND TAX STRUCTURE.

YOU SHOULD NOT CONSTRUE THE CONTENTS OF THIS OFFERING MEMORANDUM AS LEGAL OR BUSINESS ADVICE. YOU SHOULD CONSULT YOUR OWN ATTORNEY, BUSINESS ADVISOR OR TAX ADVISOR AS TO LEGAL, BUSINESS, TAX AND RELATED MATTERS CONCERNING THIS INVESTMENT.

Important Information (cont)

THE INVESTMENT DESCRIBED IN THIS MEMORANDUM INVOLVES A HIGH DEGREE OF RISK, IS SPECULATIVE, AND ONLY THOSE PERSONS WHO ARE ABLE TO BEAR A LOSS OF 100% OF THEIR INVESTMENT SHOULD CONSIDER PURCHASING INTERESTS. OUR OFFICERS WILL ANSWER PROSPECTIVE INVESTORS' QUESTIONS CONCERNING THE TERMS AND CONDITIONS OF THIS OFFERING AND WILL PROVIDE ADDITIONAL INFORMATION ABOUT THE OFFERING TO THE EXTENT POSSIBLE, IF THE INFORMATION CAN BE OBTAINED WITHOUT UNREASONABLE EFFORT OR EXPENSE. NO ONE OTHER THAN OUR OFFICERS HAVE BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS MEMORANDUM IN CONNECTION WITH THE OFFER AND SALE OF THE INTERESTS. DO NOT RELY ON STATEMENTS MADE ABOUT THIS OFFERING BY OTHERS OR BY OUR OFFICERS THAT ARE NOT CONTAINED IN THIS MEMORANDUM.

THE INTERESTS BEING OFFERED HEREUNDER HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, FINRA, OR ANY STATE REGULATORY AUTHORITY. NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY SUCH STATE AUTHORITY PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE INTERESTS BEING OFFERED HEREIN ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND STATE LAWS PURSUANT TO REGISTRATION THEREUNDER OR EXEMPTION THEREFROM. PROSPECTIVE INVESTORS SHOULD PURCHASE INTERESTS ONLY ON THE ASSUMPTION THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISK OF AN INVESTMENT IN THE INTERESTS FOR AN INDEFINITE PERIOD OF TIME.

SEE: (RISK FACTORS).

THE INFORMATION PRESENTED IS AS OF THE DATE SET FORTH ON THE COVER PAGE OF THE MEMORANDUM UNLESS ANOTHER DATE IS SPECIFIED. AND NEITHER THE DELIVERY OF THE MEMORANDUM NOR ANY SALE OF ANY INTERESTS THEREUNDER SHALL CREATE ANY IMPLICATION THAT THERE HAVE BEEN NO CHANGES IN THE INFORMATION PRESENTED SUBSEQUENT TO SUCH DATE.

THE MEMORANDUM CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF DOCUMENTS RELATING TO THE PARTNERSHIP. SUCH SUMMARIES DO NOT PURPORT TO BE COMPLETE AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE TEXTS OF THE ORIGINAL DOCUMENTS, WHICH ARE AVAILABLE UPON REQUEST.

IN MAKING AN INVESTMENT DECISION, PROSPECTIVE MINING INTEREST INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE VENTURE AND THE TERMS OF THIS OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

Important Information (cont)

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AND MAY NOT BE TRANSFERRED OR RESOLD, EXCEPT AS PERMITTED UNDER THE SECURITIES ACT, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. MINING INTEREST UNIT OWNERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

THE UNIT IS OFFERED SUBJECT TO ACCEPTANCE OF OFFERS, ALLOCATION OF MINING INTEREST BY THE MANAGER, AND OTHER CONDITIONS SET FORTH HEREIN. THE MANAGER MAY REJECT ANY OFFER IN WHOLE OR IN PART AND NEED NOT ACCEPT OFFERS IN THE ORDER RECEIVED.

THERE ARE VARIOUS MATERIAL RISKS (LISTED ALPHABETICALLY BELOW, AND REFERRED TO THROUGHOUT THIS MEMORANDUM) ASSOCIATED WITH AN INVESTMENT IN THE UNITS WHICH EACH POTENTIAL UNIT OWNER SHOULD CAREFULLY CONSIDER, INCLUDING, BUT NOT LIMITED TO:

COMPENSATION TO THE ISSUER / SPONSOR. THE ISSUER WILL RECEIVE PAYMENTS FROM THE PARTNERSHIP AND WILL MAKE A PROFIT THROUGH ITS TURNKEY MINING DEVELOPMENT AGREEMENT AND THE MINING OPERATIONS CONTRACT (SEE: EXHIBIT "E").

CONFLICTS OF INTEREST. CERTAIN TRANSACTIONS OF THE MANAGER MAY INVOLVE CONFLICTS OF INTEREST WITH THE PARTNERSHIP.

INVESTMENTS IN COAL MINES. INVESTMENTS IN COAL MINES ARE HIGHLY SPECULATIVE AND INVOLVE A SUBSTANTIAL DEGREE OF RISK.

LIMITED TRANSFERABILITY OF UNITS. TRANSFER OF THE UNITS ARE SUBJECT TO SIGNIFICANT RESTRICTIONS.

PRODUCTION DECLINE. PRODUCTION OF STEAM COAL AND/OR METALLURGICAL COAL CAN BE LIMITED BY PERMITS, MANPOWER, EPA, AND OTHER CONDITIONS UNCONTROLLABLE BY ISSUER.

TAX ASPECTS. THERE ARE INCOME TAX RISKS ASSOCIATED WITH THE OWNERSHIP OF MINING INTEREST.

COAL PRODUCTION. THERE IS A SUBSTANTIAL RISK THAT THE MINE AND LEASES MAY NOT PRODUCE SUFFICIENT STEAM COAL AND/OR METALLURGICAL COAL, IF ANY, TO RETURN A PROFIT TO THE PARTNERSHIP. (SEE: "RISK FACTORS") FOR FURTHER DISCUSSION OF THE MATERIAL RISKS ASSOCIATED WITH THE OFFERING.

TIME FOR INVESTOR TO RECEIVE INCOME. FROM THE DATE OF FUNDING INTO THE PARTNERSHIP TO THE DATE OF FIRST CHECK RECEIVED, IF ANY, CAN BE AS LONG AS SIX (6) TO NINE (9) MONTHS.

PROSPECTIVE INVESTORS ARE URGED TO CAREFULLY READ THE CONTENTS OF THIS MEMORANDUM, AND IN PARTICULAR THE SECTION TITLED "RISK FACTORS."

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements in this memorandum constitute forward-looking statements relating to future events or future financial performance. Forward-looking statements may be identified by words such as "may", "will", "should", "expect", "scheduled", "plan", "intend", "projected", "anticipate", "believe", "estimate", "potential", or "continue" (or the negative of such terms or similar words).

You should read the forward-looking statements carefully because those statements indicate the Partnership's future expectations. As such, any forward-looking statements are inherently subject to changes in economic, regulatory, operational and other circumstances that cannot be foreseen. Any adverse changes in regulations or market and operating conditions may have a material adverse effect on the Partnership. In addition, certain assumptions made by the Partnership may not materialize, and unanticipated events and circumstances may occur subsequent to the date of this memorandum and such statements may prove to be inaccurate. The Partnership's assumptions include, but are not limited to, the following:

- * The continued production of Steam Coal and Metallurgical Coal in commercially productive quantities and of commercially productive quality;
- * The ability to obtain needed capital;
- * The ability to operate profitably;
- * The market price of Steam Coal and Metallurgical Coal;
- * The ability to deliver any Steam Coal and/or Metallurgical Coal to a sales market;
- * The expenses of production of Steam Coal and Metallurgical Coal;
- * Domestic or global economic conditions;
- * There will be no regulatory changes that materially adversely affect the Partnership's financial condition or results of operations; and
- * There will be no materially adverse changes in customer preferences and attitudes.

FORWARD-LOOKING STATEMENTS (cont.)

In evaluating the forward-looking statements, prospective investors should specifically consider various factors, including those factors discussed under (See: Risk Factors). Those factors may cause the Partnership's actual results to differ materially from any forward-looking statement.

The information contained in this memorandum is provided as of the date appearing on the cover page. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, profitability, or achievements. Moreover, neither we nor the Partnership assume any responsibility for the accuracy and completeness of such statements in the future. In light of the significant uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by the Partnership or any other Person that the objectives and plans of the Partnership will be achieved. We do not plan to update any of the forward-looking statements after the date of this memorandum.

INVESTOR SUITABILITY STANDARDS

THESE SECURITIES INVOLVE A HIGH DEGREE OF RISK

THIS INVESTMENT IS ONLY SUITABLE FOR PERSONS OF SUBSTANTIAL MEANS WHO:

1. HAVE NO NEED FOR LIQUIDITY IN THEIR INVESTMENT; AND
2. CAN AFFORD THE LOSS OF THEIR ENTIRE INVESTMENT.

THESE UNITS ONLY WILL BE SOLD TO ACCREDITED INVESTORS WHO:

1. QUALIFY AS "ACCREDITED INVESTORS" AS THAT TERM IS DEFINED IN RULES 501, 502, AND 506 (AS APPLICABLE) OF THE REGULATION D, UNDER THE SECURITIES ACT OF 1933, AS AMENDED (SEE: "DEFINITIONS");
2. HAVE SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS, EITHER ALONE OR WITH THEIR FINANCIAL ADVISORS, TO BE CAPABLE OF EVALUATING THE MERITS AND RISKS OF AN INVESTMENT IN UNITS; AND
3. ARE ABLE TO BEAR THE ECONOMIC RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

STATE LEGENDS AND LEGAL

ALABAMA RESIDENTS

THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION UNDER THE ALABAMA SECURITIES ACT. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS NOT BEEN FILED WITH THE ALABAMA SECURITIES COMMISSION. THE COMMISSION DOES NOT RECOMMEND OR ENDORSE THE PURCHASE OF ANY SECURITIES, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF THIS PRIVATE PLACEMENT MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

ALASKA RESIDENTS

(APPLICABLE ONLY IF AN OFFER IS EXPRESSLY AUTHORIZED IN ALASKA.)

THE SECURITIES OFFERED HAVE BEEN REGISTERED WITH THE ADMINISTRATOR OF SECURITIES OF THE STATE OF ALASKA UNDER PROVISIONS OF 3 AAC 08.500-3) AND ONLY A CURSORY REVIEW OF THE REGISTRATION STATEMENT AND THEY HAVE NOT REVIEWED THIS DOCUMENT SINCE THE DOCUMENT IS NOT REQUIRED TO BE FILED WITH THE ADMINISTRATOR. THE FACT OF REGISTRATION DOES NOT MEAN THAT THE ADMINISTRATOR HAS PASSED IN ANY WAY UPON THE MERITS OF, OR RECOMMENDED OR APPROVED THE SECURITIES ANY REPRESENTATION TO THE CONTRARY IS A VIOLATION OF A.S.45.56.170.

THE SUBSCRIBER MUST RELY ON HIS OR HER OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING. INCLUDING THE MERITS AND RISKS INVOLVED IN MAKING A SUBSCRIPTION DECISION ON THESE SECURITIES.

ARIZONA RESIDENTS

THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE. THESE ARE SPECULATIVE SECURITIES. THE LIMITED PARTNER INTEREST OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF ARIZONA, AS AMENDED, AND THEREFORE, CANNOT BE RESOLD UNLESS THEY ARE REGISTERED UNDER SUCH ACT OR AN EXEMPTION THEREFROM IS AVAILABLE.

ARKANSAS RESIDENTS

THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION UNDER SECTION 23-42-504(a)(14) OF THE ARKANSAS SECURITIES ACT AND SECTION 4(2) OF THE SECURITIES ACT OF 1933. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS NOT BEEN FILED WITH THE ARKANSAS SECURITIES DEPARTMENT OR WITH THE SECURITIES AND EXCHANGE COMMISSION. NEITHER THE DEPARTMENT NOR THE COMMISSION HAS PASSED UPON THE VALUE OF THESE SECURITIES, MADE ANY RECOMMENDATION AS TO THEIR PURCHASE, APPROVED OR DISAPPROVED THE OFFERING, OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

CALIFORNIA RESIDENTS

RULE 260.141.11 RESTRICTION ON TRANSFER. (a) THE ISSUER OF ANY SECURITY UPON WHICH A RESTRICTION ON TRANSFER HAS BEEN IMPOSED, PURSUANT TO SECTIONS 260.102A, 260.141.10 OR 260.534, SHALL CAUSE A COPY OF THIS SECTION TO BE DELIVERED TO EACH ISSUER OR TRANSFEREE OF SUCH SECURITY AT THE TIME THE CERTIFICATE EVIDENCING THE SECURITY IS DELIVERED TO THE ISSUER OR TRANSFEREE. (b) IT IS UNLAWFUL FOR THE HOLDER OF ANY SUCH SECURITY TO CONSUMMATE A SALE OR TRANSFER OF SUCH SECURITY, OR ANY INTEREST THEREIN, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER (UNTIL THIS CONDITION IS REMOVED PURSUANT TO SECTION 260.141.12 OF THESE RULES), EXCEPT:

- (1) TO THE ISSUER;
- (2) PURSUANT TO THE ORDER OR PROCESS OF ANY COURT;
- (3) TO ANY PERSON DESCRIBED IN SUBDIVISION (f) OF SECTION 25102 OF THE CODE OR SECTION 260.105.14 OF THESE RULES;
- (4) TO THE TRANSFEROR'S ANCESTORS, DESCENDANTS OR SPOUSE, OR ANY CUSTODIAN OR TRUSTEE FOR THE ACCOUNT OF THE TRANSFEROR OR THE TRANSFEROR'S ANCESTORS, DESCENDANTS, OR SPOUSE; OR TO A TRANSFEREE BY A TRUSTEE OR CUSTODIAN FOR THE ACCOUNT OF THE TRANSFEREE OR THE TRANSFEREE'S ANCESTORS, DESCENDANTS OR SPOUSE; (5) TO HOLDERS OF SECURITIES OF THE SAME CLASS OF THE SAME ISSUER;
- (5) BY WAY OF GIFT OR DONATION INTER VIVO OR ON DEATH;
- (6) BY OR THROUGH A BROKER-DEALER LICENSED UNDER THE CODE (EITHER ACTING AS SUCH OR AS A FINDER) TO A RESIDENT OF A FOREIGN STATE, TERRITORY OR COUNTRY WHO IS NEITHER DOMICILED IN THIS STATE TO THE KNOWLEDGE OF THE BROKER DEALER, NOR ACTUALLY PRESENT IN THIS STATE IF THE SALE OF SUCH SECURITIES IS NOT IN VIOLATION OF ANY SECURITIES LAW OF THE FOREIGN STATE, TERRITORY OR COUNTRY CONCERNED;

- (7) TO A BROKER-DEALER LICENSED UNDER THE CODE IN A PRINCIPAL TRANSACTION, OR AS AN UNDERWRITER OR MEMBER OF AN UNDERWRITING SYNDICATE OR SELLING GROUP;
- (8) IF THE INTEREST SOLD OR TRANSFERRED IS A PLEDGE OR OTHER LIEN GIVEN BY THE PURCHASER TO THE SELLER UPON A SALE OF THE SECURITY FOR WHICH THE COMMISSIONER'S WRITTEN CONSENT IS OBTAINED OR UNDER THIS RULE NOT REQUIRED;
- (9) BY WAY OF A SALE QUALIFIED UNDER SECTIONS 25111, 25112, 25113, OR 25121 OF THE CODE, OF THE SECURITIES TO BE TRANSFERRED, PROVIDED THAT NO ORDER UNDER SECTION 25140 OR SUBDIVISION (e) OF SECTION 25143 IS IN EFFECT WITH RESPECT TO SUCH QUALIFICATION;
- (10) BY A CORPORATION TO A WHOLLY OWNED SUBSIDIARY OF SUCH CORPORATION, OR BY A WHOLLY OWNED SUBSIDIARY OF A CORPORATION TO SUCH CORPORATION;
- (11) BY WAY OF AN EXCHANGE QUALIFIED UNDER SECTION 25111, 25112 OR 25113 OF THE CODE, PROVIDED THAT NO ORDER UNDER SECTION 25140 OR SUBDIVISION (e) OF SECTION 25143 IS IN EFFECT WITH RESPECT TO SUCH QUALIFICATION;
- (12) BETWEEN RESIDENTS OF FOREIGN STATES, TERRITORIES OR COUNTRIES WHO ARE NEITHER DOMICILED NOR ACTUALLY PRESENT IN THIS STATE.

COLORADO RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE COLORADO SECURITIES ACT OF 1981 BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED TO, OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE COLORADO SECURITIES ACT OF 1981, IF SUCH REGISTRATION IS REQUIRED.

CONNECTICUT RESIDENTS

THE INTERESTS OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER SECTION 38-481 OF THE CONNECTICUT GENERAL STATUTES, THE UNIFORM SECURITIES ACT, AS AMENDED (THE "CONNECTICUT ACT") AND, THEREFORE, CANNOT BE RESOLD UNLESS THEY ARE REGISTERED UNDER SECTION 38-485 OR ANY OTHER SECTION OF THE CONNECTICUT ACT OR UNLESS AN EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 38-490 OF THE CONNECTICUT ACT IS AVAILABLE.

DELAWARE RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER DELAWARE SECURITIES' LAWS, AND CANNOT BE RESOLD WITHOUT REGISTRATION THEREUNDER, OR ANY EXEMPTION THEREFROM.

FLORIDA RESIDENTS

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE FLORIDA SECURITIES ACT. EACH OFFEREE WHO IS A FLORIDA RESIDENT SHOULD BE AWARE THAT SECTION 517.061(12)(a)(5) OF THE FLORIDA SECURITIES ACT PROVIDES IN RELEVANT PART, AS FOLLOWS, "WHEN SALES ARE MADE TO FIVE OR MORE PERSONS, IN (FLORIDA) ANY SALE IN (FLORIDA) PURSUANT TO SECTION 517.018 (1) SHALL BE AVOIDABLE BY THE PURCHASER IN SUCH SALE EITHER WITHIN 3 DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER, WHICHEVER OCCURS LATER."

THE AVAILABILITY OF THE PRIVILEGE TO VOID SALES PURSUANT TO SECTION 517.018 (1)(A)(5) AND WHO WISHES TO EXERCISE SUCH RIGHT, MUST WITHIN THREE DAYS AFTER THE TENDER OF THE FIRST INSTALLMENT OF HIS CAPITAL CONTRIBUTION TO THE PARTNERSHIP OR TO ANY AGENT OF THE PARTNERSHIP (INCLUDING ANY DEALER ACTING ON BEHALF OF THE PARTNERSHIP OR ANY SALESMAN OF SUCH DEALER) OR AN ESCROW AGENT, CAUSE A WRITTEN NOTICE OR TELEGRAM TO BE SENT TO THE PARTNERSHIP AT THE ADDRESS PROVIDED IN THE CONFIDENTIAL MEMORANDUM. SUCH LETTER OR TELEGRAM MUST BE SENT AND POSTMARKED ON, OR PRIOR TO THE END OF THE AFOREMENTIONED THIRD DAY IF A PERSON IS SENDING A LETTER. IT IS PRUDENT TO SEND SUCH LETTER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ASSURE THAT IT IS RECEIVED AND ALSO TO EVIDENCE THE TIME IT WAS MAILED. SHOULD A PERSON MAKE THIS REQUEST ORALLY, HE MUST ASK FOR A WRITTEN CONFIRMATION THAT HIS REQUEST HAS BEEN RECEIVED.

GEORGIA RESIDENTS

THESE SECURITIES HAVE BEEN ISSUED OR SOLD IN RELIANCE ON PARAGRAPH (18) OF CODE SECTION 10-5-0 OF THE GEORGIA SECURITIES ACT OF 1973 AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION UNDER SUCH ACT.

IDAHO RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE IDAHO SECURITIES ACT AND, THEREFORE, CANNOT BE RESOLD OR TRANSFERRED UNLESS THEY ARE SO REGISTERED OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

Thacklight Coal Mine, LLP

July 15, 2011

INDIANA RESIDENTS

THERE WILL BE NO OFFER OR SALE OF UNITS IN THIS STATE.

IOWA RESIDENTS

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. UNIT OWNERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE SECURITIES COMMISSION OR REGULATORY AUTHORITY, FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

KANSAS RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES ACT OF KANSAS OR OF MOST, IF NOT ALL OF THE JURISDICTIONS, BY REASON OF SPECIFIC EXEMPTIONS. THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAW, IF SUCH REGISTRATION IS REQUIRED.

KENTUCKY RESIDENTS

THERE WILL BE NO OFFER OR SALE OF UNITS IN THIS STATE.

MAINE RESIDENTS

SECURITIES ARE BEING SOLD PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE BANK SUPERINTENDENT OF THE STATE OF MAINE UNDER SECTION 0502(2)(R) OF TITLE 32 OF THE MAINE REVISED STATUTES. THESE SECURITIES MAY BE DEEMED RESTRICTED SECURITIES AND AS SUCH THE HOLDER MAY NOT BE ABLE TO RESELL THE SECURITIES UNLESS PURSUANT TO REGISTRATION UNDER STATE OR FEDERAL SECURITIES LAWS OR UNLESS AN EXEMPTION UNDER SUCH LAW EXISTS.

MASSACHUSETTS RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE MASSACHUSETTS UNIFORM SECURITIES ACT, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE MASSACHUSETTS SECURITIES ACT, IF SUCH REGISTRATION IS REQUIRED.

MICHIGAN RESIDENTS

THE SECURITIES REFERRED TO IN THIS MEMORANDUM WILL BE SOLD TO AND ACQUIRED BY THE HOLDER IN A TRANSACTION EXEMPT UNDER THE MICHIGAN UNIFORM SECURITIES ACT. THE SECURITIES CANNOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT. THE MICHIGAN SECURITIES ACT PROVIDES THAT THIS PRIVATE PLACEMENT MEMORANDUM MUST BE PROVIDED TO PROSPECTIVE PURCHASERS AT LEAST 48 HOURS PRIOR TO ANY SALE OF THE SECURITIES OFFERED HEREBY.

IN ADDITION TO THE SUITABILITY STANDARDS SET FORTH IN THIS MEMORANDUM, THE PURCHASE PRICE OF THE INTERESTS ACQUIRED BY A NON-ACCREDITED INVESTOR RESIDING IN THE STATE OF MICHIGAN MAY NOT EXCEED TEN PERCENT (25%) OF THE INVESTOR'S NET WORTH, EXCLUDING PRINCIPAL RESIDENCE, HOUSEHOLD FURNISHINGS AND PERSONAL AUTOMOBILES, WITHOUT REGARD TO THIS INVESTMENT.

THE PARTNERSHIP SHALL PROVIDE ALL INVESTORS WITH A DETAILED WRITTEN STATEMENT OF THE APPLICATION OF THE PROCEEDS OF THE OFFERING WITHIN SIX MONTHS AFTER COMMENCEMENT OF THE OFFERING OR UPON COMPLETION WHICHEVER OCCURS FIRST AND WITH ANNUAL CURRENT BALANCE SHEETS AND INCOME STATEMENTS THEREAFTER. THE JOINT VENTURE WILL MAINTAIN A LIST OF ALL NAMES AND ADDRESSES OF ALL PARTICIPANTS AT ITS OFFICES AND WILL KEEP AVAILABLE TO PARTICIPANTS OR THEIR DESIGNATED REPRESENTATIVES.

MINNESOTA RESIDENTS

THE SECURITIES REPRESENTED BY THIS MEMORANDUM HAVE NOT BEEN REGISTERED UNDER CHAPTER 60A OF THE MINNESOTA SECURITIES LAWS AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO REGISTRATION, OR AN EXEMPTION THEREFROM.

MISSOURI RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES ACT OF MISSOURI OR OF MOST, IF NOT ALL OTHER JURISDICTIONS, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAW, IF SUCH REGISTRATION IS REQUIRED.

Thacklight Coal Mine, LLP

July 15, 2011

LOUISIANA RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE UNIFORM SECURITIES ACT OF LOUISIANA AND, THEREFORE, CANNOT BE RESOLD OR TRANSFERRED UNLESS THEY ARE SO REGISTERED OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

NEW HAMPSHIRE RESIDENTS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED, NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED, CONSTITUTES A FINDING BY THE DIRECTOR OF THE OFFICE OF SECURITIES REGULATION THAT ANY DOCUMENT FILED UNDER THE NEW HAMPSHIRE UNIFORM SECURITIES ACT IS TRUE, COMPLETE AND NOT MISLEADING, NEITHER ANY SUCH FACT, NOR THE FACT THAT AN EXEMPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION, MEANS THAT THE DIRECTOR OF THE OFFICE OF SECURITIES REGULATION HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATION OF, OR RECOMMENDED OR GIVEN APPROVAL TO ANY PROSPECTIVE PURCHASER, CUSTOMER, OR CLIENT ANY REPRESENTATION INCONSISTENT WITH SECTION 421-920 OF THE NEW HAMPSHIRE UNIFORM SECURITIES ACT.

NEW JERSEY RESIDENTS

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE BUREAU OF SECURITIES OF THE STATE OF NEW JERSEY NOR HAS THE BUREAU PASSED ON OR ENDORSED THE MERITS OF THE OFFERING. THE FILING OF THE WITHIN OFFERING DOES NOT CONSTITUTE APPROVAL OF THE ISSUE OR THE SALE THEREOF BY THE BUREAU OF SECURITIES.

NEW MEXICO RESIDENTS

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES BUREAU OF THE NEW MEXICO DEPARTMENT OF REGULATION AND LICENSING, NOR HAS THE SECURITIES BUREAU PASSED UPON THE ACCURACY OF THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

NEW YORK RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE NEW YORK FRAUDULENT PRACTICES ("MARTIN") ACT, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE NEW YORK FRAUDULENT PRACTICES ("MARTIN") ACT, IF SUCH REGISTRATION IS REQUIRED. THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM HAS NOT BEEN REVIEWED BY THE ATTORNEY GENERAL PRIOR TO ITS ISSUANCE AND USE. THE ATTORNEY GENERAL OF THE STATE OF NEW YORK HAS NOT PASSED ON OR ENDORSED THE MERITS OF THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

PURCHASE OF THESE SECURITIES INVOLVES A HIGH DEGREE OF RISK. THIS MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF MATERIAL FACT OR OMIT TO STATE MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS OF DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN.

NORTH CAROLINA RESIDENTS

THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION UNDER THE NORTH CAROLINA SECURITIES ACT. THE NORTH CAROLINA SECURITIES ADMINISTRATOR NEITHER RECOMMENDS NOR ENDORSES THE PURCHASE OF ANY SECURITY, NOR HAS THE ADMINISTRATOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION PROVIDED HEREIN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

IN ADDITION TO THE SUITABILITY STANDARDS SET FORTH IN THIS MEMORANDUM, THE PURCHASE PRICE OF THE INTEREST ACQUIRED BY A NON-ACCREDITED INVESTOR RESIDING IN THE STATE OF NORTH CAROLINA MAY NOT EXCEED TEN PERCENT OF THE INVESTORS NET WORTH, EXCLUDING PRINCIPAL RESIDENCE, HOUSEHOLD FURNISHINGS, AND PERSONAL AUTOMOBILES, WITHOUT REGARD TO THIS INVESTMENT.

INVESTORS MUST ALSO MEET ONE OF THE FOLLOWING STANDARDS (1) NET WORTH OF AT LEAST \$225,000 EXCLUSIVE OF PRINCIPLE RESIDENCE MORTGAGE, THEREON, HOUSEHOLD FURNISHINGS AND PERSONAL AUTOMOBILES, OR (2) NET WORTH OF AT LEAST \$80,000 EXCLUSIVE OF PRINCIPAL RESIDENCE, MORTGAGE THEREON, INCOME DURING THE LAST TAXABLE YEAR OF AT LEAST \$60,000, IN EACH CASE, WITHOUT REGARD TO THIS INVESTMENT.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES, AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FORGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT.

NORTH DAKOTA RESIDENTS

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES COMMISSIONER OF THE STATE OF NORTH DAKOTA NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

OHIO RESIDENTS

ACCORDING TO SECTION 207(m) OF THE OHIO SECURITIES ACT OF 1972: EACH OHIO RESIDENT WHO ACCEPTS AN OFFER TO PURCHASE SECURITIES EXEMPTED FROM REGISTRATION UNDER SECTION 203(d) OF THE 1972 ACT, DIRECTLY FROM AN ISSUER OR AN AFFILIATE OF AN ISSUER, SHALL HAVE THE RIGHT TO WITHDRAW HIS ACCEPTANCE WITHOUT INCURRING ANY LIABILITY TO THE SELLER, UNDERWRITER (IF ANY) OR ANY OTHER PERSON, WITHIN

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TWO (2) BUSINESS DAYS FROM THE DATE OF RECEIPT BY THE ISSUER OF HIS WRITTEN BINDING CONTRACT OF PURCHASE OR, IN THE CASE OF A TRANSACTION IN WHICH THERE IS NO WRITTEN BINDING CONTRACT OF PURCHASE, WITHIN TWO (2) BUSINESS DAYS AFTER HE MAKES THE INITIAL PAYMENT FOR THE SECURITIES BEING OFFERED.

TO ACCOMPLISH THIS WITHDRAWAL, A SUBSCRIBER NEED ONLY SEND A LETTER OR TELEGRAM TO THE PLACEMENT AGENT AT THE ADDRESS SET FORTH IN THE TEXT OF THIS MEMORANDUM INDICATING HIS OR HER INTENTION TO WITHDRAW. SUCH LETTER OR TELEGRAM SHOULD BE SENT AND POST-MARKED PRIOR TO THE END OF THE AFOREMENTIONED SECOND BUSINESS DAY. IT IS PRUDENT TO SEND SUCH LETTER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ENSURE THAT IT IS RECEIVED, AND ALSO TO EVIDENCE THE TIME WHEN IT WAS MAILED. IF THE REQUEST IS MADE ORALLY (IN PERSON OR BY TELEPHONE, TO THE PLACEMENT AGENT AT THE NUMBER LISTED IN THE TEXT OF THIS MEMORANDUM), A WRITTEN CONFIRMATION THAT THE REQUEST HAS BEEN RECEIVED SHOULD BE REQUESTED. NEITHER THE OHIO SECURITIES COMMISSION, NOR ANY OTHER AGENCY, HAS PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING, AND ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL. OHIO SUBSCRIBERS MAY NOT SELL THEIR SECURITIES FOR ONE YEAR FROM THE DATE OF PURCHASE, IF SUCH A SALE WOULD VIOLATE SECTION 103(d) OF THE OHIO SECURITIES ACT.

OKLAHOMA RESIDENTS

THESE SECURITIES REFERENCED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR THE OKLAHOMA SECURITIES ACT. THE SECURITIES ARE BEING ACQUIRED FOR INVESTMENT AND MAY NOT BE SOLD OR TRANSFERRED FOR THE VALUE IN THEIR ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OF 1933, AND/OR THE OKLAHOMA SECURITIES ACT, OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR ACTS.

OREGON RESIDENTS

A "PERMITTED OREGON PURCHASER" IS EITHER (A) ONE WHO IS PURCHASING AT LEAST \$10,000 OF THE SECURITIES OFFERED, AND THE PURCHASE DOES NOT EXCEED 25% OF THE PURCHASER'S NET WORTH AT THE TIME OF PURCHASE; OR (B) ONE WHO HAS PERSONAL INCOME EXCEEDING \$70,000 IN EACH OF THE LAST TWO YEARS, AND REASONABLY EXPECTS TO EXCEED THAT IN THE CURRENT YEAR, AND THE PURCHASE DOES NOT EXCEED 25% OF THE PURCHASER'S PERSONAL INCOME FOR THE MOST RECENT YEAR.

PENNSYLVANIA RESIDENTS

PRIOR TO OFFERING THE INTEREST TO ANY PENNSYLVANIA RESIDENTS, THE GENERAL PARTNER OF THE PARTNERSHIP WILL FILE A NOTICE UNDER SECTION 203(d) OF THE PENNSYLVANIA SECURITIES ACT OF 1972 WHICH PROVIDES AN EXEMPTION FROM THE REGISTRATION PROVISIONS OF SAID ACT UNDER CERTAIN CIRCUMSTANCES, EACH OFFERED WHO IS A PENNSYLVANIA RESIDENT SHOULD BE AWARE THAT SECTION 207(d) OF THE PENNSYLVANIA SECURITIES ACT OF 1972 PROVIDES, IN RELEVANT PART, AS FOLLOWS: EACH PERSON WHO ACCEPTS AN OFFER TO PURCHASE SECURITIES EXEMPTED FROM REGISTRATION BY SECTION 203(d), DIRECTLY FROM AN ISSUER OR AFFILIATE OF AN ISSUER SHALL HAVE THE RIGHT TO WITHDRAW HIS ACCEPTANCE WITHOUT INCURRING ANY LIABILITY TO RECEIPT BY THE ISSUER OF HIS WRITTEN BINDING CONTRACT OF PURCHASE OR, IN THE CASE OF TRANSACTION IN WHICH THERE IS NO WRITTEN BINDING CONTRACT OF PURCHASE, WITHIN TWO BUSINESS DAYS AFTER HE MAKES THE INITIAL PAYMENT FOR THE SECURITIES BEING OFFERED. EACH PERSON ENTITLED TO EXERCISE THE RIGHT TO WITHDRAW GRANTED BY SECTION 207(d), AND WHO WISHES TO EXERCISE SUCH RIGHT, MUST WITHIN THE AFOREMENTIONED TWO BUSINESS DAYS CAUSE A WRITTEN NOTICE OR TELEGRAM TO BE SENT TO THE PARTNERSHIP AT THE ADDRESS PROVIDED IN THE MEMORANDUM INDICATING HIS INTENTION TO WITHDRAW, SUCH LETTER OR TELEGRAM MUST BE SENT AND POSTMARKED ON OR PRIOR TO THE END OF THE AFOREMENTIONED BUSINESS DAY. IT IS PRUDENT TO SEND IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, FOR CONFIRMATION THAT YOUR REQUEST HAS BEEN RECEIVED. NEITHER THE PENNSYLVANIA SECURITIES COMMISSION NOR ANY OTHER AGENCY HAS PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING AND ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

PENNSYLVANIA SUBSCRIBERS MAY NOT SELL THEIR LIMITED PARTNERSHIP INTEREST FOR ONE YEAR FROM THE DATE OF PURCHASE IF SUCH SALE WOULD VIOLATE SECTION 203(d) OF THE PENNSYLVANIA SECURITIES ACT.

PENNSYLVANIA INVESTORS SPECIAL SUITABILITY STANDARDS. ALL PENNSYLVANIA INVESTORS MUST BE EITHER AN "ACCREDITED INVESTOR" OR HAVE A NET WORTH (EXCLUSIVE OF PRINCIPAL RESIDENCE AND FURNISHINGS) OF FIVE (5) TIMES THE AMOUNT OF THEIR INVESTMENT.

SOUTH CAROLINA RESIDENTS

THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION UNDER THE SOUTH CAROLINA UNIFORM SECURITIES ACT. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS NOT BEEN FILED WITH THE SOUTH CAROLINA SECURITIES COMMISSIONER. THE COMMISSIONER DOES NOT RECOMMEND OR ENDORSE THE PURCHASE OF ANY SECURITIES, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF THIS PRIVATE PLACEMENT MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

SOUTH DAKOTA RESIDENTS

THESE SECURITIES ARE OFFERED FOR SALE IN THE STATE OF SOUTH DAKOTA PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SOUTH DAKOTA BLUE SKY LAW, CHAPTER 47-3-1A, WITH THE DIRECTOR OF THE DIVISION OF SECURITIES OF THE DEPARTMENT OF COMMERCE AND REGULATION OF THE STATE OF SOUTH DAKOTA. THE EXEMPTION DOES NOT CONSTITUTE A FINDING THAT THIS MEMORANDUM IS TRUE, COMPLETE AND NOT MISLEADING, NOR HAS THE DIRECTOR OF THE DIVISION OF SECURITIES PASSED IN ANY WAY UPON THE MERITS OF RECOMMENDED, OR GIVEN APPROVAL TO THESE SECURITIES. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER CHAPTER 47-31A OF THE SOUTH DAKOTA SECURITIES LAW AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF FOR VALUE EXCEPT PURSUANT TO REGISTRATION, EXEMPTION THEREFROM, OR OPERATION OF LAW.

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TENNESSEE RESIDENTS

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. UNIT OWNERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

TEXAS RESIDENTS

THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION UNDER SECTION 5(f) OF THE TEXAS SECURITIES ACT OF 1957. AN OFFERING MEMORANDUM HAS NOT BEEN FILED WITH THE TEXAS COMMISSIONER.

THE SECURITIES CANNOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT.

UTAH RESIDENTS

THE INTERESTS OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER SECTION 61-1-7 OF THE UTAH CODE ANNOTATED, 1953 AS AMENDED, THE UTAH UNIFORM SECURITIES ACT (THE "UTAH ACT") AND, THEREFORE CANNOT BE RESOLD UNLESS THEY ARE REGISTERED UNDER SECTION 61-1-7 OR ANY OTHER SECTION OF THE UTAH ACT OR UNLESS AN EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 61-1-7 OR ANY OF THE SECTION OF THE UTAH ACT OR UNLESS AN EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 61-1-14 OF THE UTAH ACT IS AVAILABLE.

WASHINGTON RESIDENTS

THE ADMINISTRATOR OF SECURITIES OF THE STATE OF WASHINGTON HAS NOT REVIEWED OR RECOMMENDED THIS OFFERING OR THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM. THE LIMITED PARTNER INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF WASHINGTON, CHAPTER 21.20 RCW (THE "WASHINGTON ACT"), AND THEREFORE, CANNOT BE SOLD UNLESS THEY ARE REGISTERED UNDER THE WASHINGTON ACT OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

WISCONSIN RESIDENTS

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY, FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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SUMMARY OF OFFERING – GENERAL INFORMATION

This summary highlights important information about the Partnership and this offering. Because the following is a summary, it does not contain all the information you should consider before investing in the Partnership. Please read the entire memorandum. Definitions of certain capitalized terms used in this memorandum are contained in: (See: "Definitions"). The material risks of investing in Unit Interests are discussed in (See: "Risk Factors").

THE PARTNERSHIP:

Thacklight Coal Mine, LLP (the "Partnership"), is a Limited Liability Partnership in formation, for the purpose of purchasing a 30.00% of 100% Mining Interest, in Thacklight Coal Mine, located in Lawrence County, Kentucky.

THE ISSUER / SPONSOR:

New Century Coal Inc., hereinafter "the Company", or "Issuer", or "Manager", or "Sponsor", or "Partnership Operator", or (the "Issuer / Sponsor"), is incorporated, organized and existing under the laws of the State of Nevada and maintains an office at 1009 Lark Street, Ste 1A, Johnson City, TN 37604

THE PARTNERSHIP OPERATOR:

New Century (the "Partnership Operator"), is the contracted Partnership Operator for the Partnership. The Mine operations will be sub-contracted to other parties. ("Industry Partners")

INVESTOR PARTNERS:

Investors will purchase Limited Liability Partnership Interests in and through this Memorandum and in the Partnership Agreement, all unit holders are referred to as, "Limited Liability Partners", or "Partners", or "Non-Partnership Operators", or "Unit Holders", or "Investors". (See: "Summary of the Partnership Agreement")

CERTAIN TAX ASPECTS:

Under current tax law, exploration and development expenses can be deducted in full in the year they are paid or incurred. The expenses must be recaptured in the year that the mine goes into the producing stage or upon disposition of the property. In reality, few miners ever claim to be in the producing stage, disposals are seldom reported, and it is unlikely that proper accounting for the recapture of expenses will be found. In the past, taxpayers have deducted large mining losses with little or no recourse by the Government. IRC section 183 has strengthened the position of the Service in holding that a miner must be in a trade or business or engaged in

an activity for the production of income with the objective of making a profit in order to claim mining related expenses such as those for exploration and development.

The small placer miner usually claims a Schedule C loss created by deducting exploration and development expenses with little or no mining income. The miner claims to be in the exploration or development stage when, in fact, gold is being produced and sold. The examiner will generally find that the expenses are related to the extraction of gold while the sales of gold are not reported.

The miner may be required to maintain a mineral inventory and claim cost-of-goods sold, including the costs necessary to clearly reflect income following the matching of income and expenses principal. Examiners should verify the mining stage, search for unreported income, and confirm the existence of an inventory. Most expenses will be found to be either direct or indirect mining costs which should be included as part of cost-of-goods sold. As a result, mining losses can be reduced by either the increases to income or the decreases in deductible expenses or both.

There is no one inclusive definition of "mining" for federal income tax purposes. The key definitions needed for a quality examination of mining operations are defined below. The glossary includes more definitions of mining terminology.

The term *mine* as defined in Treas. Reg. section 1.617-3(c)(1) states: The term "mine" includes all quarries, pits, shafts, and wells, and any other excavations or workings for the purpose of extracting any known deposit of ore or other mineral.

The term *mining property* defined in Treas. Reg. section 1.617-3(c)(3) states: The term "mining property" means any property (as the term is defined in IRC section 614(a) after the application of subsection (c) and (e) thereof) with respect to which any expenditures allowed as deductions under IRC section 617(a) are properly chargeable.

The term *property* as defined in IRC section 614(a) states: For the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term "property" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

The term *mining* as defined in IRC section 613(c)(2) states in part: The term "mining" includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not common carrier) from the point of extraction from the ground to the plant or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills. The life of mining property is generally classified into three separate stages: Exploration, Development, and Producing.

The term "*exploration expenditures*" as defined in IRC section 617(a)(1) provides in part: * * * At the election of the taxpayer, expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine, shall be allowed as a deduction in computing taxable income. * * * In no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas or of any mineral with respect to which a deduction for percentage depletion is not allowable under IRC section 613.

The term *development expenditures* as defined in IRC section 616(a) provides in part: * * * there shall be allowed as a deduction in computing taxable income all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed.

The term *producing stage* as defined in Treas. Reg. section 1.616-2(b) states: The mine or other natural deposit will be considered to be in a producing stage when the major portion of the mineral production is obtained

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from workings other than those opened for the purpose of development, or when the principal activity of the mine or other natural deposit is the production of developed ores or minerals rather than the development of additional ores or minerals for mining.

The term *Producing Stage* is defined in Treas. Reg. section 1.617-3(c)(2) as follows: A mine will be considered to have reached the producing stage when: the major portion of the mineral production is obtained from workings other than those opened for the purpose of development, income derived from extraction of the mineral or severance of the timber, to which he must look for a return of his capital.

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OFFER AND SALE OF UNITS and TERMINATION OF OFFERING:

The units will be offered by the Company as of July 15, 2011. The Termination Date of the offering will be on the earlier of (i) the date we have accepted subscriptions for the Forty (40) Units, (ii) the date we declare that the offering is terminated, or (iv) the date of any of the scheduled closing levels, or (iii) October 30, 2011, unless the Company decides to extend the offering for an additional up to, three (3) sixty (60) day periods.

SUMMARY OF THE OFFERING

THIS SUMMARY OF CERTAIN ASPECTS OF THE OFFERING IS INTENDED ONLY FOR QUICK REFERENCE AND IS QUALIFIED IN ITS ENTIRETY BY THE MORE DETAILED INFORMATION APPEARING ELSEWHERE IN THIS MEMORANDUM AND IN THE ATTACHED EXHIBITS. THE COMPLETE MEMORANDUM AND ALL EXHIBITS SHOULD BE READ AND FULLY UNDERSTOOD BY EACH PROSPECTIVE UNIT HOLDER PRIOR TO TENDERING A SUBSCRIPTION FOR UNITS. FOR DEFINITIONS OF CERTAIN TERMS USED IN THIS MEMORANDUM, SEE THE "DEFINITIONS" SECTION. CERTAIN TERMS USED IN THIS MEMORANDUM HAVE THE MEANING PROVIDED UNDER THE SECTION "DEFINITIONS," WHICH MAY BE FOUND AT THE BACK OF THIS MEMORANDUM. A PROSPECTIVE UNIT HOLDER SHOULD REFER TO SUCH DEFINITIONS IF THE MEANING OF ANY TERM IS NOT PROVIDED WITHIN THE CONTEXT IN WHICH IT IS USED.

THE COMPANY: NEW CENTURY COAL INC., (THE "COMPANY"), 1009 LARK STREET STE 1A, JOHNSON CITY, TN 37604 TELEPHONE NUMBER 855-4USCOAL, IS THE ISSUER/SPONSOR OF THIS OFFERING, THACKLIGHT COAL MINE, LLP (THE "PARTNERSHIP") AS DESCRIBED IN THIS MEMORANDUM. The "Company" shall also serve, directly or through its Industry Partners or their subcontractors or permitted assigns, as the Mining Partnership Operator under the Turnkey Mining Development Agreement and Mine Operating Contract, a form of which is attached to this Memorandum as Exhibit "E". (See: "Definitions", "Proposed Activities", "Compensation", "Management", and "Conflicts of Interest").

Terms of the Offering: The Company, as Issuer / Sponsor of the Partnership, is offering Forty (40) Units of participation in the Partnership which represent 100% of the ownership Interest of the Thacklight Coal Mine, LLP for the purchase of a 30% mining interest. The Units shall own 100% of the Partnership (before each investor has received cash distributions equal to the investor's investment in the Partnership's coal mine, ("Investor Payback"). After Investor Payback, the ownership in the Partnership shall revert to a 90% of 100% for the remaining life of the Partnership / Coal Mine/ Income, with the 10% of 100% reversionary portion of the interest then going to the Company, (See: "Source of Funds" and "Application of Proceeds").

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investigation of the Securities and Exchange Commission (the "SEC") or the Securities Agency of a particular States, even if the Company were ultimately to prevail.

Since the Units have not been registered with either Federal or State regulatory agencies, Unit Holder's do not have the benefits that may be derived from such a registration and corresponding review by regulatory officials. For that reason, Unit Holders must make their own decision as to a subscription for the Units with the knowledge that neither Federal nor States officials have commented either on the adequacy of the disclosures contained in this Memorandum or the fairness of this Offering.

The Company does not intend at any time in the future to register the Units with the SEC, or any States Securities Commissions, which will therefore restrict the transferability of the Units. (See: "Terms of the Offering")

Limits on Transferability of the Units: Substantial restrictions are imposed upon the transfer of the Units. Each Unit Holder will be required to sign a written agreement that the Units will not be sold without registration under the Act or pursuant to an exemption therefrom. The Company may require an opinion of counsel to the effect that any such transfer will not violate applicable Federal or State Securities Laws. The Units will not be, and the purchasers of the Units have no right to require that they be, registered under the Act. There will be no public market for the Units, and the purchasers of the Units will not be able to avail themselves of the provisions of Rule 144 adopted under the Act with respect to resale of the Units. The Company has no obligation to repurchase any of the Units from the Unit Holders.

Recovery of Initial Investment: Because mining activity and the ownership in a mine may be stronger in a specific section of the country, prices of goods and services utilized to engage in mining and in the cost of the mining site locations interests suitable for a project of this type may be higher than in other fields or geographic areas, even though prices from the sale of products may be lower than elsewhere. If such a situation occurs in the area of the prospect, an investment in the Partnership may be more expensive than might otherwise be the case.

Also, in addition, the Company will most likely make a substantial profit, which the Partnership must absorb this profit before the Unit Holders receive back their investment. There are no assurances that the price of Coal will remain at current levels, nor can any assurance be made that mine production levels can be obtained in quantities sufficient to reach payout, or that continued sales markets will be available in the near future. Those matters are beyond the control of the Company.

Arbitration: Disputes with the Company or any of their agents or representatives arising from the purchase or ownership of Units in the Partnership by a Unit Holder are subject to required arbitration in a location of the choice of the Partnership Operator, rather than any form of law suits, demand letters, or civil litigation filed in Federal or State courts. Such limited dispute resolution may be viewed as depriving Unit Holders of their full legal remedies, the unit holder is aware of such limitation and agrees to these limitation arrangements.

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The Company will receive the reversionary interest of 10% of 100% of the Partnership's coal income, loss and available cash flow after the investors have received investor payback of their investment on (See: "Risk Factors", "Definitions", "Terms of the Offering," and "Conflicts of Interest"). These Units are being offered to select qualified Accredited investors (ONLY) by the Partnership by the Company at a Unit price of \$80,000 each, payable with subscription to the Partnership. (See: "Purchaser Suitability Standards", "Risk Factors", "Plan of Distribution", "Source of Funds and Application of Proceeds")

Since the Partnership's Units and the mining interests represented thereby have not been registered under the Securities Act of 1933, as amended, or under the Securities Laws of any State jurisdiction, owners of the Units will not be able to readily liquidate their interests, inasmuch as the Units cannot be readily assigned or transferred. (See: "Terms of Offering")

Proposed Activities: The Partnership will acquire a 30% of 100% Mining Interest, in the mine development of Thacklight Coal Mine, located in Lawrence County, KY.

Risk Factors, Conflicts of Interest and Tax Matters: This Offering involves numerous risks, certain conflicts of interest and significant tax considerations. (See: "Risk Factors", "Conflicts of Interest" and "Tax Matters.")

Offering Terms:

Minimum Offering:	\$ 800,000
Maximum Offering Amount:	\$3,200,000
Price per each Unit:	\$ 80,000
Minimum Subscription Amount	\$ 80,000 (One Unit)*

*More or less than one (1) unit purchase may be allowed, in the sole discretion of the Company.

Who Should Invest

Interests may only be purchased by "accredited investors" as that term is defined in Rules 501, 502, and 506 (as applicable) of the Securities and Exchange Commission. This offering is not suitable for everyone. Prospective investors should only purchase Interests if, among other considerations, they:

1. Have experience, together with the experience of the Investor's advisor, in evaluating and investing in private placement transactions.
2. Have carefully evaluated their financial resources and decided that they can bear the economic risks of this investment.

3. Are familiar with the high risks of investing in speculative Mining projects and can bear the loss of the entire investment if this venture fails; and they are prepared to hold their Interests for an indefinite amount of time. (See: "Suitability Standards")

4. Read and understand the Turnkey Mining Development Agreement and Mine Operating Contract between the Company and the Partnership.

Participation in Mining Revenues

We expect that the only source of income for the Partnership will be operating revenues from the sale of Coal, if any, from the Partnership Mine. (See: "Sources of Funds", "Application of Proceeds", and "Mine Interest Revenues"). For Compensation and Reimbursement to Issuer: (See: additional Information below).

These Benefits Include, Among Others:

The Management Fee paid to the Issuer/Sponsor;

The Monthly management Fee Paid to the Mine Operator;

The Monthly operating costs paid to the Partnership Operator for operating the Partnership Mine.

A 10% carried mining interest (as a reversionary interest) in the coal production from Partnership Coal Mine, which were paid for by the unit holders and then going to the Issuer/Sponsor (after investment pay back) at no cost.

RISK FACTORS

Initial Potential Figures and Decline in Production: In the coal industry coal resources and reserves must be clearly understood. The commonly held distinction, is that a coal resource is coal existing in the earth, whereas a coal reserve is that portion which can be economically mined. To accurately estimate coal reserves the following information is needed (1) current mining technology, legislative restrictions, and economic conditions; (2) developing an economic model to define the role of coal sales price on coal reserves; (3) establishing the relative influence of various land-use, legislative, and technologic restrictions on reserves; and (4) determining the accuracy of the reserve estimate by comparing the results to other productive coal mines.

As with any exploration of minerals there is a decline over time, typically the decline is based on the coal reserves and what the daily output is. Prospective Unit Holders should understand that over the economic life of a mine there will be a decline and as a result of such decline will become non-commercial.

Marketing Coal: The price at which Coal may be sold is dependent upon the availability of a ready market for and the actual marketing of any Coal produced. The price of production affects the rate of return of capital invested. The availability of a ready market and the actual marketing depend upon numerous factors beyond the control of the Company, the effect of which factors cannot be predicted. These non-controllable factors which affect the price and the amount of allowable production, new discoveries, regulatory laws (including pollution controls), weather conditions, the marketing and competitive position of other coal, the availability and carrying capacity of transport, and the fluctuation of supply and demand. (See: "Conflicts of Interest")

Hazards: Operational and Environmental: Mining is an ancient occupation, long recognized as being hazardous and liable to injury and disease. The lifecycle of mining consists of exploration, mine development, mine operation, decommissioning and land rehabilitation. Mining is a multi-disciplinary industry, drawing on several professions and trades. To ensure precision in clinical and epidemiological work, it is important to enquire about the details of tasks, as the term 'miner' is relatively non-specific. Mining is traditionally classified as metalliferous or coal, and as surface or underground. Metalliferous mining can also be classified according to the commodity being mined. Some degree of minerals processing is usually undertaken at mine sites. For metalliferous mining, many of the occupational health hazards relate to these metallurgical processes.

Improvements in mining methods (e.g. longwall mining), hazardous gas monitoring (such as safety lamps or more modern electronic gas monitors), gas drainage, electrical equipment, and ventilation have reduced many of the risks of rock falls, explosions, and unhealthy air quality. Statistical analyses performed by the U.S. Department of Labor's Mine Safety and Health Administration (MSHA) show that between 1990 and 2004, the industry cut the rate of injuries by more than half and fatalities by two-thirds. However, according to the Bureau of Labor Statistics, mining remains the second most dangerous occupation in America. New braces called Atlas Cribs contain a mix of hardwoods and a main lateral element that make these braces stronger than other braces used in the past. The new cribbing system takes up 41 percent less area than existing ones and may be up to 50 percent more efficient in terms of airflow.

Coal mining can result in a number of adverse effects on the environment. Surface mining of coal completely eliminates existing vegetation, destroys the genetic soil profile, displaces or destroys wildlife and habitat, degrades air quality, alters current land uses, and to some extent permanently changes the general topography of the area mined. This often results in a scarred landscape with no scenic value. Rehabilitation or reclamation mitigates some of these concerns and is required by Federal Law, specifically the Surface Mining Control and Reclamation Act of 1977. Mine tailing dumps produce acid mine drainage which can seep into waterways and aquifers, with consequences on ecological and human health. If underground mine tunnels collapse, this can cause subsidence of land surfaces. During actual mining operations, methane, a known greenhouse gas, may be released into the air. And by the movement, storage, and redistribution of soil, the community of microorganisms and nutrient cycling processes can be disrupted.

Unexpected expenses because of hazards could impact the Unit Holder's interest, funds available for distribution to the Unit Holders, and / or require the Unit Holder to pay additional amounts over and above the amount of the Unit Holder's investment in the Partnership.

The Company will not carry, but will attempt cause to be carried (through the subcontractors, Industry Partners and other mining developers), what it believes to be appropriate insurance covering risks associated with the Partnership's operations, including worker's compensation and / or employee liability insurance, general public liability and property damage insurance, automobile public liability and property damage insurance. There is no assurance that coverage or any level of insurance coverage obtained by the Company from others will be sufficient to cover any potential liability incurred by the Company, the Partnership and / or the Unit Holders. Further, there may be occurrences resulting in expenses or liabilities to third parties that are of a nature that are not now or will not in the future be insured. As a result, Unit Holders should be aware of the fact that they may have more funds at risk than those invested in the Partnership as their Initial contribution and, if appropriate, their completion contributions and assessments. The Company will sub-contract all of its mining/ equipping / production operations to third parties, of which it is the intent of the Company to hire only such companies who possess insurance, but no such insurance coverage for the Company or the Partnership or the Unit holders is herein guaranteed or implied.

Delay in Receipt of Income: The Partnership will be engaged in the exploration for possible development of coal reserves. Although not expected, unavailability of or delay due to weather or in obtaining necessary materials for mining or title opinions to date of first production could delay the receipt of income, if any, for significant periods after discovery. Although not expected, unavailability of or delay in connection transportation systems, delays in obtaining satisfactory contracts and other unforeseen circumstances, could also postpone the distribution of income from the coal mine, if any.

Regulation and Marketability of Coal Discovered: The availability of a ready market for any type of coal that may be mined and the price obtained therefore will depend upon numerous factors, including the extent of domestic production and the proximity of the Railroad System, intrastate and interstate market demands, the extent and effect of Federal and State regulations on the sale of Coal in interstate and intrastate commerce, and other government regulations affecting the production and transportation of Coal. (See: "Competition, Markets and Regulation").

Competition: There are other individuals, partnerships, and major and independent Mining Companies which are in competition with the Company, many of which have greater financial and technical resources than those available to the Company. (See: "Competition, Markets, and Regulation").

Possible Shortages: In the past, increased mining activities have, from time to time, created shortages of certain equipment necessary in the mining of coal. Due to a shortage of such equipment and previous inflationary trends, the prices at which equipment was available escalated during such periods. Although a fairly recent nationwide decrease in mining activity and the rate of inflation has resulted in a reduction in demand and a lowering of the price at which some of such equipment is available, there

is a possibility that further price escalations, either nationally or locally, will increase the operating costs associated with production, thus reducing the distributions, if any, available to the Unit Holders. It could be anticipated that such shortage, if any, could cause the price paid for services and equipment to escalate. Due to the "Turnkey" Mining Development Cost arrangement, the Company is responsible for all cost overruns.

Specific Risks

Non-transferability and Illiquidity of Units: The Units are being offered and sold for investment only, and may not be acquired by the purchaser thereof with the view to any resale or distribution thereof. The Units will not be registered under the Securities Act of 1933, as amended, or any State Securities Acts, by reason of specific exemptions under the provisions of such acts relating to transactions not involving a public offering or solicitation, which exemptions depend in part upon the investment intent of the purchaser. Accordingly, Unit Holders will have to bear the economic risk of their investment for an indefinite period of time. A Unit Holder in the Partnership should not expect to be able to readily liquidate his / her Units, since these Units cannot be readily assigned or transferred. In addition, the interests will not be readily assignable or transferable for such reason, these Units may not represent satisfactory collateral for a loan. Each person contemplating an investment in the Units should consider whether the purchase of Units is suitable for him / her in light of his / her individual investment objectives and present and future financial needs. Each such person is urged to consult both a qualified financial advisor and an attorney in connection with that consideration and to give particular attention to the limited liquidity of the Units hereby offered. (See: "Purchaser Suitability Standards")

After Payback: The Company (See: "Source of Funds and Application of Proceeds") will own a 10% of 100% (as a reversionary interest) in the Partnership mine (s) cash income stream, once the Partnership has received back 100% of its investment from the production of the Partnership mine. The Unit Holders will bear all of the costs incurred in connection with the development and operations of the mine. The Company will at that time pay its own 10% share of the Partnerships expenses. The Company, or its Affiliates, may purchase (and resale it desires) any unsold units, and will thus become a Unit Holder for purposes of this Memorandum, and will participate on the same basis as subscribers who become Unit Holders.

Control Over Revenues: The Company will, therefore, execute and maintain division orders (receipts and payment of receipts) for Unit Holders, and will deposit all Unit Holders' revenues from runs in a segregated "ledger revenue account" maintained by the Company. Pursuant to the terms of the Turnkey Mining Development Agreement and Mine Operating Contract, the Company, after it retains its fee for acting as Partnership Operator, will collect and disburse the funds to the Partnership, less mine location and mine production operating costs, ad valorem taxes, expenses related to abandonment costs, subsequent operations, and special projects, and any other amounts due with respect to Partnership's mining interest.

Loss of control over revenues could occur if any creditor of the Partnership Operator asserts claims against any revenue account maintained by the Partnership Operator and / or the purchaser of products which encumbers the Partnership's interest in proceeds from runs. (See: "Risk Factors" and "Proposed Activities")

Loss of control over revenues could also occur in the event a party defaults under the Turnkey Mining Development Agreement and Mine Operating Contract [i.e., fails to timely pay any expenses incurred in connection with operations of the mining Locations]. Such defaulting party grants to each other party to the Turnkey Mining Development Agreement and Mine Operating Contract the right to collect from the purchaser the proceeds from the sale of such defaulting party's share of production until the amount owed by such defaulting party has been received.

Limited Diversification of Risk: The Offering involves performing development Operations on a predetermined mine.

Other Obligations of the Company: The Company has Sponsored, and intends to be involved in the Sponsoring of additional, Mining offerings of varying types, as well as Mining activities for its own account. As a Issuer / Sponsor, the Company has incurred and will incur various types of contingent liability, and possible cash flow issues, for the obligations of such offerings. (See: "Conflicts of Interest" and "Prior Activities")

Compensation received by officers, directors and management personnel of the Company will be determined from time to time by the Board of Directors of the Company. Officers, directors, and management personnel of the Company will be reimbursed for any out-of-pocket expenses incurred on behalf of the Partnership.

The officers, directors and employees of the Company may receive significant compensation, payments, and reimbursements regardless of whether the Partnership operates at a profit or a loss.

Conflicts of Interest: The Company may, in the future, act as Issuer / Sponsor of additional Mining Partnerships which may be in competition with this Partnership insofar as general management, time and attention are concerned. Consequently, there is a possibility of a conflict of interest. No interest which the Company may acquire in other prospects will be transferred to or in any way be committed to the Unit Holders in this Partnership. The Company may have other conflicts of interest with the Unit Holders. (See: "Conflicts of Interest")

Claims of Creditors: The mine could possibly become subject to claims of creditors of the Company, should the Company become insolvent, have cash flow problems, or have legal difficulties.

Possible Liability of Investors: Liability to investors could also result from certain "in personam" liability. Generally, the liability of this Partnership is the ownership interest in the mine. The mine is located in the State of Kentucky which includes contract liability, tort liability, special statutory liability and tax liability. When any of such categories of liability personally attaches personally against the partnership interest owner, such liability is generally known as "in personam" liability.

When such categories of liability attach only to the property interest owned by the partnership interest owner, such liability is generally known as "in rem" liability. If the liability of a partnership interest owner is characterized as "in personam" liability, the partnership interest owner is personally responsible for the payment of that liability, and any and all assets of that person can be used to satisfy such liability; however, if the liability is characterized only as "in rem" liability, the person to whom such liability is owed can only collect payment of such liability from the sale of the property to which such liability attaches. The primary means by which "in rem" liability attaches to the interest of a partnership interest owner is by creditors filing an and Mining lien; however, "in rem" liability can attach, as the result of the terms of an agreement (such as the lien and security interest granted to the Partnership Operator under the terms of the Turkey Mining Development Agreement and Mine Operating Contract to secure their payment of costs).

Both "in personam" and "in rem" liability can simultaneously attach (e. g., the obligation under the terms of the Turkey Mining Development Agreement and Mine Operating Contract), or either may attach without the other (e.g., the filing of an Mining lien against a non-contracting partnership interest owner).

Investor Payback: Payback is defined herein as Gross income, less operating cost (but does not include severance taxes as a cost).

Suitability of the Investment: The Units are not suitable for, and will not knowingly be sold, to anyone who does not meet certain suitability standards described herein or described by the Company. Each prospective Unit Holder will be required to represent that he or she meets such standards. An investment in the Partnership requires careful and informed study with respect to each prospective Unit Holder's individual tax and financial position and, accordingly, each prospective Unit Holder is urged to consult with his accountant, attorney, or financial planner prior to making a decision to acquire Units in the Partnership. (See: "Purchaser Suitability Requirements" and "Investor Suitability Standards")

Compliance with State and Federal Securities Laws; Lack of Regulatory Review: This Offering has not been registered under the Securities Act of 1933, as amended (the "Act"), in reliance on the provisions of Section 4(2) and 3(b) of the Act and Rules 501, 502, and 506 of Regulation D promulgated thereunder; and reliance will also be made on apparently available exemptions from securities registration under applicable State Securities Laws. (See: "Terms of the Offering") There is no assurance that the Offering presently qualifies or will continue to qualify under such exceptive provisions. If, and to the extent suits for rescission are brought and successfully concluded for failure to register this Offering and other offerings which might be Sponsored by the Company under the Act or for acts or omissions constituting offenses under the Act, the Securities Exchange Act of 1934 or under applicable State Securities Laws, both the capital and assets of the Company and the Unit Holder's could be adversely affected, thus jeopardizing the ability of the Company to conduct business. Further, the time and capital of the Company and ultimately that of the Unit Holder's could be adversely affected by the need to defend an action .

Additional Information: During the course of the Offering and prior to any sale, each Offeree of the Units and his or her professional advisor (s), if any, are invited to ask questions concerning the terms and conditions of the Offering and to obtain any additional information necessary to verify the accuracy of the information set forth herein. Such information will be provided to the extent the Company possess

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such information or can acquire it without unreasonable effort or expense.

Each prospective investor will be afforded, and should seek, the opportunity to obtain any additional information which such prospective investor may reasonably request, to ask questions of, and to receive answers from, the Company or any other person authorized by the Company to act, concerning the terms and conditions of the Offering, the information set forth herein and any additional information which such prospective investor believes is necessary to evaluate the merits of the offering, as well as to obtain additional information necessary to verify the accuracy of information set forth herein or provided in response to such prospective investor's inquires. Any prospective investor having any questions or desiring additional information should contact:

New Century Coal Inc.
1009 Lark Street, Ste 1A
Johnson City, TN 37604
855-4USCOAL (487-2625)
www.newcenturycoal.com

ALLOCATION OF PARTNERSHIP'S INTEREST, INCOME AND OWNERSHIP

Owners of the Partnership	Before Investment Payback	After Investment Payback
The Partnership	100%	90%
The Company	0%	10%
TOTAL	100%	100%
* per unit	2.50%	2.25%

Coal Mine Information

Producing	Steam Coal and Metallurgical Coal
Location	Lawrence County, Kentucky
Geology type	Core Hole, Data, Historical Production
Mineral type	Coal
Reserve base	2,887,182 tons
Annual production	240,000 tons
Mining method	Underground and Surface
Processing method	Surface mining with augers and Deep mining operations with a cutter

Tax Information

New Century Coal, INC does not give Tax advice and is not qualified to do so.

THE INFORMATION CONTAINED HEREIN IS NOT A COMPLETE EXPLANATION OF ANY INVESTOR'S TAX ADVANTAGES OR DISADVANTAGES. THE INFORMATION ENCLOSED IS BELIEVED TO BE REASONABLY RELIABLE; HOWEVER, THERE IS NO GUARANTEE OF SUCH ACCURACY.

PLEASE SEEK YOUR OWN TAX ADVICE FROM A PROFESSIONAL

PROSPECTIVE INVESTORS CONSIDERING BECOMING A UNIT HOLDER ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR ASSISTANCE IN EVALUATING ALL OF THE TAX IMPLICATIONS, BENEFITS, AND RISKS OF INVESTING IN THE PARTNERSHIP.

Exploration, Development, and Production

One of the first determinations to be made in an examination of small mining operations is the type and current stage of the mining activity.

Exploration

Exploration expenditures include amounts paid or incurred during the taxable year, prior to the development stage, for ascertaining the existence, location, extent, or quality of the mineral deposit. Some activities associated with placer mining exploration include staking the claim, removal of property line obstructions, limited removal of overburden (the removal of large amounts of overburden would indicate that a deposit may have already been found and the mine may be in a different stage), and limited sluicing.

Rev. Rul. 70-287, 1970-1 C.B. 146, holds that exploration expenditures include geological and geophysical investigations, reconnaissance, surveying, testpitting, trenching, drilling, driving of exploration tunnels and adits, and similar types of work. However, the physical means or method by which the work is performed does not distinguish exploration from development. For example, core drilling expenditures incurred in a mineralized outcrop after minerals are found to exist in commercially marketable quantities are not exploration expenses.

Exploration expenditures constitute capital expenditures which increase the basis of the mineral property unless the taxpayer makes an election to currently deduct the expenses. The election is made for the first year the taxpayer wishes to deduct the expenditures. The expenditure deductions are subject to recapture when the mine reaches the production stage. The recapture may be accomplished by either the disallowance of depletion deductions until the disallowed amounts equal the previously deducted exploration expenses or the inclusion in non-depletable gross income in an amount equal to the previously deducted expenditures.

The majority of Schedule C returns may appear to be in the exploration stage, but this should be verified. Since reporting requirements for the various stages of the operation differ, it is important to establish, preferably in the initial interview, the stage of mine operation.

The exploration stage encompasses prospecting, which does not necessarily require a state filing and actual exploration. If prospecting is conducted on public lands, a minimum requirement is the filing of Affidavits of Annual Labor. Due to the inclusion of prospecting under IRC section 617, an examination cannot be based on the sole fact that the taxpayer did or did not file the required forms with the state. Filings are not required if the land is privately held.

It is helpful, at the initial interview, to determine the approximate amount of time that was spent at the mine during the tax year since the mining season varies and can be relatively short. Only larger operators will have the equipment and resources to work through the winter. Once this information is obtained, it can be verified with the Affidavit of Annual Labor. However, remember that the Affidavits of Annual Labor are NOT verified by the Department of Natural Resources so they should only be used as a comparison tool.

It may be necessary to explain the various stages of mining to the taxpayer. If this situation arises, examiners should allow taxpayers to describe their activities before determining which stage the taxpayer is in or explaining the tax ramifications.

Development

Taxpayers generally have difficulty distinguishing between the exploration and development stages. If the development stage is claimed, examiners should verify with the taxpayers that they have discovered commercially marketable quantities of ore. In following Paul R. Schouten and Mary Kay Schouten v. Commissioner, T.C. Memo., 1991-155, CCH 47,277(M), development expenses can be disallowed when a taxpayer cannot present evidence as to the existence of minerals in commercially marketable quantities.

There should be very little, if any, income during this period. Activities associated with development are building roads, clearing the land, and other activities to prepare a site for the production stage.

Development expenditures must be for preparing a mineral deposit for extraction of the mineral and not for equipment or facilities which relate solely to the extraction of the mineral from the deposit.

Pre-stripping is a process found in open pit and strip mines. The process involves the removal of top soil or earth to expose a coal or ore deposit for later mining. The actual ore may not be removed until the next year after the covering layer of earth is removed or stripped away.

Where the removal of the overburden is related to the extraction of the mineral in the day-to-day mining cycle, and the removal of overburden makes it possible to extract only a small portion of the ore directly beneath the overburden, the costs of overburden removal are operating expenses of mining to be taken into account as costs-of-goods sold under the provisions of Treas. Reg. section 1.61-3. See Rev. Rules. 67-169, 1967-1 C.B. 159 and 77-308, 1977-2 C.B. 208. Where a portion of the coal seam is exposed in excess of what is needed to maintain a desired level of coal production, these expenses are developmental expenses under IRC section 616. See Rev. Rul. 86-83, 1986-1 C.B. 251. Accordingly, where expenditures incurred for removing overburden serve both to expose ore for mining and make possible the future mining of additional ore, the costs are developmental expenditures under IRC section 616 because they are incurred for the purpose of making the ore accessible for sustained extraction over a relatively long period.

The time involved with development can be for a short or relatively long period, depending on the location of the mine, the taxpayer's resources, and the amount of work needed to ready the ore body for production. Taxpayers should be questioned on their plan for development of the property. Have the required permits been submitted to the Department of Natural Resources, the Department of the Interior, the Department of Environmental Conservation, etc.? Ask and determine if they are familiar with the filing requirements concerning the property being worked. If they are unaware of the requirements or activity, this may be an indication that the claim owner is not working the mine and possibly making it a passive activity or an activity not engaged in for profit pursuant to IRC section 183.

Production

If the taxpayer is claiming to be in the production stage, the issues of recapture and depletion should be considered. In all instances, regardless of the mining status, expenditures should be reviewed for possible examination issues. Consider if the alternative minimum tax applies or if a passive activity exists.

Recapture of previous expenditures is an important issue when the taxpayer is claiming to have always been in production. If taxpayer's state they have always been in production, ask to see returns as far back as possible to derive some type of history of the operation. There should at least be some income in each year, although taxpayers can legitimately state they are in production while having no income shown on the return. If a taxpayer claims to be in production, yet a history of the operation shows continual losses, then the "not for profit" issue under IRC section 183 can be

raised and pursued

Prospecting Activities

Of the stages involved in the creation of a profitable mining operation, the prospecting or discovery stage is generally the first activity. A discovery need not be of commercial quantity. However, it should be of a character where an ordinary and prudent person would be justified in further expense with a reasonable expectation of success and profit potential.

Prospecting activities are generally considered a form of exploration so the associated expenses may be allowable under IRC section 617. Normally, state or federal reporting is not completed for general prospecting. The contention that there can be no exploration expenses because there are no documents filed cannot be used as a reason to disallow the expenses. Generally, a taxpayer only needs to show that there is an intent to be in an active trade or business for profit. However, all factors must be considered in determining if a "not for profit" issue (IRC section 183) can be raised. Exploration expenditures as defined by IRC section 617 include amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of a mineral deposit, and paid or incurred prior to the development stage of the mining operation. Prospecting expenditures constitute capital expenditures which increase the basis of the mineral property to the same extent as exploration expenditures. However, Treas. Reg. section 1.617-1(c)(1) grants the taxpayer a right to make an election to currently deduct the expenditures.

By definition, the type of expenditures qualifying as prospecting or exploration expenses are very limited for the placer miner. Expenses should be analyzed to determine if they relate to the types allowable by IRC section 617.

Economic Substance, Sham Transactions, and the Hobby Activity

Losses incurred by an individual miner should be reviewed to determine if the activity was engaged in for profit or if it had no economic feasibility for profit. The facts of each case should be considered to determine if the mining activity had economic substance, if it was a sham transaction, or if it involved a hobby activity. An activity "not for profit" is considered a hobby, with expenses limited to the extent of income produced from the activity (except for deductions allowable regardless of whether a "not for profit" issue exists, such as interest and taxes).

IRC section 183(a) provides that if an activity is not engaged in for profit, no deduction attributable to such activity shall be allowed. IRC section 183(c) defines an activity not engaged in for profit as "any activity other than one with respect to which deductions are allowable for the taxable year under IRC section 162 or under paragraph (1) or (2) of IRC section 212".

The following list from Treas. Reg. section 1.183-2(b) sets forth nine non-exclusive objective factors to determine whether an activity is engaged in for profit.

- The manner in which the taxpayer carries on the activity.
- The expertise of the taxpayer or his advisors.
- The time and effort expended by the taxpayer in carrying on the activity.
- The expectation that the asset used in the activity may appreciate in value.
- The success of the taxpayer in carrying on other similar or dissimilar activities.
- The taxpayer's history of income or losses with respect to the activity.
- The amount of occasional profits, if any.
- The financial status of the taxpayer.
- The elements of personal pleasure or recreation involved in the activity.

The regulation factors should not merely be counted to determine the number of items "for" and "against" the taxpayer. All the facts and circumstances must be considered and more weight may be given to some of the factors. Not all factors may be applicable in every case and no one factor is considered controlling.

Generally, in order for expenses to be allowable, they must be supported by the taxpayer's actual motive to make a profit. If the profit motive is absent, tax deductions relating to the investment are limited under IRC section 183 to the income generated from the activity. *Maurice C. Deicer v. Commissioner*, 78 T.C. 642 (1982).

It is important to remember that while a reasonable expectation of profit is not required, the taxpayers' profit motive must be bona fide. Refer to the decisions reached in *Henry N. and Marilyn Hulter v. Commissioner*, 91 T.C. 371 (1988)

and *Truett E. Allen and Barbara Allen v. Commissioner*, 72 T.C. 28 (1979). Whether a taxpayer has an actual profit motive is a question of fact and is to be resolved from all the relevant facts and circumstances. The burden of proving the motive is on the taxpayer.

The economic substance of the transaction is one of the factors that is relevant in analyzing a taxpayer's profit motive. Transactions entered into solely for the purpose of obtaining a tax benefit and without economic substance will not be allowed. If the taxpayer is using the mining activity to create a loss to offset income or deduct personal expenses under the guise of a mining activity, they should not be respected for tax purposes. The cases of *Frank Lyon Company v. United States*, 78-1 U.S.T.C. Para 9370; and *James L. Hudson v. Commissioner*, 103 T.C. 90 (1994), support this position.

Passive Activities

A passive activity is defined as a trade or business, or activity conducted in anticipation of becoming a trade or business, in which the taxpayer does not materially participate. Passive activities are controlled by IRC section 469; those rules apply to individuals and estates, trusts, personal service corporations, and closely held C-Corporations with five or fewer individuals owning more than 50 percent in value of its outstanding stock anytime during the last half of the taxable year. A passive activity is a Schedule C or F activity with no material participation, a limited partner interest without more stringent material participation, and a rental (regardless of the level of participation).

Most of the returns examined will be for miners who are actually working a claim, and the basic concepts of passive activities should be addressed when interviewing the taxpayer to obtain information regarding the taxpayer's participation in the activity. Determine the approximate number of hours worked by the taxpayer. This figure can then be compared with that on the Affidavit of Annual Labor. If there is a substantial variance, it may be worthwhile to probe the issue in more depth.

Generally, the owner of the claim is the main person working the claim. However, check to see if the claim is leased. If this is the case, the lessee has the same rights as the owner. While most mining claims are worked by individuals, there will be times when a partnership or S-Corporation may be involved with the running of the operation. It is important to determine who actually handles the day-to-day operations, or who is actually materially participating in the activity. It is not uncommon for partners or shareholders to live out of state (lending credence to the fact that the activity may be passive to that individual). Be sure and check the EIN and compare it to the state in which the taxpayer resides. Limited partners are by Code presumed passive unless they pass the exception tests outlined in Treas. Reg. 1.469-5T(e)(2). If this type of return is examined, copies of the Forms K-1 should be obtained and examined. If it appears that the issue of material participation may be applicable, obtain an RTVUE and review the individual's return for possible examination. The glossary contains definitions of certain terms used in this section.

There are seven tests which can be applied to determine material participation. The taxpayer need only meet ONE of these tests to qualify. Pay particular attention to items 1 through 3. The seven tests are outlined below.

Material Participation

A trade or business activity is not a passive activity if the taxpayer materially participates in the activity. One materially participates in a trade or business activity for a tax year by satisfying one of the following tests.

1. The taxpayer participates for more than 500 hours during the taxable year. In counting hours of participation, spouses' hours are added together. An individual's participation in an activity may be established by any reasonable means. Time reports and logs are not required. Treas. Reg. section 1.469-5T(f)(4).
2. The taxpayer's participation is substantially all of the participation in the activity of all individuals for the tax year, including the participation of individuals who did not own any interest in the activity.
3. The taxpayer participated in the activity for more than 100 hours during the tax year, and he/she participated at least as much as any other individual (including individuals who did not own any interest in the activity) for the year.
4. The activity is a Significant Participation Activity, (SPA) and the taxpayer's aggregate participation in all SPA's for the taxable year exceeds 500 hours. A significant participation activity is any trade or business activity in which the taxpayer participated for more than 100 hours during the year and in which the taxpayer did not materially participate under any of the material participation tests, other than this test.

If the claim is leased and the lessee has control of the operations, this would convert the claim to a rental activity for the owner and generally convert it to a passive activity. IRC section 469(c)(2) defines a passive activity as including any rental activity.

Treas. Reg. section 1.469-1T(e)(3) further defines the concept of "rental activity". The owner/lessor would thus not be entitled to any expenses which would fall under IRC sections 616 or 617. The activity would not be allowed to be claimed on the Schedule C but would have to be filed on Schedule E and the appropriate passive loss schedules completed.

To determine if the mining activity for the individual is passive, begin with the ownership documents to verify the taxpayer's position. After ownership is established, examination of the Affidavits of Annual Labor should be pursued, if the taxpayer is required to file them. They describe how much work was done in terms of man-days, the dollar amounts, who actually did the work, and what type of work was done. The reports also give the dates the work was performed. The reporting period runs from September 1 thru September 1 of the following year, requiring the need to review 2 years of affidavits.

Often, the reports will reveal that the owner of the claim did not actually do the physical labor of working the claim. This standing alone would not immediately make the activity passive to the owner. Management of the activities, hiring the laborers, and filing the necessary documentation pertaining to the claim all must be considered in the determination of the participation by the owner. (Note: Treas. Reg. sections 1.469-5T(b)(2)(ii) and (i)(2) exclude certain types of participation from consideration.) This may be difficult to ascertain as there are no strict record-keeping requirements. Thus, obtaining information at the initial interview is critical. Third-party contacts with those individuals identified on the labor reports may also be helpful in determining the amount of participation on the part of the owner. Remember, the Affidavits of Annual Labor are NOT verified by the Department of Natural Resources. This information must be used only as reference information. Audit comments should be made regarding the extent of reliance on the information.

The mining season for the small scale miner can be a short period during the spring and summer. This is due to the extreme weather conditions and the need for heavy duty equipment to work in the winter months. Larger operations have more resources and are better able to extend the period of operations. However, for the individual, this relatively shorter working season should be considered when making an analysis of the numbers of hours worked.

Depletion

Depletion, like depreciation, is a form of cost recovery. Just as the owner of a business asset is allowed to recover the cost of an asset over its useful life, a miner is allowed to recover the cost of mineral property. Depletion is taken over the period of time that mineral is being extracted. Two forms of depletion are allowed: cost depletion and percentage depletion. The taxpayer is required to use the method which will result in the greatest deduction.

Cost Depletion

The general method used for the calculation of depletion is the cost method. The first step of this method is to determine the number of units which comprise the deposit. The units can be tons of ore, barrels of oil, board feet of timber, etc. The taxpayer must be consistent from year to year in the type of unit being calculated to insure uniformity. The second step takes the cost or adjusted basis of the property which pertains to the deposit and divides this basis by the total number of units to obtain the depletion cost per unit. Once the total number of units extracted is determined for the tax year, it is multiplied by the cost per unit to obtain the amount of depletion available.

It is possible that during the course of the operation or from examination, the estimate of the number of units which comprise the deposit may change. If this happens, the calculation can change. While the number of units can be recalculated, the basis cannot be adjusted. It is advisable to discuss with the taxpayer as early as possible how they estimated the number of units used in the depletion calculation. It is also helpful to determine if the taxpayer has adjusted this estimate over the course of production. Check to see if the taxpayer is being consistent with the measure of units and what method was used to develop the new estimate.

The following example covers depletion using constant estimates.

The taxpayer purchases a claim for \$50,000, with known mineral reserves in mineable quantities. He states that he is in the production phase and is selling product. The taxpayer estimates that there is 100,000 tons of ore to be extracted. For purposes of the computation for depletion, the basis of the mine is \$50,000. During the tax year, the taxpayer mines and sells 3,500 tons of ore. The first year depletion would be calculated as follows:

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Rate of Depletion per ton (\$50,000/100,000)	\$.50
Depletion for year (3,500 x \$.50)	\$ 1,750.00

Purchase price	\$ 50,000
First year depletion	\$ 1,750
First year basis of the property	\$ 48,250

If estimates of the amount of reserves were never adjusted, the above calculation for depletion would remain constant. The basis would be reduced each year by the amount of depletion until it is totally consumed and the taxpayer has no basis left in the property. At this time, cost depletion is no longer allowed. While this scenario would certainly not be out of the ordinary, a revision in the estimate of reserves will affect the depletion calculation, and should be thoroughly examined. The following example covers depletion using revised estimates.

In tax year 2, the miner sells 7,000 tons. At the end of the year, the estimate of the ore changes to 130,000 tons. The calculation for depletion for year 2 would be as follows:

Revised estimate of unextracted ore	130,000
Ore sold during the year	7,000
Total tonnage used to compute new rate	137,000
Remaining Adjusted Basis of property	\$48,250
Rate of Depletion per tone (\$48,250 / 137,000)	\$00.35
Depletion for year 2 (7,000 x .35)	\$2,450

First Year basis of the property	\$48,250
Second year depletion	<u>-\$ 2,450</u>
Second year basis of the property	\$ 45,800

Percentage Depletion

Under the percentage depletion method, a flat percentage of gross income from the activity is used to calculate the depletion allowance. The deduction for depletion cannot exceed 50 percent of the taxable income from the activity. This limitation is computed without regard to the depletion allowance. Depletion percentages are found in IRC section 613(b) and Treas. Reg. section 1.613-2. The amount of the deduction allowable under percentage depletion is not limited by the basis of the property. Thus, even though the basis of the property is reduced by the amount of depletion taken, if the basis becomes zero, the depletion based on the percentage of gross income may continue. However, if cost depletion will yield a higher deduction, it must be used to calculate the amount deducted.

In using percentage depletion the concepts of gross income, taxable income, and different percentages based on the type of material extracted all come into play in the computation. The Code and Regulations are specific regarding the percentages to be used for the various types of materials which can be mined. Particular attention should be paid to the type of arrangement the taxpayer is involved in, that is, is the property being leased, are there royalties involved, are there prepayments of any kind, etc. This information should be discussed in the initial interview in order to clearly establish the nature of the mining activity.

Alternative Minimum Tax

For purposes of determining Alternative Minimum Taxable Income (AMTI), mining development and exploration costs paid or incurred after December 31, 1986, which were allowable as a current deduction under IRC section 616(a) or 617(a), must be capitalized and amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made. This amount is shown as an Alternative Minimum Tax adjustment item and is the difference between the recomputed Alternative Minimum Tax expense and the expense claimed on the return. This adjustment is subject to an election under IRC section 59(e) which could eliminate the adjustment for AMTI purposes.

5. The taxpayer materially participated in the activity for any 5 (whether or not consecutive) of the 10 preceding years. When determining whether the taxpayer materially participated in tax years beginning before 1987 (other than a tax year of a partnership, S-Corporation, estate, or trust ending after 1986), the taxpayer materially participated only if he/she participated for more than 500 hours during the tax year.
6. The activity is a personal service activity in which the taxpayer materially participated for any 3 (whether or not consecutive) preceding tax years. To determine material participation in tax years beginning before 1987 (other than a tax year of a partnership, S-Corporation, estate, or trust ending after 1986), the taxpayer materially participated only if he/she participated for more than 500 hours during the tax year.
 1. For the passive activity rules, a corporation is a personal service corporation if it meets all of the following requirements.
 1. It is a corporation (other than an S-Corporation).
 2. Its principal activity during the "testing period" is performing personal services. The test period for any tax year is the previous tax year. If the corporation has just been formed, the testing period begins on the first day of its tax year and ends on the earlier of:
 1. the last day of its tax year, or
 2. the last day of the calendar year in which its tax year begins.
 3. the services in (2) must be substantially performed by employee-owners. This met if more than 20 percent of the corporation's compensation cost for its activities of performing personal services during the tax year are for services performed by employee-owners, and
 4. Its employee-owners own more than 10 percent of the fair market value of its outstanding stock on the last day of the testing period.
 2. Personal services are those performed in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.
 3. A person is an employee-owner of a personal service corporation if both of the following apply.
 1. He or she is an employee, or performs personal services for or on behalf of the corporation an independent contractor, during any day of the testing period, and
 2. He or she owns directly or indirectly any stock in the corporation at any time during the testing period.
7. The taxpayer's participation is regular, continuous, and substantial. The participation must be more than 100 hours per year and then it is a facts and circumstances determination. Treas. Reg. section 1.469-4(b)(1) defines trade or business activities as:
 - • • activities, other than rental activities (as defined in Treas. Reg. section 1.469-1T(e)(3)) or activities that are treated under Treas. Reg. section 1.469-1T(e)(3)(vi)(B) as incidental to an activity of holding property for investment, that-
 1. Involve the conduct of a trade or business (within the meaning of [IRC] section 162);
 2. Are conducted in anticipation of the commencement of a trade or business; or
 3. Involve research or experimental expenditures that are deductible under [IRC] section 174 (or would be deductible if the taxpayer adopted the method described in [IRC] section 174(a)).

Determination of material participation is crucial in determining whether the mining activity is passive or not. IRC section 469(h)(1) states: "• • • A taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is: (A) regular, (B) continuous, and (C) substantial." See the seven tests for material participation discussed above.

Exploration and development expenditures for any given claim can only be deducted by the owner of the claim or by another when there has been an arrangement, such as a contract with a renter/lessee. Ownership or control can be verified by examining the documents pertaining to the claim in the Department of Natural Resources files. If the claim is leased or rented to another, the contract should be examined to determine the terms of the agreement. If there is a verbal contract, both parties should be queried to determine the facts.

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A taxpayer pays or incurs expenditures of \$50,000 in the current taxable year for mining exploration and development costs. This amount was deducted on the Schedule C. Had the taxpayer elected to amortize the expenses over a 10-year period, the deduction in the current year would have been \$5,000. The Alternative Minimum Tax adjustment would be calculated as follows:

Current year Deduction	\$50,000
Amortized Deduction	<u>-\$ 5,000</u>
Total Adjustment to AMT	\$45,000

In years 2 through 10, the unamortized amount becomes a negative adjustment in computing ATMI. That is, the unamortized amount reduces AMTI in years 2 through 10 as shown below:

Current Year Deduction	\$70,000
Current year Amortized Deduction	-\$ 7,000
Prior Year Amortized Deduction	<u>-\$ 5,000</u>
Total Adjustment to AMT	\$58,000

Exploration and development expenditures can effect the Alternative Minimum Tax calculation. Consider also the calculation for Depreciation and Depletion. Most miners tend to have some heavy equipment with sizable basis. The recalculation of the depreciation or depletion and subsequent changes can have an effect on the Alternative Minimum Tax.

Corporate Exploration and Development Costs

Per IRC section 291(b), the amount allowable as a deduction for exploration expenses (IRC section 617(a)) and development expenses (IRC section 616(a)) must be reduced by 30 percent. The unallowed expenses are deducted ratably over a 60-month period beginning with the month the costs are paid or incurred. Thus the corporation must prorate the expenses in the first year. The expenses are not taken into account for purposes of determining depletion under IRC section 611. If a corporation subsequently abandons or declares the property worthless and is still carrying unamortized expenses, they may be deducted in full in the tax year the properties are deemed worthless. If there are indications that a corporation is deducting exploration or development expenses, there should be an amount for amortization somewhere on the return. If there is not, it may indicate the corporation is deducting the exploration or development expenses in full.

Per IRC section 617(h), exploration expenses incurred outside of the United States may not be deducted in full in the year paid or incurred. These expenses must either be included in the adjusted basis of the property and recovered through depletion or be deducted ratably over a 10-year period beginning in the year the expenses were paid or incurred. The same rules pertain to development expenditures per IRC section 616(d).

Fuel Excise Tax

Taxpayers may be eligible to claim a credit or refund of excise tax included in the price of fuel if it was for off-highway use. Publication 378 defines off-highway business use as any use of fuel in a trade or business other than as a fuel in a registered highway vehicle. A highway vehicle is "any self-propelled vehicle designed to carry a load over public highways, whether or not also designed to perform other functions."

These are vehicles not considered highway vehicles:

1. Specially designed mobile machinery for non-transportation functions. A self-propelled vehicle is not a highway vehicle if it consists of a chassis that:
2. has permanently mounted to it machinery or equipment used to perform certain operations if the operation of the machinery or equipment is unrelated to transportation on or off the public highways;
3. has been specially designed to serve only as a mobile carriage and mount for the machinery or equipment, whether or not the machinery or equipment is in operation; and
4. could not be used, because of its special design, as part of a vehicle designed to carry any other load without substantial structural modification.

5. Vehicles designed for off-highway transportation. A self-propelled vehicle is not a highway vehicle if:
6. the vehicle is designed primarily to carry a specific kind of load other than over the public highway for certain operations; and
7. the vehicle's use of carrying this load over public highways is substantially limited or impaired because of its design. Fuels used in off-highway business use include fuels for stationary machines such as generators, compressors, power saws, and similar equipment; for cleaning purposes; forklift trucks and bulldozers; and cars and trucks operating off the highway in construction, mining, or timbering activities, if the vehicles are neither registered nor required to be registered.

A credit or refund is allowable only if tax has been imposed on the fuel. All gasoline and undyed (clear) diesel fuel have been taxed by the time these fuels are used at the mine. Dyed diesel fuels generally do not qualify for a credit or refund. Other types of fuel (such as propane) generally are bought tax free and are not eligible for a credit or refund.

Inventories and Uniform Capitalization

It is the Government's position that, under IRC section 471(a), in order to achieve the matching of income to expenses, the taxpayer is required to maintain in inventory the gold extracted from the mining operation. This is necessary in order to determine the income of the taxpayer. The matching of expense to income follows the generally accepted accounting principal. A matching principal issue generally arises when the taxpayer is in the production stage deducting expenses related to the production phase of mining with little or no income. It is not uncommon to examine a return where the taxpayer claims to be in production yet keeps no inventory. Since the gold recovered must eventually be recognized as income, inventories must be maintained.

The initial interview should establish when the taxpayer first went into production and if any gold was on hand, either obtained with the claim or produced in the exploration or development stages. The general rules of inventory apply here, that is, how much gold was on hand at the beginning of the year, how much was produced during the year, how much was sold, and how much was on hand at the end of the year. This will provide the physical amounts used in computing the cost-of-goods sold.

IRC section 471 establishes that an inventory must be kept. Treas. Reg. section 1.446-1(a)(4)(i) recognizes the need for inventories and makes reference to IRC sections 263A and 471. Treas. Reg. section 1.471-7 establishes the need for inventories of miners and manufacturers and is supported by Treas. Reg. section 1.61-3 which provides that in a manufacturing, merchandising, or mining business, gross income means total sales less cost-of-goods sold. Cost-of-goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer.

Treas. Reg. section 1.471-11(a) states that:

• • • In order to conform as nearly as possible to the best accounting practices and to clearly reflect income (as required by section 471 of the Code), both direct and indirect production costs must be taken into account in the computation of inventoriable costs in accordance with the "full absorption" method of inventory costing.

The Uniform Capitalization rules require the capitalization of the costs of producing real and tangible personal property. See IRC section 263A(b)(1). Mining operations involve the production of both real and tangible personal property. Until the gold is extracted from the land, the taxpayer is engaged in the production of tangible personal property. The gold is inventory in the hands of the taxpayer.

The costs that must be capitalized are: (1) the direct costs, and (2) a properly allocable share of the indirect costs that benefit or are incurred by reason of the production of the mineral property. See IRC section 263A(2) and Treas. Reg. section 1.263A-1(e)(3)(i). Treas. Reg. section 1.263A-1(e)(ii) provides an illustrative list of indirect costs required to be capitalized. In addition, IRC section 263A(f) requires the capitalization of interest incurred with respect to the production of real property.

IRC section 263A(c)(3) provides that the general rules of IRC section 263A do not require the capitalization of any cost that is allowable as a deduction under IRC sections 263(c), 263(i), 291(b)(2), 616, or 617.

The direct and indirect costs that benefit or that are incurred by reason of the production of the mineral property must be capitalized to that property. See IRC section 263A(a)(1)(B). The direct and indirect costs that directly benefit or are incurred by reason of the gold must be included in the inventoriable cost of the gold. See IRC section 263A(a)(1)(A)

The Partnership and its Proposed Activities

THE FOLLOWING DISCUSSION REFERS TO AND / OR SUMMARIZES CERTAIN DOCUMENTS AND INSTRUMENTS THAT ARE ATTACHED TO THIS MEMORANDUM AS EXHIBITS. A PROSPECTIVE UNIT HOLDER SHOULD REVIEW EACH EXHIBIT CAREFULLY PRIOR TO MAKING AN INVESTMENT DECISION. IN THE EVENT OF ANY DIFFERENCES BETWEEN THE DISCUSSION BELOW AND THE CONTENTS OF THE EXHIBITS THEMSELVES, THE PROVISIONS OF THE EXHIBITS SHALL CONTROL.

The Partnership: The Partnership is a Limited Liability Partnership in formation that will be organized upon closing of this offering. The Partnership is being formed as a Limited Liability Partnership pursuant to applicable provisions of the Nevada Uniform Partnership Laws or other such laws that may apply, as such; the Partnership constitutes a General Partnership under Nevada law, and is governed by the statutory provisions applicable to General Partnerships, as set forth in Nevada. New Century Coal Inc. will serve as the Issuer / Sponsor of the Partnership. Investors whose subscriptions are accepted by the Issuer / Sponsor will be admitted as Unit Holder Partners of the Partnership. The Issuer / Sponsor will make decisions Regarding Partnership activities of the mine. The Issuer / Sponsor will have the authority, discretion and responsibility in the management, control and conduct of, and shall make such decisions affecting the business and affairs of the Partnership.

Operation of the Mine: The Company will act as the Partnership Mine Operator of the mine under the Turnkey Mining Development Agreement and Mine Operating Contract, a form of which is attached as (Exhibit "E"). The Turnkey Mining Development Agreement and Mine Operating Contract and its attachments should be read in their entirety by each prospective Unit Holder for a full understanding of the terms thereunder. Under the terms of the Turnkey Mining Development Agreement and Mine Operating Contract, the Unit Holders appoint the Company to perform or cause to be performed all services in connection with the supervision and management of the mine. Any or all of the Company's duties as Partnership Operator may be delegated by the Company to third parties; however, the Company will remain primarily responsible for the performance of such functions as long as it continues to serve as Partnership Operator. On behalf of the Unit Holders, the Company will enter into contracts on behalf of the Company and Partnership for the sale of products produced from the mine, for periods not to exceed five years. The Partnership will be billed a minimum overhead charge of \$1,000 per week, as the Companies compensation for Partnership administratively costs. The Turnkey Mining Development Agreement and Mine Operating Contract grants the Company a lien on the interest of Partnership / Unit Holders in the mine to secure payment of their obligation for all Operating and Production and Re-work costs.

The Partnership will pay its proportionate share of the operating costs for the mine and it's pro rata share of the taxes on production from the mine. The State of Kentucky currently levies a severance tax on coal production. Operating costs will be charged against revenues in accordance with generally accepted accounting procedures, and in accordance with the accounting procedures attached. All production revenues attributable to the mining interests held by the Partnership, after payment of severance taxes levied, be paid to the Partnership Operator, under a revocable appointment the Company or whoever the Company appoints to act as agent of each Unit Holder. Each month (for the first 12 months and quarterly thereafter) the Company or its agent will, after deduction of operating costs, distribute the

revenue interest to each Unit Holder in accordance with his pro rata interest as such interest is reported to the agent by the Company in accordance with the Turnkey Mining Development Agreement and Mine Operating Contract. In the event revenues held by the agent from the sale of products for the account of Partnership are from time to time insufficient to pay operating costs as they come due, Unit Holders may be billed, at the discretion of the Company, for their pro rata share of the deficiency. It is industry standards for payment to the unit holders for their share of coal income to stay in the arrears 3 - 4 months. It will generally take up to six (6) months from when mining operations begin for the investor to receive their first royalty payment .

Subsequent Operations and Special Projects: Under the Turnkey Mining Development Agreement and Mine Operating Contract, provision is made for assessment of the parties, including unit Holders interest owners, for subsequent operations. A subsequent operation would typically involve additional leasing, bonding or reclamation. At any time any party to the Turnkey Mining Development Agreement and Mine Operating Contract may propose additional projects on the prospect ("Special Projects") such as additional permitting or core hole drilling. The cost of a special project shall be governed by separate agreement between the parties which will agree and authorize (by 51% approval vote of the unit holders, of those who vote) the special project.

No subsequent operations or special projects are contemplated at this time, although over the course of the producing life of the mine, an assessment for such a purpose could be required. In the event of a determination by the Partnership Operator that a subsequent operation and/or a special project might be desirable to be carried out , the Issuer / Sponsor will present the proposal to the voting Unit Holders for their approval, which shall be effective upon the vote of a simple 51% majority of those Unit Holders who vote on the matter. (See: "Risk Factors" and Exhibit "E")

Control Over Revenues: The Turnkey Mining Development Agreement and Mine Operating Contract provides that, even though the mine obtains production in commercial quantities, and the Partnership may have received an assignment of interest, the Partnership Operator will maintain 100% division orders under which all of a Unit Holder's revenues from production sales proceeds ("Runs") will be deposited in a segregated "revenue account" maintained by the Partnership Operator. The account should not be subject to the claims of the general creditors of the Partnership Operator (except to the under the Turnkey Mining Development Agreement and Mine Operating Contract). A similar provision will most likely be in any agreement entered into between the Partnership Operator and any third party Partnership Operator, if any. The failure of the Partnership Operator to pay the Unit Holder's proportionate share of costs to such Partnership Operator or the Unit Holder's failure to pay his share of costs to the Partnership Operator could result in the Unit Holder's loss of revenues and possibly his entire interest in the mine for payment of those costs.

As with a Mining lien, a Partnership Operator's lien could attach, regardless of whether the Unit Holders have paid their share of costs to the Partnership Operator; therefore, the Unit Holders must rely upon the Partnership Operator's timely payment of all costs attributable to Unit Holders to any third party Partnership Operator.

The Turnkey Mining Development Agreement and Mine Operating Contract allows the Partnership Operator to "net" (withhold and offset) a Unit Holder's share of revenues against that Unit Holder's share of unpaid costs, in the proportion that their interest bears to the whole, less operating costs, ad valorem taxes, expenses related to subsequent operations, special projects, production and administrative costs and any other amounts due with respect to Unit Holders' Partnership interest. (See: "Risk Factors" and Exhibit "E").

Partnership Operator will not carry insurance, but will attempt to have all contractors or subcontractors to carry Workmen's Compensation insurance in compliance with the laws of the State of Kentucky and public liability insurance coverage. In addition, the Partnership Operator will attempt to have the contractors and subcontractors to have adequate general liability insurance.

Special Risks of the Offering: "Liability of Unit Holders," As noted in the section of this Memorandum entitled "Risk Factors," "Special Risks of the Offering - Liability of Unit Holders," the liability of a Partnership Unit Holder in the mining location located in the state of the Partnership development includes contract liability, tort liability, special statutory liability and tax liability. When any of such categories of liability personally attach against the Partnership Unit Holder, such liability is generally known as "in personam" liability. When such categories of liability attach only to the property interest owned by the Partnership Unit Holder such liability is generally known as "in rem" liability. If the liability (e. g., contractual liability) of a Partnership interest owner is characterized as "in personam" liability, the Partnership Unit Holder is personally responsible for the payment of that liability; however, if the liability is characterized only as "in rem" liability, the person to whom such liability is owed can only collect payment of such liability from the sale of the property to which such liability attaches.

A lien can be filed on the property and equipment pursuant to the law of the state in which the mine is located, by the Company or by any person who performs labor or furnishes or hauls material, equipment, tools, machinery or any other supplies which relate to the mine. Such a lien can conceivably attach to all interests in the property owned by the Partnership (the status occupied by the Partnership). Such a lien can attach regardless of whether the Partnership Operator or Partnership interest owners / Unit Holders personally contracted for such service and supplies or even knew of such a contract. Therefore, if the Partnership Operator interest owner / Unit Holder fails to pay any of the costs associated with the mining of the coal, the person providing such services or supplies could conceivably cause a mining lien to attach to the property interest of all mining interest owners and cause such property interests to be judicially sold for payment of such costs. The sale of a Unit Holder's interest under a Mining lien can take place regardless of whether the Unit Holder has paid his share of such costs to the Partnership Operator or the field Operator has paid the Unit Holder's share of such costs to a third party Partnership Operator, if any, or supplier of goods or services. Unit Holders must therefore rely upon the Partnership Operator's timely payment of all costs relating to the mine, as well as, the timely payment by other parties for costs and expenses under the Turnkey Mining Development Agreement and Mine Operating Contract. (See: "Risk Factors")

In addition to the possible attachment of a Mining lien, a Unit Holder's interest in the mine will be subject to a Partnership Operator's lien since the determination of an independent contractor status

depends upon the actual factual circumstances of the relationship, it is not possible to presently determine what protection, if any, will be afforded to the Unit Holders by the provisions of the Turnkey Mining Development Agreement and Mine Operating Contract which attempt to prevent the finding of control necessary for an agency relationship between the Partnership Operator and Unit Holders, as non-operating partnership interest owners. Theories of "in personam" liability could be asserted against Unit Holders (for example, in operating an "ultra-hazardous activity") and Unit Holders should consider this risk before investing in the Partnership Units. The characterization of an activity as ultra-hazardous could result in "in personam" liability on the Unit Holders for all liability arising from the performance of that activity and such "in personam" liability would attach regardless of whether the Partnership Operator was declared to be the agent or independent contractor of the Unit Holder's. Under this circumstance, the personal assets of any and all Unit Holder's could be reached to satisfy any such liability.

It is possible that "in personam" liability could be imposed upon Unit Holder's with respect to any contractual or tort liability of the Partnership Operator which arises under the terms of the Mining lease executed with the mineral owners. Such potential "in personam" liability is based upon the Unit Holder's position as a limited liability partner in the Partnership, meaning that the Unit Holder is exposed to the potential loss of the entire interest in the Partnership, and has potential liability for the acts or omissions of such Unit Holder. The Partnership has certain obligations with respect to the Turnkey Mining Development Agreement and Mine Operating Contract, and may have obligations with respect to the express and implied terms of the Mining lease upon which operations are conducted. The failure to comply with these contract and lease obligations could result in contractual and / or tort liability being imposed upon the Partnership and the limited liability partners. Since the Partnership Operator will control all operations, such liability may attach without the Unit Holder being able to control the Partnership Operator's actions.

The possibility of personal liability on a joint and several basis should be carefully considered by potential unit holders in the partnership units.

Risk of Penalty and / or Relinquishment: A Unit Holder in the Partnership will be subject to a risk of penalty and / or total relinquishment of his interest in the Partnership or a part thereof as a result of certain provisions of the Turnkey Mining Development Agreement and Mine Operating Contract. The Turnkey Mining Development Agreement and Mine Operating Contract contains certain risks of penalty and / or total relinquishment to which a Unit Holder will be subject in the event a Unit Holder fails to fund an assessment levied on his interest after completion of the mine. In the event a Unit Holder fails to consent to fund an assessment levied on his interest to carry out a subsequent operation on the mine, the Unit Holder relinquishes his interest in the mine and all Partnership interest owned.

Sale of Coal Production: The Company as Partnership Operator may enter into contracts on behalf of the Unit Holder for the sale of products from the mine, for periods not to exceed the minimum period reasonably necessary in the industry, and in any event for longer than one year. The Company will see the Coal produced from the mine in accordance with provisions of the Turnkey Mining Development Agreement and Mine Operating Contract, and the Coal produced from the mine will be sold on a competitive basis to third parties, and will not be sold to or otherwise acquired by the Company. The Company, as Partnership Operator, will collect and disburse the "Funds" to the Partnership less operating costs,

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administrative cost, and any other amounts due with respect to Partnership's interest. (See: "Risk Factors", "Control over Revenues" and Exhibit "E").

Reports: The Company will maintain accurate records relating to all phases of the mining operation and will make them available to each Unit Holder on a thirty (30) day written notice at its office at 1009 Lark Street, Ste 1A, Johnson City, TN 37604 or any other such place as determined by the Partnership Operator in its sole discretion. The telephone number for New Century Coal is 855-4USCOAL (487-2625). Operating and production reports will be mailed to the Unit Holders, not less often than quarterly, until such time as the Company determines that such reports and statements are no longer needed to fully inform Unit Holder's of the mine operations. During the actual mining operations, it is the intent of the Company to inform all Unit Holder's with progress information. The Company will also arrange for the preparation of all information needed by Unit Holders for the filing of tax returns, which will be transmitted within a reasonable period after the close of each calendar year. This tax preparation cost shall be borne by the Partnership at cost plus 20%.

Liens Against Unit Holders' Interest: The Turnkey Mining Development Agreement and Mine Operating Contract grants the Partnership Operator a lien on the interest of Unit Holder in the mine to secure payment of their obligation for all Operating Costs. (See: "Risk Factors" and Exhibit "E").

Lease Abandonment: At any time after mining of the mine begins, the Company, in its capacity as Partnership Operator, in its sole discretion may determine that the mine is not capable, or is no longer capable, of producing products in commercial quantities, and shall thereupon proceed to abandon and shut down the mine. There shall be at no additional cost to the Unit Holders. The mine location and its mining interest at that time would then revert back to Partnership Operator.

Return on Investment: There is absolutely no assurance expressed or implied that the mine will produce commercial quantities of Coal. However, if commercial quantities of products are achieved, all Unit Holders (in good standing) will participate in any Coal production revenues.

Competition, Markets and Regulation

Competition: The Coal industry in the United States is highly competitive. Numerous companies engaged possess financial resources, facilities, and technical staffs far greater than those of the Company. The Partnership will encounter frequent and intense competition from both major Coal companies and other independent contractors in its effort to secure equipment necessary in the mining and completion phases of the mine. Such competition may cause a substantial increase in mining and operating costs and the procurement costs for site prospect (all costs increases will be sole responsibility of the Partnership Operator, subject to the "Turnkey" cost contract). In addition to these increasing costs, the unavailability of certain vital equipment could significantly time delay exploration and development operations of the Partnership.

Markets: The marketing of any Coal found and produced by the Partnership and the price that they will bring in the marketplace will be influenced by a number of factors which are beyond the control

Partnership ("Percentage Interest"). All net profits and net losses allocated to the Unit Holders shall be credited or charged, as the case may be, to their respective capital accounts. Unless otherwise specifically required, all allocations of net profits and net losses shall be made as of the last day of each fiscal year of the Partnership. Once the Partnership has received a cash return of 100% of all money invested in the Coal Mine then the Partnership's revenue distribution of 100% will be reduced to 90%. The remaining 10% of the revenue will, at that time, be owned by the Issuer / Sponsor, as additional compensation..

Limitation on Allocation of Losses: In no case shall any item of Partnership loss or deduction be allocated to any Unit Holder if, or to the extent, such allocation would cause or increase a deficit balance in the Unit Holder's capital account as of the end of the Partnership's fiscal year to which such allocation would cause or increase a deficit balance in the Unit Holder's capital account as of the end of the Partnership's fiscal year to which such allocation relates.

Distributions: Revenues from production of Coal, if any, will be collected by the Issuer / Sponsor and originally deposited in the Partnership bank account from which the Partnership will pay all Operating Costs and General and Administrative Costs incurred by the Partnership. To the extent there is cash available for distribution ("Available Cash Flow"), as determined by the Issuer / Sponsor in its sole discretion, the Issuer / Sponsor may make distributions to the Unit Holder from time to time, according to the Unit Holder's percentage ownership interest in the Partnership. If the Partnership sells the property prior to dissolution, the entire net cash proceeds resulting from the sale (See: "Net Cash Proceeds") that are available for distribution shall be distributed to the Unit Holders according to their percentage ownership interests. The Issuer / Sponsor expects that Partnership distributions, if any, will be made on a monthly basis during the first twelve months that there is available cash flow, and then on a quarterly and / or semi-annually basis thereafter, although they may be made more or less frequently at its discretion.

Distributions upon Dissolution: Upon dissolution and winding up of the Partnership after payment of, or adequate provisions for, the debts and obligations of the Partnership to creditors, the remaining assets of the Partnership (or the proceeds of sales or other distributions in liquidation of the Partnership assets, as may be determined by the Issuer / Sponsor in his or her sole discretion) shall be distributed to the Unit Holders in the following order: Available cash flow for the then current fiscal year to the extent not theretofore distributed; Net cash proceeds to the extent not theretofore distributed; then the balance of the remaining assets to the Unit Holders in accordance with their percentage of ownership interests.

Cash Reserves: The Issuer / Sponsor may set aside all or any portion of available cash flow or net cash proceeds as a reserve for contingencies or expend the same for any Partnership purpose which the Issuer / Sponsor in the Issuer / Sponsor's sole discretion deems reasonably necessary or appropriate for the operation or orderly liquidation of the Partnership, including contingent liabilities or obligations of the Partnership.

Costs and Expenses: The Issuer / Sponsor will pay all organization, syndication and offering expenses. The Issuer / Sponsor will also pay all legal, accounting, printing, and filing fees associated with the organization of the Partnerships and the offerings of Units. All Company expenses paid by the Company are expected to be reimbursed to the Company from the profits it receives from the Turnkey Mining

Development Agreement and Mine Operating Contract (Exhibit "E"). All mining and mine operating costs and ongoing expenses of the Partnership will be paid by the Partnership.

Cash Distribution Policy: Although the Issuer / Sponsor anticipates making distributions of available cash flow from time to time, that is subject to the absolute discretion of the Issuer / Sponsor to determine whether the Partnership has available cash flow and as to the timing of any distribution. The ability of the Partnership to make or sustain cash distributions will depend upon numerous factors. There can be no assurance that any level of cash distributions to the Unit Holders will be made, attained or sustained, or that the cash distributions, if any, would be sufficient to return the capital contributions of the Unit Holders.

Amendment of Partnership Allocation Provisions: The Issuer / Sponsor is authorized to amend the Partnership Agreement without the consent or approval of any Unit Holder if, in the opinion of the Partnership's attorneys, the amendment is necessary or appropriate to satisfy requirements of the Internal Revenue Code or regulations promulgated or proposed thereunder, and the amendment does not adversely affect the interests of the Unit Holders.

Management

The Company: The Company, New Century Coal Inc., was formed in October 2006 under the laws of the State of Nevada. New Century Coal maintains its office at 1009 Lark Street, Ste. 1A, Johnson City, TN 37604. The telephone number is 855-4USCOAL (487-2625). The President of New Century Coal and its associate team of professionals, consultants, and sub-contractors have extensive mining experience, however any former success that may have enjoyed can not be relied on for future success. Past performance is not an indication of future success. In addition to being the Sponsor of the Partnership, the Company will also, through assigns, act as the Issuer / Sponsor, Partnership Operator, and through its Industry Partners and field Operator.

The principle business of New Century Coal is to engage with other Industry Professionals in the development and operations of mining and marketing of steam coal and metallurgical coal with heavy emphasis on the Appalachian Region, and also but not limited to Nevada, Colorado and Indiana.

Officers and Directors: The members, officers, and directors of the Company will devote only such time and effort to the Partnership as may be necessary in order to properly conduct and administer the business and affairs of the Partnership. (See: "Risk Factors").

Jim Robinson, President: 52, Mr. Robinson a married man has over 30 years of experience in managing operations for small to medium size manufacturing and production environments. Jim attended Fairmont State College and Prosser Vocational Institute. With his vast experience Jim has approached New Century Coal with the same vigor and commitment that has afforded him all his prior successes. His continue commitment through hard work is a clear demonstration of a leader in the coal industry.

Industry Partners: It is the primary business model for New Century Coal to participate in other Mining Company projects that New Century Coal has reviewed and has "passed the test", in which they (the Industry Partner) generally will have their own money and / or time invested, have experience doing prior similar projects in the same region, and are qualified to be the field Mining Operator and Developer.

Consultants: The Company may employ the services of professional mineral consultants, engineers and geologists as required for prospect and lease acquisition, prospect evaluations, geological analysis, project engineering, completion and equipment design, reservoir engineering and production techniques.

The Company believes the utilization of services of consulting specialists provides the Company with greater opportunities to effectively perform in its business of exploration and production of coal mining.

Sub-Contractors: The Company may employ the services of professional sub-contractors, who perform development, completion and equipping tasks, as required for prospect and lease development, as well as production. The Company believes the utilization of services of the specialists provides the Company with greater opportunities to effectively perform in its business of exploration and production of coal mining.

Conflicts of Interest: Most of the areas of conflicts of interest which are described below are common to many Coal Mining Partnership's. The terms contained herein are intended to ameliorate the conflicts of interest inherent in such a situation to the extent practicable, taking into consideration, among other things, the uncertainties involved in attempting to determine in advance the location of the mine, progress of exploration and production of the mine.

(a) **Prior and Subsequent Activities of the Company:** The Company will be actively engaged in other Mining acquisitions and operations. Such activities could create conflicts of interest with this Partnership. The Company anticipates Sponsoring, managing, and participating in other private mining partnerships. Such activities may create conflicts of interest between this Partnership and the Company. In all instances of operation and management of mining Partnership's for the account of others, the Company and its management, where potential conflicts arise, will attempt to deal fairly with this Partnership and its Unit Holders. For example, the Company may have recently completed mining operations as Partnership Operator for other interest owners in several different projects similar to this Partnership.

(b) **Partnership Operator:** The Company will be the Partnership Operator of the mine. As Partnership Operator, the Company will receive overhead reimbursements and will be solely responsible for overseeing the conduct of operations of the mine. In making decisions about such operations, the Company will or may be subject to conflicts between its interests and the interests of the Partnership. Since the Partnership will pay all of the costs incurred in connection with the operations of the mine. And, since the Company and others (See: "Source of Funds", "Application of proceeds" , will not pay any portion of the costs to perform the operations, but will receive a 10% reversionary interest in the income stream of the Partnership's mine. Notwithstanding this potential conflict of interest, the Company

is cognizant of the obligations to the Partnership under the Turnkey Mining Development Agreement and Mine Operating Contract, and intends to make all such decisions by adhering to the "prudent Partnership Operator" standard.

(c) Sale of Steam Coal and/or Metallurgical Coal: Conflicts of interest may also arise in connection with the selling of production or of any portion of the properties by the Company at a later date. The right to allocate production among prospective purchasers and to negotiate the terms therefore may permit the Company to obtain other benefits. The Company will endeavor to obtain the highest competitive price for any production obtained.

(d) Acquisition of Other Mining Properties: The Company, and its Affiliates, may own or may acquire Mining Locations in the same general area, adjoining or offsetting to the Mining Site Location on which the mine in this Partnership will be. These properties may not be offered to Unit Holders in the Partnership.

(e) Conflicts Among Unit Holders: Conflicts of interest may arise between Unit Holders to the extent that a Unit Holder fails to pay operating costs, or fails to consent to a subsequent operation and / or a special project, or fails to consent to a required operation, as defined in the Turnkey Mining Development Agreement and Mine Operating Contract. Even though the Turnkey Mining Development Agreement and Mine Operating Contract provides remedies therefore, those remedies may not be adequate under the specific facts and circumstances, and may cause a conflict among and operate a hardship on non-defaulting and consenting Unit Holder. (See: "Risk Factors" and "Source of Funds and Application of Proceeds").

(f) Lack of Separate Legal Counsel: Legal counsel to the Issuer / Sponsor also may serve as legal counsel to the Partnership, potentially giving rise to conflicts of interest. Should a dispute arise between or among any such parties, each party involved will be required to retain separate counsel for such matters.

Compensation to the Issuer / Sponsor

Contract: The Company, directly or indirectly through its assigns and subcontractors, will serve as the Partnership Mine Operator under the Turnkey Mining Development Agreement and Mine Operating Contract. The Company will achieve, what could be considered by some as an excessive profit under such contract, even though Steam Coal and/or Metallurgical Coal might not be achieved in commercial quantities in the Partnership mine and the Unit Holders receive no cash return on their investment. The Company will also receive certain compensation in connection with the Partnership and for management and supervision of the Partnership.

Participation in Revenues: The Company will receive a 10% reversionary interest in the Partnership's income stream, but only after the 100% payback of the Unit Holder's investment. Since the Company and others (See: "Source of Funds", "Application of Proceeds") will share in the revenues generated by the production of coal, without contributing to the costs associated with the operations of the mine, this will be deemed additional compensation to the Company.

Payments to Partnership Operator: The Company, in its capacity of Partnership Operator, will be paid a weekly fee for operating, maintaining and managing the mine. The Company also will profit from the services rendered on behalf of the Partnership in connection with the operations to be performed on the mine; the rates to be charged by the Company are in some cases not competitive with those of other Mine Partnership Operators in the area.

Fiduciary Responsibilities and Indemnification of the Issue / Sponsor

The Issuer / Sponsor is accountable to the Unit Holders as a fiduciary and consequently must exercise reasonable good faith and integrity in the handling of Partnership affairs. The Issuer / Sponsor must provide Unit Holders (or their representatives) with timely and full information concerning matters affecting the business of the Partnership, including its formation and liquidation. Each Unit Holder may inspect the books and records of the Partnership at any time during normal business hours upon thirty (30) days' written notice.

Under the terms of the Partnership Agreement, the Issuer / Sponsor will not be liable to the Partnership or the Unit Holders for errors in judgment or other acts or omissions not amounting to gross negligence or willful misconduct, and will be indemnified in such circumstances by the Partnership against any losses or liabilities that it may incur as a result of the manner in which the business or affairs of the Partnership were operated. Therefore, the Unit Holders may have more limited rights of action than they would have absent these limitations in the Partnership Agreement.

The Issuer / Sponsor shall be indemnified by each subscribing Unit Holder for any and all state or federal securities law violations concerning all activities related to this Partnership including but not limited to its formation and day-to-day operations, except as required by law, the Issuer / Sponsor shall not be under any obligation to any Unit Holder or anyone else to provide the names and addresses of the Unit Holder to any other Unit Holder, or partner representative. Such information shall be deemed to be confidential pursuant to the Limited Liability Partnership Agreement.

Summary of Partnership Agreement

The Partnership Agreement in the form attached hereto as (Exhibit "C") will govern the rights and obligations of the Unit Holder. Each prospective Unit Holder should carefully study the Partnership Agreement in its entirety before making an investment decision. The following description of the Partnership Agreement summarizes certain significant provisions of the Partnership Agreement but does not purport to be complete. If there is any conflict or discrepancy between the description provided below and the Partnership Agreement, the Partnership Agreement will control.

Responsibility of Issuer / Sponsor: The Issuer / Sponsor shall have the authority and responsibility for the management and control of all aspects of the Partnership's business and operations. Other Unit Holders shall have a voice in the day-to-day business operations of the Partnership if desired. The Issuer / Sponsor is authorized to delegate to, and to contract with, other persons for the performance of certain of the Issuer / Sponsor's obligations and responsibilities under the Partnership Agreement, including the authority to delegate to, and contract with, affiliates of the Issuer / Sponsor.

Liability of Partners (Unit Holders): The (Unit Holders) may be liable, jointly and severally, for the contractual obligations of the Partnership.

Authority to Sell Units: The Partnership is authorized to offer and sell the Units, on the terms described in this Memorandum.

Allocations and Distributions: Partnership profits and losses are to be allocated in accordance with Section VII of the Partnership Agreement and distributions are to be made, if at all, in accordance with Section IX of the Partnership Agreement.

Voting and Other Rights; Reports; Fiscal Year: Although the management of the Partnership is substantially controlled by the Issuer / Sponsor, approval of the Holders (who vote) of a majority of the Partnership interests (51%) is required in order for the Issuer / Sponsor to sell all or substantially all of the Partnership assets, to dissolve or terminate the Partnership, to confess judgments or take other action that would impair the Partnership's ability to carry on the ordinary course of its business, to violate the terms of the Partnership Agreement, or for the Issuer / Sponsor to use or possess Partnership assets other than for Partnership purposes. The Unit Holders may inspect the Partnership's books and records upon 30 working days prior notice, during reasonable business hours, at the offices of the Partnership. The Issuer / Sponsor is obligated to provide certain reports to the Unit Holders. (See: "Reports to Unit Holders").

Power of Attorney: Each Unit Holder will grant to the Issuer / Sponsor a power of attorney to execute certain documents or instruments deemed by the Issuer / Sponsor to be necessary or desirable and proper for the conduct of the Partnership's business, including instruments pertaining to the sale or transfer of a Unit Holder's interest upon default in payment of any assessment.

Indemnification: The Issuer / Sponsor is indemnified by the Partnership from and against any cost, expense or liability incurred by the Issuer / Sponsor in the course of service as Issuer / Sponsor.

Term and Dissolution: The Partnership is to terminate on December 31, 2040 unless terminated earlier pursuant to the Partnership Agreement, upon the occurrence of the bankruptcy or other act of insolvency of the Issuer / Sponsor.

TAX MATTERS

The most significant federal income tax aspects of an investment in the Partnership are discussed below. The full implications of the federal, state and local tax laws which may affect the tax consequences of participating in the Partnership are too complex and numerous to be described herein. Also, the discussion which follows is necessarily general.

EACH PROSPECTIVE UNIT HOLDER SHOULD SATISFY HIMSELF / HERSELF AS TO THE INCOME AND OTHER TAX CONSEQUENCES OF PARTICIPATION IN THE PARTNERSHIP BY OBTAINING ADVICE FROM HIS / HER OWN TAX ADVISOR. THIS INFORMATION IS PROVIDED AS AN OVERVIEW ONLY AND MAY NOT BE COMPLETE FOR EVERY INVESTOR.

**NEW CENTURY COAL INC.
DOES NOT GIVE TAX ADVICE AND IS NOT QUALIFIED TO DO SO.**

The following discussion is directed primarily to individual cash basis taxpayers who are citizens and residents of the United States. Other prospective investors in the Partnership, such as companies, partnerships, trusts (including qualified retirement plans), and resident aliens, should consult their tax advisors concerning special rules applicable to them before investing in the Partnership.

The discussion is founded upon the provisions of the Internal Revenue Code of 1986 ("IRS") as amended in construing the pertinent provisions of the Code, consideration was given to its legislative history, existing and proposed regulations promulgated by the Treasury Department, judicial decisions construing its provisions, and administrative rulings and practices of the IRS then in effect. The discussion is subject to amendment of the Code, issuance of new regulations, changes in judicial construction of the Code, and changes in IRS ruling positions and administrative practices, any of which may occur at any time. These developments may materially, and possibly adversely, affect the tax aspects and consequences summarized below, and could be applied retroactively, Company and its counsel.

Some Code provisions, which are discussed below, are subject, in some instances, to substantial uncertainty and controversy in their application. Their application depends, in some instances, on the resolution of factual so as to affect transactions previously entered into. In particular, Code provisions may be interpreted by the Treasury Department, IRS, or reviewing courts differently from the way such provisions have been interpreted by the Partnership as a separate entity.

No assurance can be given that the IRS will not challenge the tax consequences claimed by investors in the Partnership, or that a reviewing courts will not sustain the position taken by the IRS. In this regard it should be noted that the Company does not intend to obtain an IRS ruling Regarding any of the tax consequences of investment in the Partnership.

THE COMPANY WILL NOT OBTAIN A WRITTEN OPINION FROM ITS COUNSEL REGARDING THE ADEQUACY OF A TAX DISCUSSION (TAX OPINION LETTER), AND THE AVAILABILITY OF THE MATERIAL TAX BENEFITS OF INVESTMENT IN THE PARTNERSHIP. ANY DISCUSSION HEREIN WILL NOT BE BINDING UPON THE IRS OR A REVIEWING COURT, AND SHOULD NOT BE TAKEN AS POSITIVE ASSURANCE THAT THE TAX CONSEQUENCES ARE AS HEREIN.

The Partnership is being formed as a Limited Liability Partnership under the Uniform Partnership Laws of Nevada as amended. As such, the Partnership constitutes a general partnership for Nevada law purposes and is governed by the same statutory provisions as are applicable to general partnerships formed under Nevada law. Although the Partnership constitutes a partnership under Nevada law, whether it will be treated as a partnership for federal income tax purposes will be determined under the "IRC" and the Regulations. Thus, while Nevada law will determine the legal relationships between the Unit Holders, the Partnership and others, the characterization of the Partnership for federal income tax purposes will depend upon the application of the tests and standards set forth in the Code and the Regulations, as described in the following discussion.

Partnership will be treated as a partnership for federal income tax purposes unless an election is made by the Partnership to be treated as an association taxable as a corporation.

The Partnership will not elect to be treated as an association taxable as a corporation, and the Partnership will take the position on all returns filed with the IRS and state taxing authorities that the Partnership is a partnership for federal, state and local tax purposes. Therefore, the Issuer / Sponsor believes that it is more likely than not the Partnership will be treated as a partnership for federal income tax purposes and not as an association taxable as a corporation.

Under federal income tax law and regulations, an organization classified as a partnership is not a taxable entity but rather a "pass thru" entity through which tax deductions and taxable income are passed through to the Partners. Therefore, if the Partnership is classified as a Partnership for federal tax purposes, tax deductions and taxable income from the Partnership's operations will be passed to the Investors as partners in the Partnership. Investors will be subject to tax on the income of the Partnership, but no additional income tax will be incurred by the Unit Holder. A Unit Holder will be entitled to deduct on his or her personal federal income tax return the Investor's distributive share of expenses and losses, if any, but only to the extent of such Unit Holder's adjusted basis for his or her interest in the Partnership at the end of the Partnership year in which such losses occur, and then only to the extent he is "at risk" with respect issues about which reasonable persons could differ. Furthermore, certain of the tax consequences of investment in the Partnership are dependent upon the individual circumstances of investors.

The Partnership will file an annual information return with the Internal Revenue Service. Each Unit Holder will be required to report on his or her personal federal income tax return his or her distributive share of the Partnership's income, gains, losses, deductions or credits each year, whether or not any actual distribution is made to the to his or her interest, and not subject to passive activity loss limitations as set out below. A Unit Holder's basis for his or her interest in the Partnership will be determined by the Unit Holder's cash contribution to the Partnership and the Unit Holder's proportionate share of the Partnership's non-recourse liabilities, if any.

Each Unit Holder's basis for his or her interest in the Partnership will be decreased (but not below zero) by distributions of cash property from the Partnership and by the Unit Holder's distributive share of the expenses and losses of the Partnership. A Unit Holder's basis for his or her interest in the Partnership will be increased by the Investor's distributive share of the Partnership's revenues, additional capital contributions and by the Unit Holder's share of the Partnership's liabilities.

Federal Income Taxation of a Partnership and its Unit Holders: The Partnership itself will not be subject to Federal income tax if it is found by the IRS to be a partnership and not an association taxable as a corporation. Rather, each of the Unit Holders would be required to report on his or her Federal income tax return the Unit Holders distributive share of the income, gains, losses, deductions, credits and items of tax preference for the taxable year of the Partnership ending within or with his taxable year, whether or not any cash has been distributed during that period. Within ninety (90) days after the end of each taxable year of the Partnership, each Unit Holder will be provided with the information necessary to report his or her respective share of the Partnership's ordinary income or loss, capital gain or loss, portfolio income and deductions, and applicable tax credits for the year. Even though the Partnership should

not be subject to federal income tax, it will be required to file annual information returns with the IRS disclosing its operating results and the distributive shares to the Unit Holders. The accounting method and tax year of the Partnership will be determined under the rules discussed in "Tax Basis on Mining Interest," below. Any cash distributed to a Unit Holder by the Partnership will be applied, first, to reduce the tax basis of his Units, but not below zero; distributions in excess of such tax basis generally will be taxable as gain from the sale or exchange of the Units. A distribution of money or property that is received by a Unit Holder in exchange for an interest in "inventory" items which have appreciated substantially in value or "unrealized and ordinary income upon the disposition of such property pursuant to the recapture rules as set forth in the Code and the Regulations. (See: "Gains and Losses From sale of Property") below.

Allocation of Income and Deductions: The manner in which the Partnership Agreement allocates Partnership profits and losses is described in "Profits, Losses, Expenses and Distributions." The allocation of Partnership profits and losses (and the attendant items of income, gain, loss and deduction and credit) as specified in the Partnership Agreement will be recognized for federal income tax purposes unless such allocation is deemed to lack "substantial economic effect." If the allocations under the Partnership Agreement lack substantial economic effect, each Unit Holder's income, gain, loss, deduction or credit (or item thereof) will be determined in accordance with his interest in the Partnership "taking into account all facts and circumstances." (See: "Source of Funds", "Application of Proceeds" and "Interest Revenue").

Pertinent Regulations address both the "substantial economic effect" test and the "Unit Holder's interest in the partnership" provisions. With respect to the substantial economic effect test, the Regulations establish a two-part test: (i) the allocations must have "economic effect" and (ii) the economic effect must be "substantial." In general, an allocation has "economic effect" if, throughout the term of the partnership, the partnership agreement establishes, maintains and adjusts capital accounts for the partners, such capital accounts are given effect in making distributions upon liquidation of the Partnership, and any Unit Holder with a deficit balance in his capital account following liquidation of his interest is unconditionally obligated to restore such deficit amount. An alternative "economic effect" test is provided in the case of a partnership agreement that does not require partners who have deficit capital accounts to restore such deficits upon liquidation. Under the alternative test, allocations will be deemed to have economic effect if (i) throughout the Partnership's term, the Partnership agreement establishes, maintains and adjusts capital accounts in accordance with the Regulations, (ii) such capital accounts are given effect in making distributions upon liquidation, and (iii) the partnership agreement contains a "qualified income offset" provision. The economic effect of an allocation will be "substantial" if there is a "reasonable possibility" that the allocation will substantially affect the dollars to be received by the Unit Holders, independent of the tax consequences of the allocation.

Under the terms of the Partnership Agreement, the capital accounts of the Unit Holders will be adjusted annually to reflect the effect of all items of income, gain, loss or deduction and the capital accounts, as adjusted, will be given effect in making distributions to the Unit Holders in the event of liquidation and dissolution of the Partnership. Based upon the terms of the Partnership Agreement, the Issuer / Sponsor believes that it is more likely than not that the Partnership's allocations are consistent with the

general mandate of the Regulations, that tax allocations follow (or be consistent with) the underlying economic arrangements of the partners, and that the allocations contained in the partnership agreement either have "substantial economic effect" or are "in accordance with the partners' interests in the Partnership" and thus will be given effect for federal income tax purposes. The Issuer / Sponsor's belief will have no effect upon and will not be binding upon the IRS or the courts; consequently, no assurance can be given that the allocations provided for in the Partnership Agreement will be considered by the IRS to either have "substantial economic effect" or be "in accordance with each partner's interest in the Partnership".

Prospective Unit Holders are cautioned that any allocation under the Partnership Agreement is subject to adjustment or audit by the IRS or the courts, and that any such adjustment could have an adverse tax effect on the Unit Holders.

1986 Reform Tax Act

The Tax Reform Act of 1986 (TRA) was a major legislative change toward closing tax loopholes and restoring greater equity to the federal tax code. Provisions of the Tax Reform Act were targeted at reducing these tax shelters benefits of partnerships. A partnership is not a taxable entity. Each partnership files with the Internal Revenue Service (IRS) an information return (Form 1065) which shows the partnership's taxable incomes or loss for the year and the allocation of that income or loss to the separate partners. Thus, to fully ascertain the effective taxation of partnership income, the income and separately reportable items must be followed to the tax returns of the partners. Tax shelters are generally defined as investments "in which a significant portion of the investor's return is derived from the realization of tax saving with respect of tax-favored (or, potentially, tax-exempt) income from the investment itself".

The Tax Reform Act of 1986 took several steps to reduce the attractiveness of tax shelters, including:

1. Eliminating the preferential tax rate on capital gains. Before Tax Reform, only 40% of most long-term capital gains were included in taxable income; after TRA 100% were included.
2. Reducing the acceleration of depreciation deductions. This change essentially extends the duration of the allowable depreciation deduction thereby reducing the effective "interest-free loan" from the government to the taxpayer in cases where taxable service lives are shorter than economic service lives.
3. Lowering overall marginal tax rates. In addition to reducing the disincentive to increase income, this provision also reduces the value of deductions since their value is equivalent to the size of the deduction times the marginal tax rate.
4. Imposing limitations on "passive" losses. The TRA added a new category of "passive" income or loss as generated by a flow-through business, such as a limited partnership in which the individual does not actively or materially participate. Before Tax Reform, there were no limitation on "passive" losses offsetting other types of income. After Tax Reform, passive losses could only be used to offset passive gains. However, ex exceptions were provided for certain partners for losses from energy operations and from certain rental real estate activities.

**THACKLIGHT CASH FLOW
YEAR ONE**

Year One	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Coal Production, Short Tons	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Coal Revenue \$ 10.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	600,000.00
Mining Cost \$ 23.70	118,500.00	118,500.00	118,500.00	118,500.00	118,500.00	118,500.00	118,500.00	118,500.00	118,500.00	118,500.00	118,500.00	118,500.00	1,422,000.00
Coal Royalties \$ 3.20	16,000.00	16,000.00	16,000.00	16,000.00	16,000.00	16,000.00	16,000.00	16,000.00	16,000.00	16,000.00	16,000.00	16,000.00	192,000.00
Coal Hedging \$ 6.50	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	390,000.00
Tax \$ 5.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	300,000.00
Professional Fees	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	60,000.00
Emergency Fund													
Expord Co. \$ 3.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	180,000.00
Yield Operating Cost \$ 41.45	207,500.00	207,500.00	207,500.00	207,500.00	207,500.00	207,500.00	207,500.00	207,500.00	207,500.00	207,500.00	207,500.00	207,500.00	2,490,000.00
Other Costs \$ 6.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	360,000.00
Total Costs	302,500.00	302,500.00	302,500.00	302,500.00	302,500.00	302,500.00	302,500.00	302,500.00	302,500.00	302,500.00	302,500.00	302,500.00	3,630,000.00
EBITDA	197,500.00	197,500.00	197,500.00	197,500.00	197,500.00	197,500.00	197,500.00	197,500.00	197,500.00	197,500.00	197,500.00	197,500.00	2,370,000.00
10% CashEBITDA	19,750.00	19,750.00	19,750.00	19,750.00	19,750.00	19,750.00	19,750.00	19,750.00	19,750.00	19,750.00	19,750.00	19,750.00	237,000.00
30% of Cash EBITDA	59,250.00	59,250.00	59,250.00	59,250.00	59,250.00	59,250.00	59,250.00	59,250.00	59,250.00	59,250.00	59,250.00	59,250.00	711,000.00
Per Unit Cash EBITDA	3.95	3.95	3.95	3.95	3.95	3.95	3.95	3.95	3.95	3.95	3.95	3.95	39.50

Terms of the Offering and Plan of Distribution

Subscriptions: Pursuant to this Memorandum, the Company, as Issuer / Sponsor of the Partnership, is offering interest in Forty (40) Units of participation in the Partnership, which represent 100% of the Partnership ownership before ("Investor Payback"). After Unit Holder payback, Units ownership collectively shall revert downwards to 90% of 100% ownership of the Partnership for the remaining life of any of the Partnership / Mine / Income, with the reversionary portion of the interest then going to the Company. (See: "Source of Funds", "Application of Proceeds", and "Interest Revenue"). The Company and others will receive a reversionary interest from the Partnership of 10% of 100% of each item of income, loss and available cash flow after the Unit Holders have received payback. (See: "Definitions", "Source of Funds", "Application of Proceeds", "Interest Revenue" and "Definitions")

The Forty (40) Units are being offered to selected qualified Accredited Investors by the Company for the Partnership at a price of \$80,000 each. (See: "Purchaser Suitability Requirements", "Plan of Distribution", "Source of Funds" and "Use of Proceeds")

The minimum subscription is one (1) Unit unless the Company, in its sole discretion and as allowed by applicable Securities Laws, elects to accept subscriptions for more or less than the minimum. (See: "Purchaser Suitability Requirements")

Subscription Procedures: Persons intending to subscribe for the Unit in the Partnership should send a completed and signed Purchaser Suitability Questionnaire (Exhibit "F") and the Subscription and Customer Agreement (Exhibit "G") to the Company together with a check for their Initial Contribution \$80,000 per Unit made payable to the order of: Thacklight Coal Mine, LLP.

Limited Transferability: Since the Units have not been registered under the Securities Act of 1933, as amended, or under the Securities Laws of any States jurisdictions, Unit Holders in the Partnership will not be able to readily liquidate their interests, inasmuch as the Units cannot be readily assigned or transferred. The Holders of the Units may not sell, transfer, or assign such Units if, in the sole opinion of the Issuer / Sponsor, such sale, transfer, or assignment would prejudice the exemption of the sale of the Units from the registration requirements of the Securities Act of 1933, as amended, or of any State Securities Laws. In this regard, the Issuer / Sponsor may condition the transfer or disposition of any Unit on the receipt by it of an opinion of counsel acceptable to the Issuer / Sponsor (the cost of which shall be borne by the transferor) to the effect that such transaction will not violate the Securities Act of 1933, as amended, or any other applicable Securities Laws, or regulations promulgated thereunder, and that such transfer is being made under a lawful exemption from registration, if any exists. The Issuer / Sponsor has not obligated itself to repurchase, has not established a procedure for repurchasing, and has no present plan to repurchase Units from the owners thereof. As such, unless the Issuer / Sponsor is willing to repurchase a Unit Holder's interest, a Unit Holder may experience difficulty and perhaps a loss of his entire investment in disposing of his Unit.

Purchaser Suitability Requirements

Form of Offering: This offering is being made pursuant to certain exemptions from the registration requirements of the Federal Securities Act of 1933, as amended ("Securities Act"), pursuant to the

provisions of Section 4(2) of the Securities Act promulgated thereunder, and pursuant to applicable exemptions from state securities laws. The Company has determined that sales of the Unit will be made to "Accredited Investors" ONLY. Persons from whom subscriptions will be accepted by the Partnership and the Issuer / Sponsor, in their sole discretion, will be determined on the basis of the signed "Purchaser Suitability Questionnaire" delivered to and completed by each prospective Unit Holder. Factors governing whether a person will be deemed a "suitable purchaser" are more fully set forth in the "Purchaser Suitability Questionnaire" attached to this Memorandum as (Exhibit "F"). A subscription may be rejected by the Company, as Issuer / Sponsor, in its sole discretion for any reason.

Accredited Investor: An "Accredited Investor" (See: "Definitions") as that term is defined in Rule 501, 502, and 506 of Regulation D, shall mean any person who comes within any of the following categories, or any person who the Company reasonably believes comes within any of the listed categories in the definitions section of this Memorandum, at the time of the sale of the Units to that person.

A completed "Questionnaire" delivered from the Investor / prospective Unit Holder will determine in the most part if the investor is Accredited or not. Factors governing whether a person will be deemed a "suitable purchaser" are more fully set forth in the "Purchaser Suitability Questionnaire" attached to this Memorandum as (Exhibit "F"). A subscription may be rejected by the Company, as Issuer / Sponsor, in its sole discretion for any reason.

With respect to potential investment in the Units by entities such as trusts, Individual Retirement Accounts, pension plans or investors subject to ERISA, the investor is urged to consult a qualified advisor such as an attorney, accountant or investment advisor specializing in such matters. Many of the tax benefits to individual Unit Holders in the Units may be substantially reduced or eliminated with respect to an investment made through such entities. In addition, the Units may not meet the requirements of ERISA with respect to investments for plans subject thereto.

Reports to Unit Holder

As soon as reasonably practicable, after the end of each fiscal year, each Unit Holder shall be furnished a copy of a statement of income or loss for the Partnership and another statement showing the amounts allocated to or against such Unit Holder, pursuant to the Partnership Agreement during, or in respect, of such year. These statements will also show all items of income, expense or credit allocated to such Unit Holder for federal income tax purposes. These statements will be prepared, at the expense of the Partnership, in accordance with the accounting method adopted by the Partnership and will be reflected in the Partnership tax return. The Issuer / Sponsor shall also deliver to each Unit Holder, by March 31st next following the close of each fiscal year of the Partnership, all of the information necessary for the completion of that portion of the Unit Holder's federal income tax return relating to his investment in the Partnership. The Partnership will maintain its accounts on a basis deemed by the Issuer / Sponsor to be in the best interests of the Partnership. The fiscal year of the Partnership shall begin on the first day of January and end on the thirty-first day of December of each year. On a periodic basis, as determined by the Issuer / Sponsor, the Partnership or a Unit Holder may request that the books and records of the Partnership be audited at the end of any fiscal year, and any such audit shall be conducted by

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man independent certified public accountant selected by the Unit Holder requesting the audit. If a Unit makes such request, the audit shall be conducted at the expense of the Unit Holder requesting the audit. Upon the request of the issuer / Sponsor or by Partners who jointly own in excess of fifty percent (51%) of the Units, such audit shall be made at the expense of the Partnership by an independent certified public accountant selected by the Issuer / Sponsor.

Additional Information

Statements contained in this Memorandum constitute only a brief summary of certain provisions of such documents and do not purport to be a complete description of every term and condition of and are qualified in their entirety by reference to such documents. As with any summary, some details and exceptions have been omitted. If any of the above statements are in conflict with any of the terms of such documents, the terms of such documents will govern. Reference should be made to the actual documents for a complete understanding of what they contain. Each prospective Unit Holder is urged to review all such documents. Copies of such documents and all the other documents in connection with this transaction are available for inspection at the offices of the Issuer / Sponsor.

The forms of documents included with this Memorandum, and various documents referred to herein above, are subject to modification. It is not anticipated that later drafts of the exhibits or any additional documents or information will be distributed to potential Investors prior to their admission as Partners. Any prospective Unit Holder may, however, review any such materials at the Issuer / Sponsor's office upon request, as described above.

Supplemental, promotional and sales materials, and or projected possible cash flow returns, and or potential cash saving due to tax write-offs, and or company videos, or web sites may be used in connection with the offering, these items listed must not and can not be used in the Investors decision making process of deciding to or not to purchase units in the Partnership. However, prospective Investors should be aware that the offering of Units is made only by means of this Memorandum ONLY. No person has been authorized by the Partnership to give any decision making information or make any representations, express or implied, written or oral, other than those contained in this Memorandum in connection with the offering, and any if and when any such information or representation should not be, and must not be, relied upon when making your investment decision.

To the extent possible and material to an Investor's understanding of the Issuer / Sponsor, the Partnership, or their business, or the offering of the Units hereby, the Issuer / Sponsor will make available to prospective Investors and their purchaser representatives the opportunity to obtain such additional information, to the extent the Issuer / Sponsor and its Affiliates possess such information, or can acquire it without unreasonable effort and expense. All inquiries and requests for additional information should be directed to the Issuer / Sponsor in writing, at their address:

Certain Legal Matters of the Company or its President, Officers and Directors

None Known

Financial Information Regarding the Partnership

The Partnership is newly organized and has had no operations. An un-audited Balance Sheet for the Partnership as of July 15, 2011 is attached as (Exhibit "D").

The Company believes that the un-audited Balance Sheet fairly reflects, in all material respects, the financial condition of the Partnership as at the date stated.

The Issuer / Sponsor, on behalf of the Partnership, will pay certain expenses of the Offering and may use such funds for other purposes under the Turnkey Mining Development Agreement and Mine Operating Contract. Prospective Unit Holders should be aware that the subscription proceeds from the Offering, once released from the Partnership's bank account, will be deposited into the general operating account of the Issuer / Sponsor, in its sole discretion deems appropriate, which may include the payment of past or future expenses of the Issuer / Sponsor unassociated with the expenses of this Partnership. The Issuer / Sponsor shall, however, be obligated to mine, market coal and realize a profit if it can be accomplished through the Turnkey Mining Development Agreement and Mine Operating Contract.

Definitions

Abutment - In coal mining, (1) the weight of the rocks above a narrow roadway is transferred to the solid coal along the sides, which act as abutments of the arch of strata spanning the roadway; and (2) the weight of the rocks over a longwall face is transferred to the front abutment, that is, the solid coal ahead of the face and the back abutment, that is, the settled packs behind the face.

Acid deposition or acid rain - Refers loosely to a mixture of wet and dry "deposition" (deposited material) from the atmosphere containing higher than "normal" amount of nitric and sulfuric acids. The precursors or chemical forerunners of acid rain formation result from both natural sources, such as volcanoes and decaying vegetation, and man-made sources, primarily emissions of sulfur and nitrogen oxides resulting from fossil fuel combustion.

Acid mine water - Mine water that contains free sulfuric acid, mainly due to the weathering of iron pyrites.

Active workings - Any place in a mine where miners are normally required to work or travel and which are ventilated and inspected regularly.

Adit - A nearly horizontal passage from the surface by which a mine is entered and dewatered. A blind horizontal opening into a mountain, with only one entrance.

Advance - Mining in the same direction, or order of sequence; first mining as distinguished from retreat.

Air split - The division of a current of air into two or more parts.

Airway - Any passage through which air is carried. Also known as an air course.

Anemometer - Instrument for measuring air velocity.

Angle of dip - The angle at which strata or mineral deposits are inclined to the horizontal plane.

Angle of draw - In coal mine subsidence, this angle is assumed to bisect the angle between the vertical and the angle of repose of the material and is 20° for flat seams. For dipping seams, the angle of break increases, being 35.8° from the vertical for a 40° dip. The main break occurs over the seam at an angle from the vertical equal to half the dip.

Angle of repose - The maximum angle from horizontal at which a given material will rest on a given surface without sliding or rolling.

Anticline - An upward fold or arch of rock strata.

Aquifer - A water-bearing bed of porous rock, often sandstone.

Arching - Fracture processes around a mine opening, leading to stabilization by an arching effect.

Area (of an airway) - Average width multiplied by average height of airway, expressed in square feet.

Auger - A rotary drill that uses a screw device to penetrate, break, and then transport the drilled material (coal).

Auxiliary operations - All activities supportive of but not contributing directly to mining.

Auxiliary ventilation - Portion of main ventilating current directed to face of dead end entry by means of an auxiliary fan and tubing.

Azimuth - A surveying term that references the angle measured clockwise from any meridian (the established line of reference). The bearing is used to designate direction. The bearing of a line is the acute horizontal angle between the meridian and the line.

Back - The roof or upper part in any underground mining cavity.

Backfill - Mine waste or rock used to support the roof after coal removal.

Barren - Said of rock or vein material containing no minerals of value, and of strata without coal, or containing coal in seams too thin to be workable.

Barricading - Enclosing part of a mine to prevent inflow of noxious gasses from a mine fire or an explosion.

Barrier - Something that bars or keeps out. Barrier pillars are solid blocks of coal left between two mines or sections of a mine to prevent accidents due to intrusives of water, gas, or from explosions or a mine fire.

Beam - A bar or straight girder used to support a span of roof between two support props or walls.

Beam building - The creation of a strong, inflexible beam by bolting or otherwise fastening together several weaker layers. In coal mining this is the intended basis for roof bolting.

Bearing - A surveying term used to designate direction. The bearing of a line is the acute horizontal angle between the meridian and the line. The meridian is an established line of reference. Azimuths are angles measured clockwise from any meridian.

Bearing plate - A plate used to distribute a given load. In roof bolting, the plate used between the bolt head and the roof.

Bed - A stratum of coal or other sedimentary deposit.

Belt conveyer - A looped belt on which coal or other materials can be carried and which is generally constructed of flame-resistant material or of reinforced rubber or rubber-like substance.

Belt idler - A roller, usually of cylindrical shape, which is supported on a frame and which, in turn, supports or guides a conveyor belt. Idlers are not powered but turn by contact with the moving belt.

Belt take-up - A belt pulley, generally under a conveyor belt and in by the drive pulley, kept under strong tension parallel to the belt line. Its purpose is to automatically compensate for any slack in the belting created by start-up, etc.

Bench - One of two or more divisions of a coal seam separated by slate or formed by the process of cutting the coal.

Beneficiation - The treatment of mined material, making it more concentrated or richer.

Berm - A pile or mound of material capable of restraining a vehicle.

Binder - A streak of impurity in a coal seam.

Bit - The hardened and strengthened device at the end of a drill rod that transmits the energy of breakage to the rock. The size of the bit determines the size of the hole. A bit may be either detachable from or integral with its supporting drill rod.

Bituminous coal - A middle rank coal (between subbituminous and anthracite) formed by additional pressure and heat on lignite. Usually has a high Btu value and may be referred to as "soft coal."

Black damp - A term generally applied to carbon dioxide. Strictly speaking, it is a mixture of carbon dioxide and nitrogen. It is also applied to an atmosphere depleted of oxygen, rather than having an excess of carbon dioxide.

Blasting agent - Any material consisting of a mixture of a fuel and an oxidizer.

Blasting cap - A detonator containing a charge of detonating compound, which is ignited by electric current or the spark of a fuse. Used for detonating explosives.

Blasting circuit - Electric circuits used to fire electric detonators or to ignite an igniter cord by means of an electric starter.

Bleeder or bleeder entries - Special air courses developed and maintained as part of the mine ventilation system and designed to continuously move air-methane mixtures emitted by the gob or at the active face away from the active workings and into mine-return air courses. Alt: Exhaust ventilation lateral.

Bolt torque - The turning force in foot-pounds applied to a roof bolt to achieve an installed tension.

Borehole - Any deep or long drill-hole, usually associated with a diamond drill.

Bottom - Floor or underlying surface of an underground excavation.

Boss - Any member of the managerial ranks who is directly in charge of miners (e.g., "shift-boss," "face-boss," "fire-boss," etc.).

Box-type magazine - A small, portable magazine used to store limited quantities of explosives or detonators for short periods of time at locations in the mine which are convenient to the blasting sites at which they will be used.

Brattice or brattice cloth - Fire-resistant fabric or plastic partition used in a mine passage to confine the air and force it into the working place. Also termed "line brattice," "line canvas," or "line curtain."

Break line - The line that roughly follows the rear edges of coal pillars that are being mined. The line along which the roof of a coal mine is expected to break.

Breakthrough - A passage for ventilation that is cut through the pillars between rooms.

Bridge carrier - A rubber-tire-mounted mobile conveyor, about 10 meters long, used as an intermediate unit to create a system of articulated conveyors between a mining machine and a room or entry conveyor.

Bridge conveyor - A short conveyor hung from the boom of mining or lading machine or haulage system with the other end attached to a receiving bin that dollies along a frame supported by the room or entry conveyor, tailpiece. Thus, as the machine boom moves, the bridge conveyor keeps it in constant connection with the tailpiece.

Brow - A low place in the roof of a mine, giving insufficient headroom.

Brushing - Digging up the bottom or taking down the top to give more headroom in roadways.

BTU - British thermal unit. A measure of the energy required to raise the temperature of one pound of water one degree Fahrenheit.

Bug dust - The fine particles of coal or other material resulting from the boring or cutting of the coal face by drill or machine.

Bump (or burst) - A violent dislocation of the mine workings which is attributed to severe stresses in the rock surrounding the workings.

Butt cleat - A short, poorly defined vertical cleavage plane in a coal seam, usually at right angles to the long face cleat.

Butt entry - A coal mining term that has different meanings in different locations. It can be synonymous with panel entry, sub-main entry, or in its older sense it refers to an entry that is "butt" onto the coal cleavage (that is, at right angles to the face).

Cage - In a mine shaft, the device, similar to an elevator car, that is used for hoisting personnel and materials.

Calorific value - The quantity of heat that can be liberated from one pound of coal or oil measured in BTU's.

Cannel coal - A massive, non-caking block coal with a fine, even grain and a conchoidal fracture which has a high percentage of hydrogen, burns with a long, yellow flame, and is extremely easy to ignite.

Canopy - A protective covering of a cab on a mining machine.

Cap - A miner's safety helmet. Also, a highly sensitive, encapsulated explosive that is used to detonate larger but less sensitive explosives.

Cap block - A flat piece of wood inserted between the top of the prop and the roof to provide bearing support.

Car - A railway wagon, especially any of the wagons adapted to carrying coal, ore, and waste underground.

Car-dump - The mechanism for unloading a loaded car.

Carbide bit - More correctly, cemented tungsten carbide. A cutting or drilling bit for rock or coal, made by fusing an insert of molded tungsten carbide to the cutting edge of a steel bit shank.

Cast - A directed throw; in strip-mining, the overburden is cast from the coal to the previously mined area.

Certified - Describes a person who has passed an examination to do a required job.

Chain conveyor - A conveyor on which the material is moved along solid pans (troughs) by the action of scraper crossbars attached to powered chains.

Chain pillar - The pillar of coal left to protect the gangway or entry and the parallel airways.

Check curtain - Sheet of brattice cloth hung across an airway to control the passage of the air current.

Chock - Large hydraulic jacks used to support roof in longwall and shortwall mining systems.

Clay vein - A body of clay-like material that fills a void in a coal bed.

Cleat - The vertical cleavage of coal seams. The main set of joints along which coal breaks when mined.

Clean Air Act Amendments of 1990 - A comprehensive set of amendments to the federal law governing the nation's air quality. The Clean Air Act was originally passed in 1970 to address significant air pollution problems in our cities. The 1990 amendments broadened and strengthened the original law to address specific problems such as acid deposition, urban smog, hazardous air pollutants and stratospheric ozone depletion.

Clean Coal Technologies - A number of innovative, new technologies designed to use coal in a more efficient and cost-effective manner while enhancing environmental protection. Several promising technologies include: fluidized-bed combustion, integrated gasification combined cycle, limestone injection multi-stage burner, enhanced flue gas desulfurization (or "scrubbing"), coal liquefaction and coal gasification.

Coal - A solid, brittle, more or less distinctly stratified combustible carbonaceous rock, formed by partial to complete decomposition of vegetation; varies in color from dark brown to black; not fusible without decomposition and very insoluble.

Coal dust - Particles of coal that can pass a No. 20 sieve.

Coal Gasification - The conversion of coal into a gaseous fuel.

Coal mine - An area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in extracting coal from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, including coal preparation facilities. British term is "colliery".

Coal reserves - Measured tonnages of coal that have been calculated to occur in a coal seam within a particular property.

Coke - A hard, dry carbon substance produced by heating coal to a very high temperature in the absence of air.

Collar - The term applied to the timbering or concrete around the mouth or top of a shaft. The beginning point of a shaft or drill hole at the surface.

Colliery - British name for coal mine.

Column flotation - A precombustion coal cleaning technology in which coal particles attach to air bubbles rising in a vertical column. The coal is then removed at the top of the column.

Comminution - The breaking, crushing, or grinding of coal, ore, or rock.

Competent rock - Rock which, because of its physical and geological characteristics, is capable of sustaining openings without any structural support except pillars and walls left during mining (stalls, light props, and roof bolts are not considered structural support).

Contact - The place or surface where two different kinds of rocks meet. Applies to sedimentary rocks, as the contact between a limestone and a sandstone, for example, and to metamorphic rocks; and it is especially applicable between igneous intrusions and their walls.

Continuous miner - A machine that constantly extracts coal while it loads it. This is to be distinguished from a conventional, or cyclic, unit which must stop the extraction process in order for loading to commence

Contour - An imaginary line that connects all points on a surface having the same elevation.

Conventional mining - The first fully-mechanized underground mining method involving the insertion of explosives in a coal seam, the blasting of the seam, and the removal of the coal onto a conveyor or shuttle car by a loading machine.

Conveyor - An apparatus for moving material from one point to another in a continuous fashion. This is accomplished with an endless (that is, looped) procession of hooks, buckets, wide rubber belt, etc.

Core sample - A cylinder sample generally 1-5" in diameter drilled out of an area to determine the geologic and chemical analysis of the overburden and coal.

Cover - The overburden of any deposit.

Creep - The forcing of pillars into soft bottom by the weight of a strong roof. In surface mining, a very slow movement of slopes downhill.

Crib - A roof support of prop timbers or ties, laid in alternate cross-layers, log-cabin style. It may or may not be filled with debris. Also may be called a chock or cog.

Cribbing - The construction of cribs or timbers laid at right angles to each other, sometimes filled with earth, as a roof support or as a support for machinery.

Coal washing - The process of separating undesirable materials from coal based on differences in densities. Pyritic sulfur, or sulfur combined with iron, is heavier and sinks in water; coal is lighter and floats.

Crep coal - Coal at the outcrop of the seam. It is usually considered of inferior quality due to partial oxidation, although this is not always the case.

Crossbar - The horizontal member of a roof timber set supported by props located either on roadways or at the face.

Crosscut - A passageway driven between the entry and its parallel air course or air courses for ventilation purposes. Also, a tunnel driven from one seam to another through or across the intervening measures; sometimes called "crosscut tunnel", or "breakthrough". In vein mining, an entry perpendicular to the vein.

Cross entry - An entry running at an angle with the main entry.

Crusher - A machine for crushing rock or other materials. Among the various types of crushers are the ball mill, gyratory crusher, Handseil mill, hammer mill, jaw crusher, rod mill, rolls, stamp mill, and tube mill.

Cutter; Cutting machine - A machine, usually used in coal, that will cut a 10- to 15-cm slot. The slot allows room for expansion of the broken coal. Also applies to the man who operates the machine and to workers engaged in the cutting of coal by prick or drill.

Cycle mining - A system of mining in more than one working place at a time, that is, a miner takes a lift from the face and moves to another face while permanent roof support is established in the previous working face.

Demonstrated reserves - A collective term for the sum of coal in both measured and indicated resources and reserves.

Deposit - Mineral deposit or ore deposit is used to designate a natural occurrence of a useful mineral, or an ore, in sufficient extent and degree of concentration to invite exploitation.

Depth - The word alone generally denotes vertical depth below the surface. In the case of incline shafts and boreholes it may mean the distance reached from the beginning of the shaft or hole, the borehole depth, or the inclined depth.

Detectors - Specialized chemical or electronic instruments used to detect mine gases.

Detonator - A device containing a small detonating charge that is used for detonating an explosive, including, but not limited to, blasting caps, exploders, electric detonators, and delay electric blasting caps.

Development mining - Work undertaken to open up coal reserves as distinguished from the work of actual coal extraction.

Diffusion - Blending of a gas and air, resulting in a homogeneous mixture. Blending of two or more gases.

Diffuser fan - A fan mounted on a continuous miner to assist and direct air delivery from the machine to the face.

Dilute - To lower the concentration of a mixture; in this case the concentration of any hazardous gas in mine air by addition of fresh intake air.

Dilution - The contamination of ore with barren wall rock in stopping.

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of the Company. Neither can the effect of these factors be accurately measured. These factors include the extent of domestic production of Coal, the availability of transportation facilities, the marketing of competitive fuels, and other matters effecting the pricing of production and the availability of a ready market, such as fluctuations in supply and demand and the effect of state and federal regulations of Coal.

Consequently, there is no assurance that the Partnership will be able to market any Coal found at favorable prices or on a continuous basis. The Company, however, will endeavor to obtain the best competitive price and markets for any Coal produced and sold.

Coal Price Controls: There are currently no federal price controls on Coal pricing; however, there can be no assurance that Congress will not enact controls in the future.

State Regulation: The laws and regulations of the state in which the mine is located is anticipated to have an effect on the production of Coal and the conduct of Coal operations proposed to be conducted by the Partnership. State laws and regulations are generally intended to prevent the waste of Coal and to protect the correlative rights and opportunities to produce Coal between owners of a common reservoir. The amount of Coal produced may also be regulated by the state, federal, or local assignment of allowable rates of Coal production. Such regulations may restrict the production rate of the mine. The effect of state regulations or production restrictions may increase cost of the Partnership operations and reduce the potential return to the Unit Holders.

Protection of the Environment: The mining and production of Coal are subject to various federal and state laws and regulations to protect the environment. Various states and federal governmental agencies are considering, and some have adopted, other laws and regulations Regarding environmental control that could adversely affect the activities of the Partnership. Compliance with such legislation and regulations, together with any penalties resulting from noncompliance therewith, will increase the cost of mining production and processing. Certain of these costs may ultimately be borne by the Partnership. The Company does not presently anticipate that compliance with federal, state and local environmental regulations will have a material adverse effect on capital expenditures, earnings or the competitive position of the Partnership in the Coal industry.

Profits, Losses, Expenses and Distributions

THE PARTNERSHIP AGREEMENT PROVIDES FOR THE ALLOCATION OF PARTNERSHIP PROFITS AND LOSSES IN ARTICLE VII. AND PROVIDES FOR THE DISTRIBUTION OF AVAILABLE CASH FLOW AND OTHER PARTNERSHIP CASH OR ASSETS IN ARTICLE IX. GENERALLY STATED, PROFITS, AND LOSSES WILL BE ALLOCATED AND DISTRIBUTIONS MADE, IF ANY AT ALL, AS DESCRIBED BELOW. THE GENERAL STATEMENTS SET FORTH BELOW ARE QUALIFIED IN THEIR ENTIRETY BY THE PERTINENT PROVISIONS OF THE PARTNERSHIP AGREEMENT, WHICH EACH PROSPECTIVE UNIT HOLDER SHOULD CAREFULLY READ.

Profits and Losses: The net profits and net losses of the Partnership shall be allocated among the Unit Holders in proportion to each Unit Holders respective percentage ownership interest in the

Dip - The inclination of a geologic structure (bed, vein, fault, etc.) from the horizontal; dip is always measured downwards at right angles to the strike.

Dragline - A large excavation machine used in surface mining to remove overburden (layers of rock and soil) covering a coal seam. The dragline casts a wire rope-hung bucket a considerable distance, collects the dug material by pulling the bucket toward itself on the ground with a second wire rope (or chain), elevates the bucket, and dumps the material on a spoil bank, in a hopper, or on a pile.

Drainage - The process of removing surplus ground or surface water either by artificial means or by gravity flow.

Draw slate - A soft slate, shale, or rock from approximately 1 cm to 10 cm thick and located immediately above certain coal seams, which falls quite easily when the coal support is withdrawn.

Drift - A horizontal passage underground. A drift follows the vein, as distinguished from a crosscut that intersects it, or a level or gallery, which may do either.

Drift mine - An underground coal mine in which the entry or access is above water level and generally on the slope of a hill, driven horizontally into a coal seam.

Drill - A machine utilizing rotation, percussion (hammering), or a combination of both to make holes. If the hole is much over 0.4m in diameter, the machine is called a borer.

Drilling - The use of such a machine to create holes for exploration or for loading with explosives.

Dummy - A bag filled with sand, clay, etc., used for stemming a charged hole.

Dump - To unload; specifically, a load of coal or waste; the mechanism for unloading, e.g. a car dump (sometimes called tipple); or, the pile created by such unloading, e.g. a waste dump (also called heap, pile, tip, spoil pike, etc.).

Electrical grounding - To connect with the ground to make the earth part of the circuit.

Entry - An underground horizontal or near-horizontal passage used for haulage, ventilation, or as a mainway; a coal heading; a working place where the coal is extracted from the seam in the initial mining; same as "gate" and "roadway," both British terms.

Evaluation - The work involved in gaining a knowledge of the size, shape, position and value of coal.

Exploration - The search for mineral deposits and the work done to prove or establish the extent of a mineral deposit. All: Prospecting and subsequent evaluation.

Explosive - Any rapidly combustible or expanding substance. The energy released during this rapid combustion or expansion can be used to break rock.

Extraction - The process of mining and removal of coal or ore from a mine.

Face - The exposed area of a coal bed from which coal is being extracted.

Face cleat - The principal cleavage plane or joint at right angles to the stratification of the coal seam.

Face conveyor - Any conveyor used parallel to a working face which delivers coal into another conveyor or into a car.

Factor of safety - The ratio of the ultimate breaking strength of the material to the force exerted against it. If a rope will break under a load of 6000 lbs., and it is carrying a load of 2000 lbs., its factor of safety is 6000 divided by 2000 which equals 3.

Fall - A mass of roof rock or coal which has fallen in any part of a mine.

Fan, auxiliary - A small, portable fan used to supplement the ventilation of an individual working place.

Fan booster - A large fan installed in the main air current, and thus in tandem with the main fan.

Fan signal - Automation device designed to give alarm if the main fan slows down or stops.

Fault - A slip-surface between two portions of the earth's surface that have moved relative to each other. A fault is a failure surface and is evidence of severe earth stresses.

Fault zone - A fault, instead of being a single clean fracture, may be a zone hundreds or thousands of feet wide. The fault zone consists of numerous interlacing small faults or a confused zone of gouge, breccia, or mylonite.

Feeder - A machine that feeds coal onto a conveyor belt evenly.

Fill - Any material that is put back in place of the extracted ore to provide ground support.

Fire damp - The combustible gas, methane, CH₄. Also, the explosive methane-air mixtures with between 5% and 15% methane. A combustible gas formed in mines by decomposition of coal or other carbonaceous matter, and that consists chiefly of methane.

Fissure - An extensive crack, break, or fracture in the rocks.

Fixed carbon - The part of the carbon that remains behind when coal is heated in a closed vessel until all of the volatile matter is driven off.

Flat-lying - Said of deposits and coal seams with a dip up to 5 degrees.

Flight - The metal strap or crossbar attached to the drag chain-and-flight conveyor.

Float dust - Fine coal-dust particles carried in suspension by air currents and eventually deposited in return entries. Dust consisting of particles of coal that can pass through a No. 200 sieve.

Floor - That part of any underground working upon which a person walks or upon which haulage equipment travels; simply the bottom or underlying surface of an underground excavation.

Flue Gas Desulfurization - Any of several forms of chemical/physical processes that remove sulfur compounds formed during coal combustion. The devices, commonly called "scrubbers," combine the sulfur in gaseous emissions with another chemical medium to form inert "sludge" which must then be removed for disposal.

Fluidized Bed Combustion - A process with a high degree of ability to remove sulfur from coal during combustion. Crushed coal and limestone are suspended in the bottom of a boiler by an upward stream of hot air. The coal is burned in this bubbling, liquid-like (or "fluidized") mixture. Rather than released as emissions, sulfur from combustion gases combines with the limestone to form a solid compound recovered with the ash.

Fly ash - The finely divided particles of ash suspended in gases resulting from the combustion of fuel. Electrostatic precipitators are used to remove fly ash from the gases prior to the release from a power plant's smokestack.

Formation - Any assemblage of rocks which have some character in common, whether of origin, age, or composition. Often, the word is loosely used to indicate anything that has been formed or brought into its present shape.

Fossil fuel - Any naturally occurring fuel of an organic nature, such as coal, crude oil and natural gas.

Fracture - A general term to include any kind of discontinuity in a body of rock if produced by mechanical failure, whether by shear stress or tensile stress. Fractures include faults, shears, joints, and planes of fracture cleavage.

Friable - Easy to break, or crumbling naturally. Descriptive of certain rocks and minerals.

Fuse - A cord-like substance used in the ignition of explosives. Black powder is entrained in the cord and, when lit, burns

along the cord at a set rate. A fuse can be safely used to ignite a cap, which is the primer for an explosive.

Gallery - A horizontal or a nearly horizontal underground passage, either natural or artificial.

Gasification - Any of various processes by which coal is turned into low, medium, or high Btu gases.

Gathering conveyor; gathering belt - Any conveyor which is used to gather coal from other conveyors and deliver it either into mine cars or onto another conveyor. The term is frequently used with belt conveyors placed in entries where a number of room conveyors deliver coal onto the belt.

Geologist - One who studies the constitution, structure, and history of the earth's crust, conducting research into the formation and dissolution of rock layers, analyzing fossil and mineral content of layers, and endeavoring to fix historical sequence of development by relating characteristics to known geological influences (historical geology).

Gob - The term applied to that part of the mine from which the coal has been removed and the space more or less filled up with waste. Also, the loose waste in a mine. Also called goaf.

Global climate change - This term usually refers to the gradual warming of the earth caused by the greenhouse effect. Many scientists believe this is the result of man-made emissions of greenhouse gases such as carbon dioxide, chlorofluorocarbons (CFC) and methane, although there is no agreement among the scientific community on this controversial issue.

Grain - In petrology, that factor of the texture of a rock composed of distinct particles or crystals which depends upon their absolute size.

Grizzly - Course screening or scalping device that prevents oversized bulk material from entering a material transfer system; constructed of rails, bars, beams, etc.

Ground control - The regulation and final arresting of the closure of the walls of a mined area. The term generally refers to measures taken to prevent roof falls or coal bursts.

Ground pressure - The pressure to which a rock formation is subjected by the weight of the superimposed rock and rock material or by diastrophic forces created by movements in the rocks forming the earth's crust. Such pressures may be great enough to cause rocks having a low compression strength to deform and be squeezed into and close a borehole or other underground opening not adequately strengthened by an artificial support, such as casing or timber.

Gunitite - A cement applied by spraying to the roof and sides of a mine passage.

Haulage - The horizontal transport of ore, coal, supplies, and waste. The vertical transport of the same is called hoisting.

Haulageway - Any underground entry or passageway that is designed for transport of mined material, personnel, or equipment, usually by the installation of track or belt conveyor.

Headframe - The structure surmounting the shaft which supports the hoist rope pulley, and often the hoist itself.

Heading - A vein above a drift. An interior level or airway driven in a mine. In longwall workings, a narrow passage driven upward from a gangway in starting a working in order to give a loose end.

Head section - A term used in both belt and chain conveyor work to designate that portion of the conveyor used for discharging material.

Heaving - Applied to the rising of the bottom after removal of the coal; a sharp rise in the floor is called a "hogsback".

Highwall - The unexcavated face of exposed overburden and coal in a surface mine or in a face or bank on the uphill side of a contour mine excavation.

Highwall miner - A highwall mining system consists of a remotely controlled continuous miner which extracts coal and con-

veys it via augers, belt or chain conveyors to the outside. The cut is typically a rectangular, horizontal cut from a highwall bench, reaching depths of several hundred feet or deeper.

Hogsback - A sharp rise in the floor of a seam.

Hoist - A drum on which hoisting rope is wound in the engine house, as the cage or skip is raised in the hoisting shaft.

Hoisting - The vertical transport coal or material.

Horizon - In geology, any given definite position or interval in the stratigraphic column or the scheme of stratigraphic classification; generally used in a relative sense.

Horseback - A mass of material with a slippery surface in the roof; shaped like a horse's back.

Hydraulic - Of or pertaining to fluids in motion. Hydraulic cement has a composition which permits it to set quickly under water. Hydraulic jacks lift through the force transmitted to the movable part of the jack by a liquid. Hydraulic control refers to the mechanical control of various parts of machines, such as coal cutters, loaders, etc., through the operation or action of hydraulic cylinders.

Hydrocarbon - A family of chemical compounds containing carbon and hydrogen atoms in various combinations, found especially in fossil fuels.

Inby - In the direction of the working face.

Incline - Any entry to a mine that is not vertical (shaft) or horizontal (adit). Often incline is reserved for those entries that are too steep for a belt conveyor (+ 17 degrees - 18 degrees), in which case a hoist and guide rails are employed. A belt conveyor incline is termed a slope. Alt: Secondary inclined opening, driven upward to connect levels, sometimes on the dip of a deposit; also called "inclined shaft".

Incompetent - Applied to strata, a formation, a rock, or a rock structure not combining sufficient firmness and flexibility to transmit a thrust and to lift a load by bending.

Indicated coal resources - Coal for which estimates of the rank, quality, and quantity have been computed partly from sample analyses and measurements and partly from reasonable geologic projections. The points of observation are $\frac{1}{4}$ to 1 $\frac{1}{4}$ miles apart. Indicated coal is projected to extend as an $\frac{1}{4}$ mile wide belt that lies more than $\frac{1}{4}$ mile from the outcrop or points of observation or measurement.

Inferred coal resources - Coal in unexplored extensions of the demonstrated resources for which estimates of the quality and size are based on geologic evidence and projection. Quantitative estimates are based largely on broad knowledge of the geologic character of the deposit and for which there are few, if any, samples or measurements. The estimates are based on an assumed continuity or repetition of which there is geologic evidence; this evidence may include comparison with deposits of similar type. Bodies that are completely concealed may be included if there is specific geologic evidence of their presence. The points of observation are 1 $\frac{1}{4}$ to 6 miles apart.

In situ - In the natural or original position. Applied to a rock, soil, or fossil when occurring in the situation in which it was originally formed or deposited.

Intake - The passage through which fresh air is drawn or forced into a mine or to a section of a mine.

Intermediate section - A term used in belt and chain conveyor network to designate a section of the conveyor frame occupying a position between the head and foot sections.

Immediate roof - The roof strata immediately above the coalbed, requiring support during the excavation of coal.

Isopach - A line, on a map, drawn through points of equal thickness of a designated unit. Synonym for isopachous line:

isopachyte.

Jackleg - A percussion drill used for drifting or stopping that is mounted on a telescopic leg which has an extension of about 2.5 m. The leg and machine are hinged so that the drill need not be in the same direction as the leg.

Jackrock - A caltrop or other object manufactured with one or more rounded or sharpened points, which when placed or thrown present at least one point at such an angle that it is peculiar to and designed for use in puncturing or damaging vehicle tires. Jackrocks are commonly used during labor disputes.

Job Safety Analysis (J.S.A.) - A job breakdown that gives a safe, efficient job procedure.

Joint - A divisional plane or surface that divides a rock and along which there has been no visible movement parallel to the plane or surface.

Kettle bottom - A smooth, rounded piece of rock, cylindrical in shape, which may drop out of the roof of a mine without warning. The origin of this feature is thought to be the remains of the stump of a tree that has been replaced by sediments so that the original form has been rather well preserved.

Kerf - The undercut of a coal face.

Lamp - The electric cap lamp worn for visibility. Also, the flame safety lamp used in coal mines to detect methane gas concentrations and oxygen deficiency.

Layout - The design or pattern of the main roadways and workings. The proper layout of mine workings is the responsibility of the manager aided by the planning department.

Lift - The amount of coal obtained from a continuous miner in one mining cycle.

Liquefaction - The process of converting coal into a synthetic fuel, similar in nature to crude oil and/or refined products, such as gasoline.

Lithology - The character of a rock described in terms of its structure, color, mineral composition, grain size, and arrangement of its component parts; all those visible features that in the aggregate impart individuality of the rock. Lithology is the basis of correlation in coal mines and commonly is reliable over a distance of a few miles.

Load - To place explosives in a drill hole. Also, to transfer broken material into a haulage device.

Loading machine - Any device for transferring excavated coal into the haulage equipment.

Loading pocket - Transfer point at a shaft where bulk material is loaded by bin, hopper, and chute into a skip.

Longwall Mining - One of three major underground coal mining methods currently in use. Employs a steel plow, or rotation drum, which is pulled mechanically back and forth across a face of coal that is usually several hundred feet long. The loosened coal falls onto a conveyor for removal from the mine.

Loose coal - Coal fragments larger in size than coal dust.

Low voltage - Up to and including 660 volts by federal standards.

Main entry - A main haulage road. Where the coal has cleats, main entries are driven at right angles to the face cleats.

Main fan - A mechanical ventilator installed at the surface; operates by either exhausting or blowing to induce airflow through the mine roadways and workings.

Manhole - A safety hole constructed in the side of a gangway, tunnel, or slope in which miner can be safe from passing locomotives and car. Also called a refuge hole.

Man trip - A carrier of mine personnel, by rail or rubber tire, to and from the work area.

Manway - An entry used exclusively for personnel to travel from the shaft bottom or drift mouth to the working section; it is always on the intake air side in gassy mines. Also, a small passage at one side or both sides of a breast, used as a traveling way for the miner, and sometimes, as an airway, or chute, or both.

Measured coal resources - Coal for which estimates of the rank, quality, and quantity have been computed from sample analyses and measurements from closely spaced and geologically well-known sample sites, such as outcrops, trenches, mine workings, and drill holes. The points of observation and measurement are so closely spaced and the thickness and extent of coals are so well defined that the tonnage is judged to be accurate within 20 percent of true tonnage. Although the spacing of the points of observation necessary to demonstrate continuity of the coal differs from region to region according to the character of the coal beds, the points of observation are no greater than $\frac{1}{4}$ mile apart. Measured coal is projected to extend as a $\frac{1}{4}$ -mile wide belt from the outcrop or points of observation or measurement.

Meridian -- A surveying term that establishes a line of reference. The bearing is used to designate direction. The bearing of a line is the acute horizontal angle between the meridian and the line. Azimuths are angles measured clockwise from any meridian.

Methane - A potentially explosive gas formed naturally from the decay of vegetative matter, similar to that which formed coal. Methane, which is the principal component of natural gas, is frequently encountered in underground coal mining operations and is kept within safe limits through the use of extensive mine ventilation systems.

Methane monitor - An electronic instrument often mounted on a piece of mining equipment, that detects and measures the methane content of mine air.

Mine development - The term employed to designate the operations involved in preparing a mine for ore extraction. These operations include tunneling, sinking, cross-cutting, drifting, and raising.

Mine mouth electric plant - A coal burning electric-generating plant built near a coal mine.

Miner - One who is engaged in the business or occupation of extracting ore, coal, precious substances, or other natural materials from the earth's crust.

Mineral - An inorganic compound occurring naturally in the earth's crust, with a distinctive set of physical properties, and a definite chemical composition.

Mining Engineer - A person qualified by education, training, and experience in mining engineering. A trained engineer with knowledge of the science, economics, and arts of mineral location, extraction, concentration and sale, and the administrative and financial problems of practical importance in connection with the profitable conduct of mining.

Misfire - The complete or partial failure of a blasting charge to explode as planned.

MSHA - Mine Safety and Health Administration; the federal agency which regulates coal mine health and safety.

Mud cap - A charge of high explosive fired in contact with the surface of a rock after being covered with a quantity of wet mud, wet earth, or sand, without any borehole being used. Also termed adobe, dobie, and sandblast (illegal in coal mining).

Natural ventilation - Ventilation of a mine without the aid of fans or furnaces.

Nip - Device at the end of the trailing cable of a mining machine used for connecting the trailing cable to the trolley wire and ground.

Open end pillarling - A method of mining pillars in which no stump is left; the pockets driven are open on the gob side and the roof is supported by timber.

Outby; outbye - Nearer to the shaft, and hence farther from the working face. Toward the mine entrance. The opposite of inby.

Outcrop - Coal that appears at or near the surface.

Overburden - Layers of soil and rock covering a coal seam. Overburden is removed prior to surface mining and replaced after the coal is taken from the seam.

Overcast (undercast) - Enclosed airway which permits one air current to pass over (under) another without interruption.

Panel - A coal mining block that generally comprises one operating unit.

Panic bar - A switch, in the shape of a bar, used to cut off power at the machine in case of an emergency.

Parting - (1) A small joint in coal or rock; (2) a layer of rock in a coal seam; (3) a side track or turnout in a haulage road.

Peat - The partially decayed plant matter found in swamps and bogs, one of the earliest stages of coal formation.

Percentage extraction - The proportion of a coal seam which is removed from the mine. The remainder may represent coal in pillars or coal which is too thin or inferior to mine or lost in mining. Shallow coal mines working under townships, reservoirs, etc., may extract 50%, or less, of the entire seam, the remainder being left as pillars to protect the surface. Under favorable conditions, longwall mining may extract from 80 to 95% of the entire seam. With pillar methods of working, the extraction ranges from 50 to 90% depending on local conditions.

Percussion drill - A drill, usually air powered, that delivers its energy through a pounding or hammering action.

Permissible - That which is allowable or permitted. It is most widely applied to mine equipment and explosives of all kinds which are similar in all respects to samples that have passed certain tests of the MSHA and can be used with safety in accordance with specified conditions where hazards from explosive gas or coal dust exist.

Permit - As it pertains to mining, a document issued by a regulatory agency that gives approval for mining operations to take place.

Piggy-back - A bridge conveyor.

Pillar - An area of coal left to support the overlying strata in a mine; sometimes left permanently to support surface structures.

Pillar robbing - The systematic removal of the coal pillars between rooms or chambers to regulate the subsidence of the roof. Also termed "bridging back" the pillar, "drawing" the pillar, or "pulling" the pillar.

Pinch - A compression of the walls of a vein or the roof and floor of a coal seam so as to "squeeze" out the coal.

Pinch - A compression of the roof and floor of a coal seam so as to "squeeze" out the coal.

Pinning - Roof bolting.

Pitch - The inclination of a seam; the rise of a seam.

Plan - A map showing features such as mine workings or geological structures on a horizontal plane.

Pneumoconiosis - A chronic disease of the lung arising from breathing coal dust.

Portal - The structure surrounding the immediate entrance to a mine; the mouth of an adit or tunnel.

Portal bus - Track-mounted, self-propelled personnel carrier that holds 8 to 12 people.

Post - The vertical member of a timber set.

Preparation plant - A place where coal is cleaned, sized, and prepared for market.

Primary roof - The main roof above the immediate top. Its thickness may vary from a few to several thousand feet.

Primer (booster) - A package or cartridge of explosive which is designed specifically to transmit detonation to other explosives and which does not contain a detonator.

Prop - Coal mining term for any single post used as roof support. Props may be timber or steel; if steel—screwed, yield-able, or hydraulic.

Proximate analysis - A physical, or non-chemical, test of the constitution of coal. Not precise, but very useful for determining the commercial value. Using the same sample (1 gram) under controlled heating at fixed temperatures and time periods, moisture, volatile matter, fixed carbon and ash content are successfully determined. Sulfur and Btu content are also generally reported with a proximate analysis.

Pyrite - A hard, heavy, shiny, yellow mineral, FeS₂ or iron disulfide, generally in cubic crystals. Also called iron pyrites, fool's gold, sulfur balls. Iron pyrite is the most common sulfide found in coal mines.

Raise - A secondary or tertiary inclined opening, vertical or near-vertical opening driven upward from a level to connect with the level above, or to explore the ground for a limited distance above one level.

Ramp - A secondary or tertiary inclined opening, driven to connect levels, usually driven in a downward direction, and used for haulage.

Ranks of coal - The classification of coal by degree of hardness, moisture and heat content. "Anthracite" is hard coal, almost pure carbon, used mainly for heating homes. "Bituminous" is soft coal. It is the most common coal found in the United States and is used to generate electricity and to make coke for the steel industry. "Subbituminous" is a coal with a heating value between bituminous and lignite. It has low fixed carbon and high percentages of volatile matter and moisture. "Lignite" is the softest coal and has the highest moisture content. It is used for generating electricity and for conversion into synthetic gas. In terms of Btu or "heating" content, anthracite has the highest value, followed by bituminous, subbituminous and lignite.

Reclamation - The restoration of land and environmental values to a surface mine site after the coal is extracted. Reclamation operations are usually underway as soon as the coal has been removed from a mine site. The process includes restoring the land to its approximate original appearance by restoring topsoil and planting native grasses and ground covers.

Recovery - The proportion or percentage of coal or ore mined from the original seam or deposit.

Red dog - A nonvolatile combustion product of the oxidation of coal or coal refuse. Most commonly applied to material resulting from in situ, uncontrolled burning of coal or coal refuse piles. It is similar to coal ash.

Regulator - Device (wall, door) used to control the volume of air in an air split.

Reserve - That portion of the identified coal resource that can be economically mined at the time of determination. The reserve is derived by applying a recovery factor to that component of the identified coal resource designated as the reserve base.

Resin bolting - A method of permanent roof support in which steel rods are grouted with resin.

Resources - Concentrations of coal in such forms that economic extraction is currently or may become feasible. Coal resources broken down by identified and undiscovered resources. Identified coal resources are classified as demonstrated and inferred. Demonstrated resources are further broken down as measured and indicated. Undiscovered resources are broken down as hypothetical and speculative.

Respirable dust - Dust particles 5 microns or less in size.

Respirable dust sample - A sample collected with an approved coal mine dust sampler unit attached to a miner, or so positioned as to measure the concentration of respirable dust to which the miner is exposed, and operated continuously over an entire work shift of such miner.

Retreat mining - A system of robbing pillars in which the robbing line, or line through the faces of the pillars being extracted, retreats from the boundary toward the shaft or mine mouth.

Return - The air or ventilation that has passed through all the working faces of a split.

Return idler - The idler or roller underneath the cover or cover plates on which the conveyor belt rides after the load which it was carrying has been dumped at the head section and starts the return trip toward the foot section.

Rib - The side of a pillar or the wall of an entry. The solid coal on the side of any underground passage. Same as rib pillar.

Rider - A thin seam of coal overlying a thicker one.

Ripper - A coal extraction machine that works by tearing the coal from the face.

Rob - To extract pillars of coal previously left for support.

Robbed out area - Describes that part of a mine from which the pillars have been removed.

Roll - (1) A high place in the bottom or a low place in the top of a mine passage, (2) a local thickening of roof or floor strata, causing thinning of a coal seam.

Roll protection - A framework, safety canopy, or similar protection for the operator when equipment overturns.

Roof - The stratum of rock or other material above a coal seam; the overhead surface of a coal working place. Same as "back" or "top."

Roof bolt - A long steel bolt driven into the roof of underground excavations to support the roof, preventing and limiting the extent of roof falls. The unit consists of the bolt (up to 4 feet long), steel plate, expansion shell, and pal nut. The use of roof bolts eliminates the need for timbering by fastening together, or "laminating," several weaker layers of roof strata to build a "beam."

Roof fall - A coal mine cave-in especially in permanent areas such as entries.

Roof jack - A screw- or pump-type hydraulic extension post made of steel and used as temporary roof support.

Roof sag - The sinking, bending, or curving of the roof, especially in the middle, from weight or pressure.

Roof stress - Unbalanced internal forces in the roof or sides, created when coal is extracted.

Roof support - Posts, jacks, roof bolts and beams used to support the rock overlying a coal seam in an underground mine. A good roof support plan is part of mine safety and coal extraction.

Roof trusses - A combination of steel rods anchored into the roof to create zones of compression and tension forces and provide better support for weak roof and roof over wide areas.

Room and pillar mining - A method of underground mining in which approximately half of the coal is left in place to support the roof of the active mining area. Large "pillars" are left while "rooms" of coal are extracted.

Room neck - The short passage from the entry into a room.

Round - Planned pattern of drill holes fired in sequence in tunneling, shaft sinking, or stopping. First the cut holes are fired, followed by relief, lifter, and rib holes.

Thacklight Coal Mine, LLP

July 15, 2011

Royalty - The payment of a certain stipulated sum on the mineral produced.

Rubbing surface - The total area (top, bottom, and sides) of an airway.

Run-of-mine - Raw material as it exists in the mine; average grade or quality.

Safety fuse - A train of powder enclosed in cotton, jute yarn, or waterproofing compounds, which burns at a uniform rate; used for firing a cap containing the detonation compound which in turn sets off the explosive charge.

Safety lamp - A lamp with steel wire gauze covering every opening from the inside to the outside so as to prevent the passage of flame should explosive gas be encountered.

Sampling - Cutting a representative part of an ore (or coal) deposit, which should truly represent its average value.

Sandstone - A sedimentary rock consisting of quartz sand united by some cementing material, such as iron oxide or calcium carbonate.

Scaling - Removal of loose rock from the roof or walls. This work is dangerous and a long bar (called a scaling bar) is often used.

Scoop - A rubber tired-, battery- or diesel-powered piece of equipment designed for cleaning runways and hauling supplies.

Scrubber - Any of several forms of chemical/physical devices that remove sulfur compounds formed during coal combustion. These devices, technically know as flue gas desulfurization systems, combine the sulfur in gaseous emissions with another chemical medium to form inert "sludge," which must then be removed for disposal.

Seam - A stratum or bed of coal.

Secondary roof - The roof strata immediately above the coalbed, requiring support during the excavating of coal.

Section - A portion of the working area of a mine.

Selective mining - The object of selective mining is to obtain a relatively high-grade mine product; this usually entails the use of a much more expensive stopping system and high exploration and development costs in searching for and developing the separate bunches, stringers, lenses, and bands of ore.

Self-contained breathing apparatus - A self-contained supply of oxygen used during rescue work from coal mine fires and explosions; same as SCSR (self-contained self rescuer).

Self-rescuer - A small filtering device carried by a coal miner underground, either on his belt or in his pocket, to provide him with immediate protection against carbon monoxide and smoke in case of a mine fire or explosion. It is a small canister with a mouthpiece directly attached to it. The wearer breathes through the mouth, the nose being closed by a clip. The canister contains a layer of fused calcium chloride that absorbs water vapor from the mine air. The device is used for escape purposes only because it does not sustain life in atmospheres containing deficient oxygen. The length of time a self-rescuer can be used is governed mainly by the humidity in the mine air, usually between 30 minutes and one hour.

Severance - The separation of a mineral interest from other interests in the land by grant or reservation. A mineral deed or grant of the land reserving a mineral interest, by the landowner before leasing, accomplishes a severance as does his execution of a mineral lease.

Shaft - A primary vertical or non-vertical opening through mine strata used for ventilation or drainage and/or for hoisting of personnel or materials; connects the surface with underground workings.

Shaft mine - An underground mine in which the main entry or access is by means of a vertical shaft.

Shale - A rock formed by consolidation of clay, mud, or silt, having a laminated structure and composed of minerals essentially unaltered since deposition.

Shearer - A mining machine for longwall faces that uses a rotating action to "shear" the material from the face as it progresses along the face.

Shift - The number of hours or the part of any day worked.

Shortwall - An underground mining method in which small areas are worked (15 to 150 feet) by a continuous miner in conjunction with the use of hydraulic roof supports.

Shuttle car - A self-discharging truck, generally with rubber tires or caterpillar-type treads, used for receiving coal from the loading or mining machine and transferring it to an underground loading point, mine railway or belt conveyor system.

Sinking - The process by which a shaft is driven.

Skid - A track-mounted vehicle used to hold trips or cars from running out of control. Also it is a flat-bottom personnel or equipment carrier used in low coal.

Skip - A car being hoisted from a slope or shaft.

Stack - Small coal; the finest-sized soft coal, usually less than one inch in diameter.

Slag - The waste product of the process of smelting.

Slate - A miner's term for any shale or slate accompanying coal. Geologically, it is a dense, fine-textured, metamorphic rock, which has excellent parallel cleavage so that it breaks into thin plates or pencil-like shapes.

Slate bar - The proper long-handled tool used to pry down loose and hazardous material from roof, face, and ribs.

Stickenside - A smooth, striated, polished surface produced on rock by friction.

Slip - A fault. A smooth joint or crack where the strata have moved on each other.

Slope - Primary inclined opening, connection the surface with the underground workings.

Slope mine - An underground mine with an opening that slopes upward or downward to the coal seam.

Sloughing - The slow crumbling and falling away of material from roof, rib, and face.

Solid - Mineral that has not been undermined, sheared out, or otherwise prepared for blasting.

Sounding - Knocking on a roof to see whether it is sound and safe to work under.

Spad - A spad is a flat spike hammered into a wooden plug anchored in a hole drilled into the mine ceiling from which is threaded a plumbline. The spad is an underground survey station similar to the use of stakes in marking survey points on the surface. A pointer spad, or sight spad, is a station that allows a mine foreman to visually align entries or breaks from the main spad.

Span - The horizontal distance between the side supports or solid abutments along sides of a roadway.

Specific gravity - The weight of a substance compared with the weight of an equal volume of pure water at 4 degrees Celsius.

Split - Any division or branch of the ventilating current. Also, the workings ventilated by one branch. Also, to divide a pillar by driving one or more roads through it.

Squeeze - The settling, without breaking, of the roof and the gradual upheaval of the floor of a mine due to the weight of the

overlying strata.

Steeply inclined - Said of deposits and coal seams with a dip of from 0.7 to 1 rad (40 degrees to 60 degrees).

Stemming - The noncombustible material used on top or in front of a charge or explosive.

Strike - The direction of the line of intersection of a bed or vein with the horizontal plane. The strike of a bed is the direction of a straight line that connects two points of equal elevation on the bed.

Stripping ratio - The unit amount of overburden that must be removed to gain access to a similar unit amount of coal or mineral material.

Stump - Any small pillar.

Subbituminous - Coal of a rank intermediate between lignite and bituminous.

Subsidence - The gradual sinking, or sometimes abrupt collapse, of the rock and soil layers into an underground mine. Structures and surface features above the subsidence area can be affected.

Sump - The bottom of a shaft, or any other place in a mine, that is used as a collecting point for drainage water.

Sumping - To force the cutter bar of a machine into or under the coal. Also called a sumping cut, or sumping in.

Support - The all-important function of keeping the mine workings open. As a verb, it refers to this function; as a noun it refers to all the equipment and materials--timber, roof bolts, concrete, steel, etc.--that are used to carry out this function.

Surface mine - A mine in which the coal lies near the surface and can be extracted by removing the covering layers of rock and soil.

Suspension - Weaker strata hanging from stronger, overlying strata by means of roof bolts.

Syncline - A fold in rock in which the strata dip inward from both sides toward the axis. The opposite of anticline.

Tailgate - A subsidiary gate road to a conveyor face as opposed to a main gate. The tailgate commonly acts as the return airway and supplies road to the face.

Tailpiece - Also known as foot section pulley. The pulley or roller in the tail or foot section of a belt conveyor around which the belt runs.

Tail section - A term used in both belt and chain conveyor work to designate that portion of the conveyor at the extreme opposite end from the delivery point. In either type of conveyor it consists of a frame and either a sprocket or a drum on which the chain or belt travels, plus such other devices as may be required for adjusting belt or chain tension.

Tension - The act of stretching.

Tertiary - Lateral or panel openings (e.g., ramp, crosscut).

Through-steel - A system of dust collection from rock or roof drilling. The drill steel is hollow, and a vacuum is applied at the base, pulling the dust through the steel and into a receptacle on the machine.

Timber - A collective term for underground wooden supports.

Timbering - The setting of timber supports in mine workings or shafts for protection against falls from roof, face, or rib.

Timber set - A timber frame to support the roof, sides, and sometimes the floor of mine roadways or shafts.

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Tipple - Originally the place where the mine cars were tipped and emptied of their coal, and still used in that same sense, although now more generally applied to the surface structures of a mine, including the preparation plant and loading tracks.

Ton - A short or net ton is equal to 2,000 pounds; a long or British ton is 2,240 pounds; a metric ton is approximately 2,205 pounds.

Top - A mine roof; same as "back."

Torque wrench - A wrench that indicates, as on a dial, the amount of torque (in units of foot-pounds) exerted in tightening a roof bolt.

Tractor - A battery-operated piece of equipment that pulls trailers, skids, or personnel carriers. Also used for supplies.

Tram - Used in connection with moving self-propelled mining equipment. A tramping motor may refer to an electric locomotive used for hauling loaded trips or it may refer to the motor in a cutting machine that supplies the power for moving or tramping the machine.

Transfer - A vertical or inclined connection between two or more levels and used as an ore pass.

Transfer point - Location in the materials handling system, either haulage or hoisting, where bulk material is transferred between conveyances.

Trip - A train of mine cars.

Troughing idlers - The idlers, located on the upper framework of a belt conveyor, which support the loaded belt. They are so mounted that the loaded belt forms a trough in the direction of travel, which reduces spillage and increases the carrying capacity of a belt for a given width.

Tunnel - A horizontal, or near-horizontal, underground passage, entry, or haulageway, that is open to the surface at both ends. A tunnel (as opposed to an adit) must pass completely through a hill or mountain.

Ultimate analysis - Precise determination, by chemical means, of the elements and compounds in coal.

Undercut - To cut below or undermine the coal face by chipping away the coal by pick or mining machine. In some localities the terms "undermine" or "underhole" are used.

Underground mine - Also known as a "deep" mine. Usually located several hundred feet below the earth's surface, an underground mine's coal is removed mechanically and transferred by shuttle car or conveyor to the surface.

Underground station - An enlargement of an entry, drift, or level at a shaft at which cages stop to receive and discharge cars, personnel, and material. An underground station is any location where stationary electrical equipment is installed. This includes pump rooms, compressor rooms, hoist rooms, battery-charging rooms, etc.

Unit train - A long train of between 60 and 150 or more hopper cars, carrying only coal between a single mine and destination.

Universal coal cutter - A type of coal cutting machine which is designed to make horizontal cuts in a coal face at any point between the bottom and top or to make shearing cuts at any point between the two ribs of the place. The cutter bar can be twisted to make cuts at any angle to the horizontal or vertical.

Upcast shaft - A shaft through which air leaves the mine.

Valuation - The act or process of valuing or of estimating the value or worth; appraisal.

Velocity - Rate of airflow in lineal feet per minute.

Ventilation - The provision of a directed flow of fresh and return air along all underground roadways, traveling roads, workings, and service parts.

Violation - The breaking of any state or federal mining law.

Virgin - Unworked; untouched; often said of areas where there has been no coal mining.

Void - A general term for pore space or other reopenings in rock. In addition to pore space, the term includes vesicles, solution cavities, or any openings either primary or secondary.

Volatile matter - The gaseous part, mostly hydrocarbons, of coal.

Waste - That rock or mineral which must be removed from a mine to keep the mining scheme practical, but which has no value.

Water Gauge (standard U-tube) - Instrument that measures differential pressures in inches of water.

Wedge - A piece of wood tapering to a thin edge and used for tightening in conventional timbering.

Weight - Fracturing and lowering of the roof strata at the face as a result of mining operations, as in "taking weight".

White damp - Carbon monoxide, CO. A gas that may be present in the afterdamp of a gas- or coal-dust explosion, or in the gases given off by a mine fire; also one of the constituents of the gases produced by blasting. Rarely found in mines under other circumstances. It is absorbed by the hemoglobin of the blood to the exclusion of oxygen. One-tenth of 1% (.001) may be fatal in 10 minutes.

Width - The thickness of a lode measured at right angles to the dip.

Winning - The excavation, loading, and removal of coal or ore from the ground; winning follows development.

Winze - Secondary or tertiary vertical or near-vertical opening sunk from a point inside a mine for the purpose of connecting with a lower level or of exploring the ground for a limited depth below a level.

Wire rope - A steel wire rope used for winding in shafts and underground haulages. Wire ropes are made from medium carbon steels. Various constructions of wire rope are designated by the number of strands in the rope and the number of wires in each strand. The following are some common terms encountered: airplane strand; cable-laid rope; cane rope; elevator rope; extra-flexible hoisting rope; flat rope; flattened-strand rope; guy rope; guy strand; hand rope; haulage rope; hawser; hoisting rope; lang lay rope; lay; left lay rope; left twist; nonspinning rope; regular lay; reverse-laid rope; rheostat rope; right lay; right twist; running rope; special flexible hoisting rope; standing rope; towing hawser; transmission rope.

Working - When a coal seam is being squeezed by pressure from roof and floor, it emits creaking noises and is said to be "working". This often serves as a warning to the miners that additional support is needed.

Working face - Any place in a mine where material is extracted during a mining cycle.

Working place - From the outby side of the last open crosscut to the face.

Workings - The entire system of openings in a mine for the purpose of exploitation.

Working section - From the faces to the point where coal is loaded onto belts or rail cars to begin its trip to the outside.

THE BELOW SECTION WAS INTENTIONALLY LEFT BLANK

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LIST OF ATTACHED EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>
Exhibit "A"	Prospect Information	66
Exhibit "B"	Form of Partnership Ownership Certificate.	70
Exhibit "C"	Form of Limited Liability Partnership Agreement	71
Exhibit "D"	Partnership Financial Statement	84
Exhibit "E"	Form of Turnkey Mining Development Agreement and Mining Operating Contract	85
*	Instructions on How to Purchase Unit	90
Exhibit "F"	Purchaser Suitability Questionnaire	91
Exhibit "G"	Subscription and Customer Agreement	96

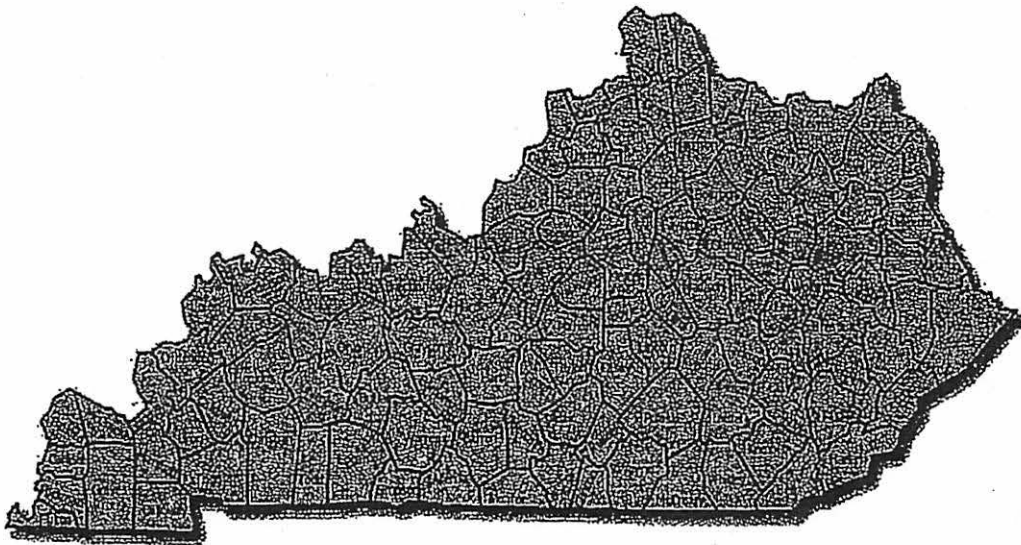
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EXHIBIT "A"

PROSPECT INFORMATION

New Century Coal and partners have identified an area that is ready for production in Lawrence County, KY. A permit for 122 acres has already been acquired with three more seams to mine on this property. There are 887,400 tons permitted and 2,887,182 projected recoverable tons total. The coal seam height is 4' to 6' with one core hole. Raw sample shows BTU of 11,596 to 12,120 and ASH of 15.33% to 10.44% with Sulfur of .97 to 1.43. Wash samples show BTU of 13,383, ASH of 6.46% and Sulfur of 1.3%.



Lawrence County, KY is part of the Eastern Mountain Coal Field which is part of the Appalachian bituminous coal field, covering all of parts of 30 counties in Kentucky and the adjoining areas in Ohio, West Virginia, Virginia and Tennessee. It covers an area from the Allegheny Mountains in the east across the Cumberland Plateau and the Pottsville Escarpment in the west. The region is known for its coal mining since the 1840's.

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Geological Report

Seam	Elevation	Thickness (Inches)	Area (Acres)	Total Reserve (Tons)	Notes
Peach Orchard	600	72	102.0	1,064,880	Proposed underground mining
Broas	680	60	102.0	887,400	Permitted for underground mining on 858-5010
Unnamed #1	800	36	79.1	412,902	Proposed surface mining
Unnamed #2	812	48	75.0	522,000	Proposed surface mining
Total				2,887,182	

Both unnamed seams could be contour / area mined with a overburden ratio of 6.9:1

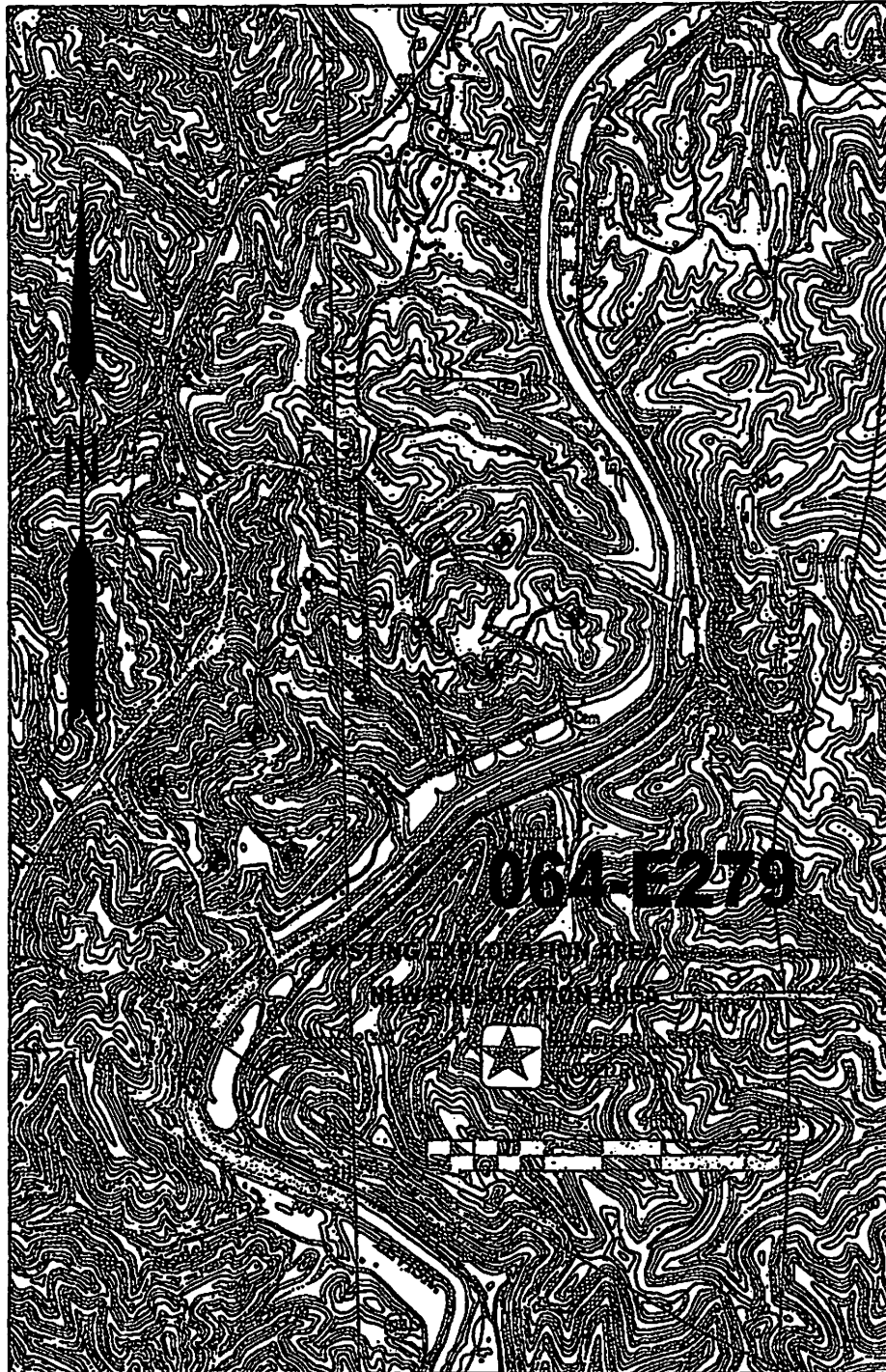
Survey Quality Results

Seam	Sample #	BTU	Total Coal	Ash	Sulfur
Peach Orchard	500653	12,665	48" - 63"	7.89	.83
Broas	501171	13,102	69.52"	4.87	7.55
Broas	503180	12,873	69.52"	7.55	.98

122 acres bonded and permitted with more seams to mine and strip

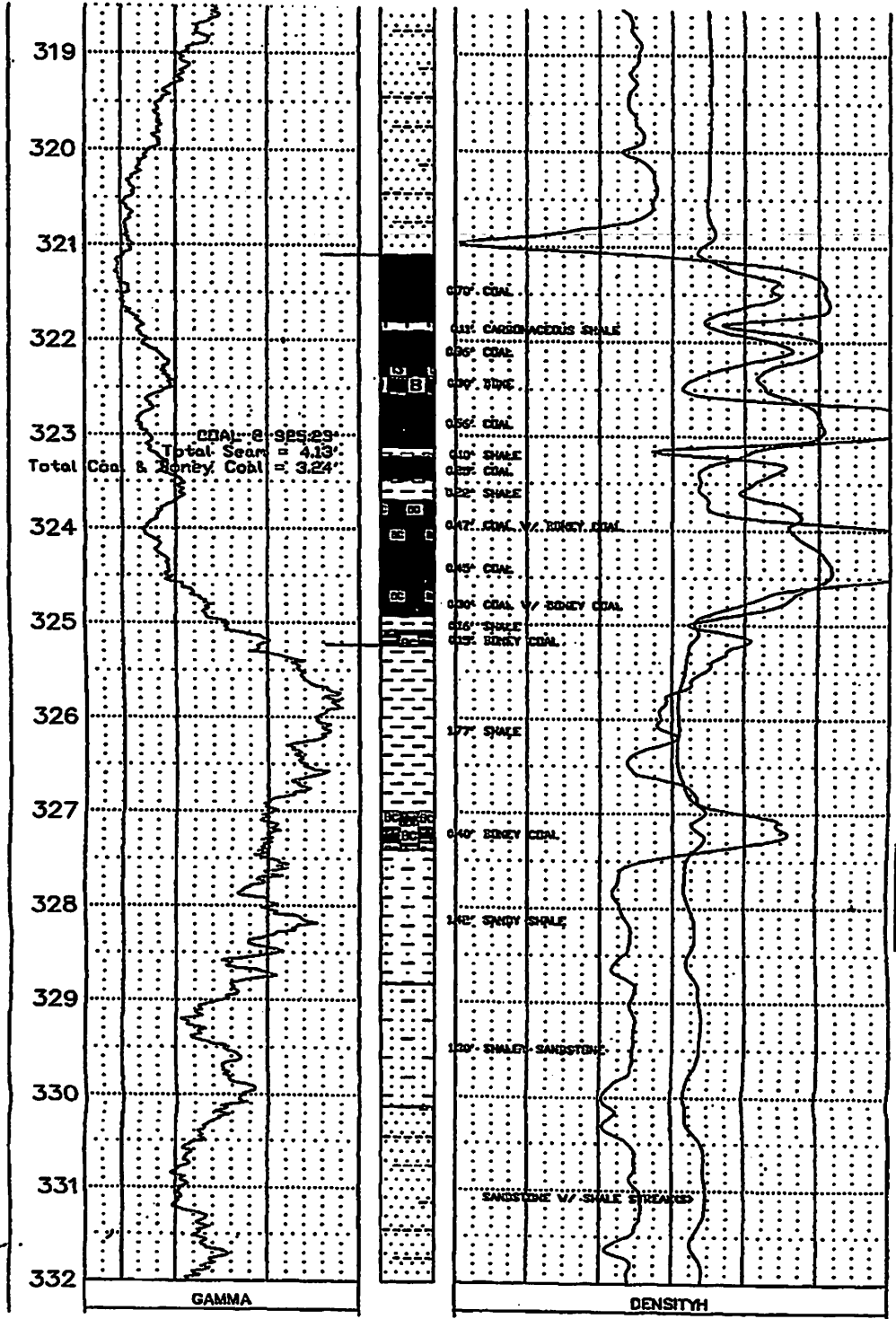
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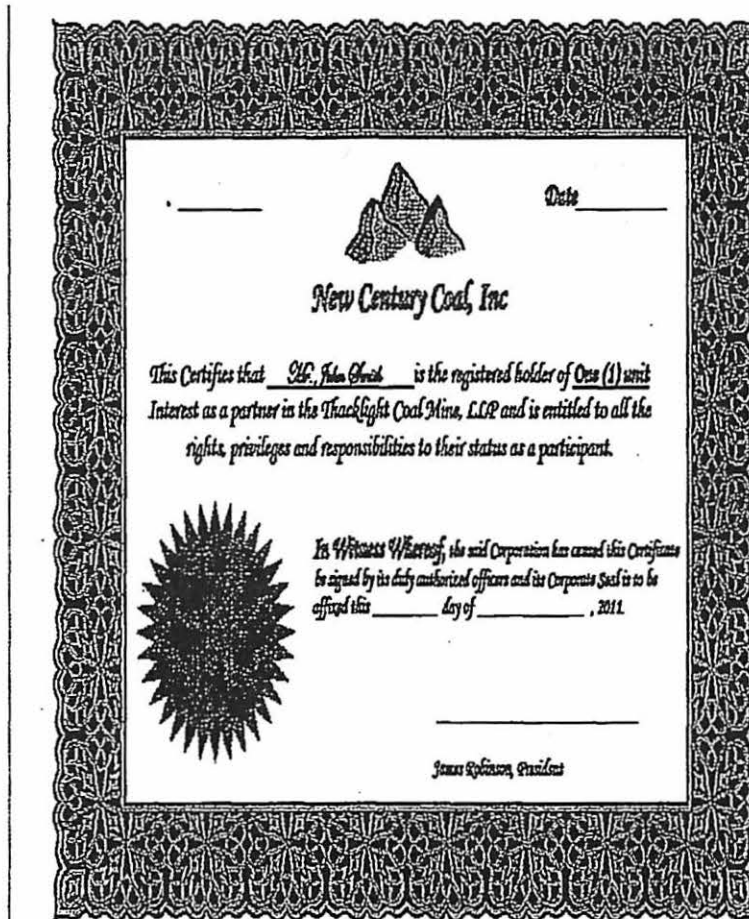


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EXHIBIT "B"

Sample of Partnership Certificate



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LIMITED LIABILITY PARTNERSHIP AGREEMENT

THIS LIMITED LIABILITY PARTNERSHIP AGREEMENT is made and entered into as of this ____ day of _____, 2011 by and between New Century Coal, Inc. (hereinafter Company", "Manager" or "Issuer / Sponsor") and the person who subscribes for the Units of participation's in the Partnership and who subsequently becomes a party hereto by executing and delivering the Subscription & Customer Agreement attached hereto [the, "Participants" or "Investor" or "Funding Partners" or "Unit Holders" or "Unit owner" or "Owner" or "Non-Partnership Operator"].

WHEREAS, the parties hereto desire to form a Limited Liability Partnership (the "Partnership") under the laws of Nevada for the purposes described herein:

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

1.1 Formation.

The parties do hereby form a Limited Liability Partnership under the laws of the State of Nevada ("Partnership").

ARTICLE II

2.1 Name.

The name of the Partnership Thacklight Coal Mine, LLP The Partnership shall file such registration and certificates as shall be required by Nevada law.

2.2 Principal Office.

The principal office of the Partnership shall be: 1009 Lark Street Ste. 1A, Johnson City, TN 37604 at or at such other places as the Manager, from time to time, may designate in his sole option without notice to the Participants. The books and records of the Partnership shall be maintained at such principal office, or at such other place of business that the Manager deems appropriate.

ARTICLE III

3.1 Purposes.

The purpose of the Partnership is to acquire 30% mining interest in Thacklight Coal Mine which represent 100% of the ownership Interest of the Thacklight Coal Mine , LLP . The Units shall own 100% of the Partnership

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(before each investor has received cash distributions equal to the investor's investment in the Partnership's coal mine, ("Investor Payback"). After Investor Payback, the ownership in the Partnership shall revert to a 90% of 100% for the remaining life of the Partnership / Coal Mine/ Income, with the 10% of 100% reversionary portion of the interest then going to the Company, (See: "Source of Funds", "Application of Proceeds") as additional compensation.

3.2 Powers.

In furtherance of the purposes set forth above, the Partnership, by and through its Manager, shall have the power to do any and all things whatsoever necessary, appropriate, or advisable in connection with such purposes, or as otherwise contemplated by this agreement.

3.3 Term.

The term of the Partnership shall commence simultaneously with the filing and registration of certificates required by the Office of the Secretary of State of Nevada, and shall therein be framed.

ARTICLE IV

4.1 Capital Contributions.

The Participant hereby subscribes to purchase Units in the Partnership as is set forth on the Signature Page of this agreement for the "Turnkey" purchase price of \$3,200,000 payable in Forty (40) Units at \$80,000 each for an interest in the Thacklight Coal Mine developed to projected production.

4.2 Withdrawal of Capital.

The Participant shall not be entitled to withdraw any part of his capital paid into the Partnership, or to received a refund in any amount, or to receive any distribution from the Partnership, except as provided in this agreement.

4.3 Capital Accounts.

There shall be established on the books and records of the Partnership a capital account for the benefit of the participant. Such capital account shall initially be credited with the capital contribution of the Manager, the participant, and thereafter shall be increased by the amount of all revenue allocable to the Manager and the participant, decreased by (i) such revenue which will be retained in the Partnership's reserve bank account in order to manage the affairs of the Partnership; (ii) the amount of all expenses and losses allocable to the Manager and the participant; and (iii) all amounts distributed to the participant. Notwithstanding anything to the contrary contained herein, the capital account of the participant shall be determined in accordance with the rules set forth in Treasury Regulations Section 1.704(b)(2)(iv), as amended from time to time.

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ARTICLE V

5.1 Books and Records.

The Manager shall maintain or cause to be maintained full and accurate books and records of the Partnership at the Partnership's principal office, or such other place as the Manager shall deem appropriate, showing all receipts and other records necessary for recording the business affairs of the Partnership. Such books and records shall be open to inspection and examination by the participant, either in person or by their duly authorized representatives during normal business hours upon thirty (30) business days prior written notice to the Manager.

5.2 Fiscal year.

The fiscal year of the Partnership shall be the calendar year.

(a) By March 31 of each fiscal year of the Partnership, the Manager shall furnish, or cause to be furnished to the participant, information relating to the Partnership which shall be necessary for the preparation by the participant of his or her Federal and State income or other tax returns.

(b) By March 31 of each fiscal year of the Partnership, the Manager shall furnish, or cause to be furnished, to the participant a report of the business and operations of this Partnership during such fiscal year. Each report shall constitute an accounting of the Partnership for such fiscal year. Such report shall contain un-audited financial statements; shall be of such form as the Manager deems proper, and shall include a balance sheet as of the end of such fiscal year; a statement of revenues, expenses, and losses of such fiscal year; a cash flow statement for such fiscal year; and such other information as the Manager deems to be reasonably necessary for the Participant to be advised of the Partnership's operations. The costs incurred with respect to such reports shall be an expense of the Partnership.

ARTICLE VI

6.1 Tax Returns.

The participant will, at his/her own expense, be responsible for filing their individual tax returns. It shall be the duty of the Manager to prepare, or cause to be prepared, all Federal, State and Local income tax returns and information returns, (if any) which the Partnership is required to file. The costs incurred with respect to the preparation and filing of such returns shall be borne by the Partnership.

6.2 Additional Information.

The Manager shall also furnish to the participant, at the expense of such participant, such other reports or information concerning the Partnership's operations and conditions as may reasonably be requested by the participant.

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ARTICLE VII

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7.1 Terms of the Offering.

The Units are being offered (the "Offering") to selected qualified investors by the, at a price of \$80,000 each.

7.2 Use of Proceeds.

Upon receipt of the proceeds of the Offering, the Issuer / Sponsor, on behalf of the Partnership, will pay certain expenses of the Offering and may use such funds for other purposes under the Development and Operating Contract. Once the subscription proceeds from this Offering are released from the Partnership's bank account, the proceeds will be deposited in the Issuer/Sponsor general operating account for use as the Issuer / Sponsor deems appropriate, which may include the payment of past or future expenses of the Issuer / Sponsor unassociated with the expenses of this Partnership. The Issuer / Sponsor shall, however, be obligated to pay the organization and distribution expenses as well as those to drill, test and if warranted, complete and equip the mine to production or abandon, which ever applies, as provided for in the Turnkey Mining Development Agreement and Mine Operating Contract.

ARTICLE VIII

8.1 Partnership Revenue Allocation.

The Unit Holders shall own, a 100% interest in the Partnership (based on a full 40 unit sale - each unit shall own 2.50% of the Partnership) and the same percentage share of each item of income and loss allocated for federal income tax purposes, until such time as there has been distributed with respect to each Unit, in cash, an amount equal to the gross aggregate investment made with respect to such Unit, (such return of capital being "Investor Payback"). After Investor Payback, the Units shall revert to and shall collectively represent a 90% interest the Partnership (being 2.25% ownership per unit) for the remaining life of the Partnership, with the reversionary portion of the interest then going to the Company and others (See: "Source of Funds", "Application of Proceeds" and "Mine Interest Revenue"), as additional compensation. The Company will receive a reversionary interest of ten percent (10%) of one hundred percent (100%) of each item of income and loss within the Partnership allocated for Federal income tax purposes, and the allocation of each item of income and loss for Federal income tax purposes in respect of each Unit held by a Participant other than the Company shall be proportionately reduced. Subject to the foregoing, net profits and net losses of the Partnership shall be allocated among the Participants in proportion to each Participants respective proportionate ownership of the Partnership. All net profits and net losses allocated to the Partners shall be credited or charged, as the case may be, to their respective capital accounts.

8.2 Net Income and Net Loss Calculation.

The net income or net loss of the Partnership for each fiscal year, for purposes of calculating the amount of the Participant's allocations shall be computed without regard to gain or loss from the sale or other dispositions of mine property. Upon dissolution and winding-up of the Partnership after payment of, or adequate provisions for, the debts and obligations of the Partnership to creditors, the remaining assets of the Partnership (or the proceeds of sales or other distributions in liquidation of the Partnership assets

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as may be determined by the Issuer / Sponsor in his or her sole discretion) shall be distributed to the Unit Holders in the following order: available cash flow for the then-current fiscal year to the extent not therefore distributed, net cash proceeds to the extent not therefore distributed; then the balance of the remaining assets to the Unit Holders in accordance with their percentage interests.

8.3 Allocation of Non-Recourse Contractual Obligations and Liabilities as a Result Of Such Contractual Obligations.

For purpose of Section 752 of the Code and the regulations thereunder, the non-recourse contractual obligations and liabilities as a result of such contractual obligations of the Partnership, if any, shall, except as otherwise specifically provided in such regulations, be allocated to the Participant in the same percentage that the Participant shares in the net income or net loss of the Partnership for each fiscal year.

8.4 Allocations in Event of Transfer or Admission of a New Participant.

In the event of the transfer of all or any part of the participant's interest (in accordance with the provisions of this Agreement) in the Partnership, at any time other than at the end of a fiscal year, or the admission of a new participant, the transferring participant or new participant's share to the Partnership's income, gain, loss, deductions and credits allocable to such interest, as computed both for accounting purposes and for federal income tax purposes, shall be allocated between the transferee participant, as the case may be, in the same ratio as the number of days in such fiscal year before and after the date of such transfer or admission; provided however, that the Manager shall have the option, to treat the periods before and after the date of such transfer or admission as separate fiscal years and allocate such transfer or admissions as separate fiscal years and allocate the Partnership's net income, gain, net loss, deductions, and credits for each of such deemed separate fiscal years.

ARTICLE IX

Distributive Share

9.1 The distributive shares of the participant of each item of Partnership taxable income, gains, losses, deductions or credits for any fiscal year shall be in the same proportions as their respective shares of the net income or net loss of the Partnership are allocated to them pursuant to Section 7 hereof.

9.2 Notwithstanding the provisions of Section 8.1 hereof, the distributive shares of the participant of each item of Partnership taxable income, gains, losses, deductions or credits relating specifically to intangible drilling and development costs under Section 263(c) of the Code shall be specially allocated so as each Participant shall receive in any fiscal year an amount equal to the proportion of their respective ownership in the Partnership until such time as the participant has been allocated, over the course of the entire ownership period, deductions equal to his original investment in the Partnership. Once all participants have been allocated deductions equal to their original investment any remaining deductions shall be allocated to the participants in accordance with their respective ownership in the Partnership.

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ARTICLE X

10.1 Distributions.

The net cash flow shall be distributed as provided in Section 7.2 hereof at such times as shall be determined by the Manager but in any event within ninety (90) days following the close of each fiscal year. Net cash flow shall be distributed to the participant in accordance with his percentage interest in the Partnership as of the date of the distributions.

10.2 Net Cash Flow.

For purposes of this Agreement, "Net Cash Flow" shall mean the excess of during the period: Gross receipts from any source, excluding capital contributions; and any funds released from reserves.

Less:

1. All cash expenses paid by Partnership;
2. All capital expenditures paid in cash;
3. Payments made on the principal of any debt; and
4. Reserves established by the Manager, in its sole discretion, for anticipated future operating, administrative, professional or other costs and expenses.

10.3 Administrative and Allocable Costs.

The Partnership will be billed directly and will be responsible for paying any ordinary and necessary expenses such as those defined above. The Partnership estimates that the components of such amounts will be as shown above.

10.4 Distribution Service Company.

Each participant, by executing this agreement, grants the Manager the authority to contract with an independent service company to calculate and process distributions to the Participant. The service company, if one is used, will calculate the gross income from the program property at the applicable contract price and deduct all expenses, associated with the operation of the Program Property and make distributions of a proportionate share of such income directly to the participant, subject to the Manager's right to require that funds be paid to the Partnership for payment of operating or administrative expenses.

The ownership in the mine (through the Partnership) is subject to a reversionary interest to the Issuer / Sponsor and others. (See: "Reduction of Revenue Interest" in the Memorandum).

ARTICLE XI

11.1 Tax Elections.

Tax elections, and other elections permitted or required to be made by the Partnership under the Code, shall be made by the Manager.

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ARTICLE XII

12.1 Management.

a. Control and management of the business of the Partnership shall be through the Manager, including its liquidation and dissolution. Pursuant to Section 14.2, herein and as follows, the Participant shall have a voice and may take part in the day-to-day management of the business of the Partnership pro-rata to mining interest held in the Partnership.

b. Except as otherwise specifically provided in this Agreement, the Participant hereby authorizes the Manager to exercise all right, power, and authority on behalf of the Partnership which may be exercised by the Manager of a Partnership under Nevada law, including, but not limited to, the following:

- (i) To acquire, hold, manage, sell, lease, alter the operations of, or otherwise dispose of any or all assets owned by the Partnership, interests therein or equipment thereto, at such prices, rentals or amounts, for cash, securities or other property, and upon such reasonable terms as the Manager deems to be in the best interest of the Partnership;
- (ii) To place record title to, or the right to use Partnership assets in the name or names of nominees for any purpose convenient or beneficial to the Partnership;
- (iii) To manage the property of the Partnership and to enter into agreements with others with respect to such management, which agreements shall contain such reasonable terms, provisions and conditions as the Manager deems to be in the best interest of the Partnership;
- (iv) To employ persons at the expense of the Partnership, and on its behalf, in the operation and management of the Partnership's property on such reasonable terms and for such compensation as the Manager deems to be in the best interest of the Partnership; provided, however, that the employment of others by the Manager shall not relieve the Manager of responsibility for the proper management of the Partnership;
- (v) The expenses relating to the purchase of supplies, materials, equipment, or similar items used in connection with the operation of the Partnership's property;
- (vi) To employ persons at the expense of the Partnership to perform legal and accounting services in connection with the operation and management of the Partnership's business, and to provide services in connection with the preparation and filing of tax returns or any other reports, including, but not limited to, the annual reports to the Participant required under this agreement;
- (vii) To enter into such agreements, contracts, documents and instruments with such par

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foregoing and any matters incident thereto, as the Manager deems advisable, appropriate, or convenient;

- (viii) To act as the Tax Matters Partner ("TMP") for the Partnership and, as such, to employ tax professionals co-represent the Partnership in connection with any audit or investigation of the Partnership by the Internal Revenue Service ("IRS"), and any subsequent administrative and judicial proceedings arising out of such audit, and to take all acts permitted to be taken by the TMP under the Code.

12.2 Powers of the Participant.

a. The participants shall have the right to approve, by majority vote (51%), of those who voted, of the outstanding Units, actions proposed to be taken with respect to the following matters, and no such action shall be taken until duly authorized:

- (i) To elect a successor Manager in the event of removal, bankruptcy, insolvency, dissolution or his withdrawal of being the Manager;
- (ii) To amend this Agreement, provided that no amendment may be made in derogation or diminution of the rights, powers and privileges of the Manager unless the Manager consents thereto; or
- (iii) To dissolve the Partnership.

b. The Manager shall cause a vote to be taken on any of the matters referred to above at a meeting called for that purpose upon not less than ten (10) days written notice to the participants, Investor response must be within five (5) days after the meeting, which can be held through the mail.

12.3 Standard of Care of Manager; Indemnification.

The Manager shall not be liable, responsible, or accountable for damages to the participant or the Partnership for any act or omission within the memorandum on behalf of the Partnership performed or omitted in good faith, and in a manner reasonably believed by it to be within the scope of its authority under this Agreement and in the best interest of the Partnership. The Manager shall be indemnified and held harmless by the Partnership for any loss or damage incurred by the Manager to the full extent permitted under the laws of Nevada provided that no participant shall not have any personal liability to the Manager or to the Partnership on account of such loss or damage unless caused directly by such participant.

12.4 Other Activities Related Party Transactions.

The Manager shall devote only such time as the Manager deems necessary to the affairs of the Partnership's business. The Manager and its affiliates may engage in or possess interests in other business ventures of any nature and description, independently or with others, including but not by way of limitation, the drilling and completion of mine, and the sale of any minerals produced therefrom, including those which might be deemed to be competitive with the Partnership, and neither the Partnership nor the participant shall have any rights by virtue of this agreement, in or to such independent ventures, or the income or profits derived therefrom, even if competitive with the business of the Partnership.

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12.5 Reimbursement of Expenses Incurred.

Regardless of whether any distributions are made to the participants, and exclusive of any fees paid to the Manager for organization, and management of the Partnership, the Partnership shall reimburse the Manager, at its cost plus twenty percent 20%, for the direct expenses which it incurs in performing or obtaining services for or on behalf of the Partnership, including but not limited to the costs of accounting services, tax preparation, travel, telephone, postage, legal, and other expenses relating to the Partnership.

ARTICLE XIII

13.1 Dissolution.

a. The Partnership shall dissolve upon the first to occur of the following:

- (i) The bankruptcy, insolvency, dissolution or withdrawal of the Manager; or
 - (ii) The sale condemnation or taking by eminent domain of all of or substantially all of the assets of the Partnership;
 - (iii) The expiration of the term of the Partnership; or
 - (iv) The vote of a majority in interest of the Participants to dissolve the Partnership;
- or
- (v) Sale or disposition of all Partnership assets pursuant to Article 11.1b(i).

b. Upon its dissolution of the Partnership, the Partnership may elect one or more successor Managers to replace the Manager within three (3) months from the date of the event causing the dissolution, the Partnership shall constitute a reconstituted Partnership under the terms of this agreement. If the Partnership does not select a successor Manager, then the participant shall select a person or entity to liquidate the Partnership ("Liquidating Trustee").

c. The Partnership shall not dissolve upon the death, bankruptcy, and adjudication of incompetence or insanity of any participant. In any such event, the Manager shall have the right and duty to continue the business of the Partnership under the terms of this agreement.

13.2 Sale of Assets upon Dissolution.

The Manager or the Liquidating Trustee, shall determine, whether such assets are to be distributed to the Participant in kind upon dissolution or whether such assets are to be sold at a fair and reasonable value (unless otherwise noted in the Memorandum).

13.3 Distributions upon Dissolution.

Upon the dissolution of the Partnership, the properties of the Partnership shall be liquidated in an orderly fashion, unless the Manager or the Liquidating Trustee, if applicable has determined to distribute the same in kind, and the proceeds thereof and any remaining property of the Partnership remaining shall be distributed as follows: first to the payment and discharge of all of the Partnership's debts and liabilities, next to the participants in an amount equal to available cash flow for the then-current fiscal year to the extent not theretofore distributed; then net cash proceeds to the interest.

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13.4 No Capital Account Deficit Make-up.

If the Partnership is liquidated within the meaning of Treasury Regulations Section 1.704-1(b) (2)(ii) (g), distributions pursuant to this Section 4.3, shall be made to the Participant if he / she has a positive Capital Account balance as provided in Treasury Regulations Section 1.704-1(b) (2)(ii) (b)(2), however, if the Participant has a deficit balance in his capital account he shall contribute to the capital of the Partnership the amount necessary to restore such capital account balance to zero as provided in Treasury Regulations Section 1.704-1(b) (2)(ii) (b)(3).

ARTICLE XIV

14.1 Withdrawal.

No Participant can withdraw from the Partnership.

14.2 Selling, Assigning, or otherwise Disposing of the Participant's Interest.

a. The participant may not sell, assign, or otherwise dispose of his / her interest in the Partnership, without certain restrictions.

b. Upon the death, incompetence, legal incapacity, bankruptcy or insolvency of the participant, his legally authorized personal representative shall have all of the rights of the participant for the purpose of settling or managing his estate, and shall have such power as the participant possessed to make an assignment of his interest in the Partnership in accordance with the terms hereof. With the consent of the Issuer / Sponsor such representative shall become the substitute participant.

14.3 Substitute Participants.

No Assignee of the participant's interest in the Partnership shall have the right to become a substitute participant unless all of the following conditions are satisfied: (a) the fully executed and acknowledged written instrument of assignment has been filed with the Partnership, setting forth the intention of the assignor that the assignee become the substitute participant in his place; (b) the assignor and assignee execute and acknowledgment such other instruments as the Manager may, in its sole discretion, deem necessary or desirable to effect such admission, including the written acceptance and adoption by the assignee of the provisions of this agreement and his execution, acknowledge and delivery to the Manager of a Power of Attorney, in the form and content substantially as set forth in Section 15.1 hereof; and (c) the Manager has consented to the assignment.

ARTICLE XV

15.1 Withdrawal.

The Manager may withdraw from the Partnership as Manager or Partnership Operator for any reason and without cause with a 30 day written notice.

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15.2 Bankruptcy or Insolvency of the Manager.

Upon the bankruptcy or insolvency of the Manager, the Manager shall immediately cease to be the Manager; provided, however, that such termination shall not affect any rights or liabilities of the Manager, which existed prior to such event.

15.3 Removal of the Manager.

Pursuant to notice and a vote conducted in accordance with this agreement, the Manager may be removed by a majority (51%) vote, of those who vote, of the outstanding Units. Such removal shall not reduce or diminish any of the rights and protections of the Manager as stated herein. However, the Issuer / Sponsor shall have the complete right to resign its duties by giving the Partnership a thirty (30) day written notice to do so.

ARTICLE XVI

16.1 Power of Attorney

To the extent not inconsistent with the terms of this agreement, the participant, after the date hereof, hereby irrevocably constitutes and appoints the Manager, with full power of substitution, his true and lawful attorney-in-fact, with full power and authority, in his name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file with respect to the Partnership, the following:

- (i) A Certificate of Assumed Name under the laws of the State of Nevada
- (ii) Any certificate or other instruments which may be required to be filed by the Part or the Participant under the laws of any state or under federal law to properly conduct its business;
- (iii) Any statements or renewal statements which may be required to be filed by the Partnership or the participant under the laws of any state for the Partnership to become and to continue as a Registered Limited Liability Partnership under applicable law;
- (iv) All certificates or other instruments which may be necessary or desirable to effect the dissolution and termination of the Partnership pursuant to the terms of this agreement;
- (v) Development and Operating Contract;
- (vi) Any certificates or instruments to assign the interests of a defaulting participant.

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- vii) The Power of Attorney hereby granted by the participant is a Special Power of Attorney coupled with an interest and is irrevocable and shall survive the death, insanity, incompetence, bankruptcy, or insolvency of such participant.

ARTICLE XVII

17.1 Notices.

All notices, requests, demands or other communications under this Agreement shall be in writing and be personally delivered or transmitted by mail addressed as following:

- (i) If given to the Partnership, at its principal office:

Thacklight Coal Mine, LLP
c/o New Century Coal, Inc.
1009 Lark Street, Ste. 1A
Johnson City, TN 37604

- (ii) If given to the Partnership Issuer / Sponsor:

New Century Coal, Inc.
1009 Lark Street Ste. 1A
Johnson City, TN 37604

If given to the participant, to such participant at the address set forth on the signature page thereof, or at such other address as the participant may hereafter designate by notice in writing to the Partnership.

17.2 Amendments.

Except as otherwise provided in this agreement, it may only be modified or amended, from time to time, upon approval of a majority of the outstanding Units; provided however, that no such amendment may be made which might have the effect of making the participants personally liable for any obligation of the Partnership which would not otherwise be incurred.

17.3 Applicable Law.

This Agreement shall be governed by the laws of the State of Nevada and any disputes to its contents shall be under the venue and jurisdiction of the Nevada courts.

17.4 Confidentiality..

The parties hereto acknowledge and agree that they wish to maintain the confidentiality of information regarding their name, address, amount of ownership, amount of investment, business, operations and financial condition, as well as information related to each part of this agreement, except to the extent disclosure is required by law, provided for under the terms hereof, or consented to in writing by the Issuer / Sponsor on behalf of the Partnership. The parties agree that breach of the confidentiality provisions may result in irreparable harm, for which money damages would not be adequate compensation, and that these provisions may, accordingly, be enforced by injunction, restraining order or other equitable relief.

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17.5 Binding Nature.

Except as otherwise specifically provided, this agreement shall be binding upon, and inure to the benefit of the parties hereto, their heirs, successors, assigns, and personal representatives. Each participant shall be bound by All terms and conditions as set out in the Private Placement Memorandum.

17.6 Severability.

If any provision of this Agreement, or the application thereof to any person, entity or circumstance, shall be invalid or unenforceable to any extent, the remainder of this agreement, and the application of such provision to other persons, entities or circumstances, shall not be affected thereby, and in all events, this Agreement shall be enforced to the greater extent permitted by law.

17.7 Entire Agreement.

This agreement contains the entire agreement between and among the parties hereto. No variations, modifications, or changes hereof shall be binding upon any of the parties hereto unless made in accordance with the terms hereof.

17.7 Confirmation

I have read and understand, and hereby confirm and accept, all of the provisions of the Registered Limit Liability Partnership Agreement attached as (Exhibit "C") to the Memorandum and of the Turnkey Mining Development Agreement and Mine Operating Contract, attached as (Exhibit "E") to the Memorandum.

Unit Purchaser's Initials: _____

IN WITNESS WHEREOF, the Manager and the participant have executed this agreement as of the day and year first above written.

BY: _____

BY: _____

Thacklight Coal Mine, LLP
Holder)

Participant / Partner / Investor (Unit

By, New Century Coal Inc., Issuer / Sponsor
James Robinson, President

Exhibit "D" 1 of 1

Thacklight Coal Mine, LLP

July 15, 2011

Thacklight Coal Mine, LLP

Un-audited Statement

Assets		
Current Assets	\$100.00	
Total Current Assets		\$100.00
Property and Equipment	\$0.00	
Total Property/Equipment		\$0.00
Other Assets	\$0.00	
Total Other Assets		\$0.00
Total Assets		\$100.00
Liabilities and Capital		
Current Liabilities		
Accrued Payables	\$0.00	
Total Current Liabilities		\$0.00
Long-Term Liabilities		
Provisions for Taxes	\$0.00	
Total Long-Term Liabilities		\$0.00
Total Liabilities		\$0.00
Distribution	\$0.00	
Net Income	\$0.00	
Total Capital		\$0.00
Total Liabilities & Capital		\$100.00

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Exhibit "E"

**TURNKEY MINING DEVELOPMENT AGREEMENT AND
MINE OPERATING CONTRACT**

THIS TURNKEY MINING DEVELOPMENT AGREEMENT AND MINE OPERATING CONTRACT (the "Contract" or the "Agreement") is made this ____ day of _____, 20____, by and between New Century Coal, Inc., having its place of business at 1009 Lark Street, Ste. 1A, Johnson City, TN 37604 hereinafter referred to as the "Company", and / or "Manager" and / or "Developer" and / or "Sponsor" and / or "Contractor" and / or "Partnership Operator" and Thacklight Coal Mine, LLP a Limited Liability Partnership, having its principal place of business at the same address shown above, hereinafter referred to as "Non-Partnership Operator."

WHEREAS, Non-Partnership Operator wishes to participate and own a mining interest in Thacklight Coal Mine LLP : a 30% of 100% Mining Interest in Thacklight Coal Mine.

WHEREAS, to avoid unforeseen or unanticipated drilling and testing / completion expenses, due to uncertain fluctuations in the costs of mining and operating equipment, labor, materials, and supplies, the Non-Partnership Operator desires to enter into at this Contract with Partnership Operator.

WHEREAS, the Non-Partnership Operator wishes to retain the Contractor to operate, produce and maintain the mine for the benefit of Non-Partnership Operator.

WHEREAS, The Non-Partnership Operator/s will acquire an interest of 100% of the Partnership with the ownership of the Units. The Partnership's revenue interest herein, is subject to a 10% of 100% reduction of revenue from the Partnership to the Issuer / Sponsor as additional compensation, at such time the Partnership has received back 100% of their investment, (See: "Reduction of Revenue Interest", Partner Payback") (ii) participate in the development, re-development, one zone testing, additional zone testing, operating, completing and equipping the mine that appears to be capable of producing Steam Coal and Metallurgical Coal in commercially marketable quantities. Whereby, pursuant to receipt of total funding, the Non-Partnership Operator will bear 100% (of its pro rata share mining interest ownership share) of the cost development of the mine to production and whereby the Non-Partnership Operator, as a result of its funding provided herein, will receive its allocable share of all applicable state and federal tax deductions, and will be obligated to pay its allocable share of the costs associated with continued operations of the mine. All profits (if any) made for the Company / Partnership Operator / Issuer / Sponsor will be made through this contract.

NOW THEREFORE, in consideration of the mutual promises provided herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Partnership Operator and Non-Partnership Operator agree as follows:

(a) The Partnership Operator is expressly given full power, right and authority in any and all matters not expressly mentioned herein to do any and everything in operating the mine that any reasonable Partnership Operator might do if present, and any acts that the Partnership Operator considers to be to the advantage of the mine or necessary or advisable in managing the mine as a prudent Partnership Operator.

(b) Any re-development or deepening of the mine, completing additional zones or by sec-

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vote (of those who vote), and will be invoiced by the Partnership Operator to Non-Partnership Operator.

(c) The Non-Partnership Operator hereby authorizes the Partnership Operator Coal purchaser and / or its agents and / or assigns, to pay to the Partnership Operator any and all Coal revenues payable to the Non-Partnership Operator or its assigns, for such period of time necessary for the Partnership Operator to be paid in full any monies due pursuant to this agreement at the amount due times three (x 3). Non-Partnership Operator, or its assigns, hereby also agrees to hold harmless forever the Partnership Operator and / or their agents or assigns pursuant to actions taken regarding these collection methods.

(d) Failure to pay invoices or approved assessments within ten (10) days of invoice by Partnership Operator to Non-Partnership Operator may, at the sole discretion of Partnership Operator, result in the forfeiture of Non-Partnership Operator's interest in the Partnership.

7. Partnership Operator's Rights and Duties.

Partnership Operator shall have charge, control and supervision of the right to determine all activities of every kind to be conducted with respect to the mine including, without limitation, drilling, operating, production, treatment, maintenance, and abandonment. Partnership Operator shall conduct all such activities diligently and in good and workmanlike manner, but shall have no liability to Non-Partnership Operator for losses sustained or liabilities incurred. Partnership Operator shall have to right to sub-contract any and all work and duties in this contract.

8. Operation of the Completed Mine and Partnership Operations.

Partnership Operator (or its assigns) shall operate the completed mine in accordance with the following terms and conditions:

(a) Partnership Operator shall have full control of the operation of the mine, and shall perform all required duties in the usual course of producing and maintaining production of Coal from the mine including: mining, supervising the delivery of Steam Coal and Metallurgical Coal through the transportation system and making it ready for sale ; making minor repairs on any related equipment and all machinery; preparing required forms of gauge and coal reports to all governmental agencies and others; and causing payments for the Coal to be made to Partnership Operator for the benefit of Non-Partnership Operator. Non-Partnership Operator shall pay Partnership Operator (pro rata to mining interest ownership) their share of all operating cost, redevelopment cost, production cost, administration cost, and shall be billed and / or production net check deducted for such cost, monthly. Additionally, the Non-Partnership Operator shall pay a pro rata share of other mining expenses for various other Partnership costs.

(b) The following services shall be the cost to the Non-Partnership Operator, all third party mining annual tax preparation cost (K-1), various state and federal filings, various costs associated with the operations of the Partnership, maintenance, repairs, work-over, chemicals and deepening, reworking, the mine. operating, repair, and other direct expenses shall be at a Turnkey invoice payable to the Issuer / Sponsor, unless otherwise agreed to by the Partnership Operator and Non-Partnership Operator. The expenses, and charges incurred by Partnership Operator as to third parties in connection with the operation of the mine including, (i) electricity; (ii) any costs incurred by reason of any present or future law, regulation, or rule of any governmental agency pertaining to the operation and use of the mine and / or the production and sale of Coal from the mine; (iii) any transportation costs, dehydration costs, or compressor costs associated with the production of the mine; and (iv) any other reasonable and necessary third party

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(c) Partnership Operator shall not incur any single Partnership share of expenditure on the mine, once placed into production, in excess of \$100,000 per occurrence to the Non-Partnership Operators mining interest share of ownership, without Non-Partnership Operator's majority vote (51% of those who vote) prior consent.

9. Non-Partnership Operator's Authorization.

Non-Partnership Operator hereby authorizes Partnership Operator to undertake the following on behalf of Non-Partnership Operator:

- (a) Negotiate and enter into an Steam Coal and Metallurgical Coal purchase and sale contract on behalf of Non-Partnership Operator.
- (b) Negotiate and enter into a contract for the distribution of "net" coal proceeds or revenue to a Non-Partnership Operator.
- (c) Assign any interest in the mine site or production to Non-Partnership Operator.
- (d) Allow the Partnership Operator to pay:
 - (1) Delay or other rental, where required.
 - (2) Labor and other services necessary for the maintenance and operation of the mine.
- (e) Materials, equipment, and supplies purchased by the Partnership Operator for the mine operations, and / or development.
- (f) All taxes for the benefit of the parties hereto, including ad-valorem property or any other taxes assessed against the mine, the production therefrom, or the operations thereon.
- (g) The premiums for bonds carried in the state where the mine is located.
- (h) The cost of any additional labor, equipment, materials, reworking, deepening, that may be required from time to time for the continued successful operation of the mine, including lease cost, and repairs or replacement of equipment.
- (i) In case of explosions, fire, flood or other sudden emergencies regardless of the cause, Partnership Operator may take such steps and incur such expenses as, in its opinion, are required to deal with the emergency and to guard life and property. The Partnership Operator shall report to the Non-Partnership Operator as promptly as possible the nature of the emergency and the action taken.
- (j) Non-Partnership Operator shall have access to the mine location, at reasonable times, with five (5) days' advance written notice, at his / her sole risk, to inspect or observe operations.

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- (k) It is understood all such payments made by Partnership Operator on behalf of the Non-Partnership Operator are to be reimbursed by Non-Partnership Operator to Partnership Operator. The Non-Partnership Operator hereby grants to the Partnership Operator a first lien upon all equipment of the mine, its Coal rights previously assigned, and any Coal payments due and payable by the purchaser of Coal, to secure payment of Non-Partnership Operator's share of operating and redevelopment cost and expenses due to Partnership Operator as defined in this Agreement. To the extent that the Partnership Operator has a security interest under the Uniform Commercial Code of the State wherein the mine is located, the Partnership Operator shall be entitled to exercise the rights and remedies of a secured party under the Code.

10. Subsequent Operations and Special Projects:

Under the Turnkey Mining Development Agreement and Mine Operating Contract, provision is made for assessment of the parties, including unit Holders interest owners, for subsequent operations. A subsequent operation would be leasing, permitting, coring and bonding. At any time any party to the Turnkey Mining Development Agreement and Mine Operating Contract may propose additional projects on the prospect ("Special Projects") such as leasing, permitting, coring, and bonding.

11. Non-Partnership Operator's Access.

Non-Partnership Operator shall have access to the mine location, at reasonable times, with a thirty (30) day advance written notice, at his / her sole risk, to inspect or observe operations.

12. Materials and Equipment.

All materials and equipment used by Partnership Operator may not be new, but generally "good" used materials and equipment shall be used, provided that they shall be in sound and serviceable condition and suitable for use.

13. Independent Contractor Relationship.

Partnership Operator is an independent contractor, and shall have full control and supervision of mining, completion, and operating activities. The relationship between the parties is not intended to be nor shall be that of a partnership, joint venture, principal, agent, or employer and employee.

14. Compliance with Regulations - Force Majeure.

Partnership Operator shall not be liable for any delays or damage or any failure to act due, occasioned, or caused by reason of any action by, or Partnership Operator's compliance with, any federal or state agency or laws or rules, regulations, or orders of any public body respecting the operations contemplated in this contract. This shall include, without limitation, delays due to or occasioned or caused by strike, actions of the natural elements, or inability to obtain materials, equipment or labor, or other causes beyond the control of Partnership Operator. The Partnership Operator shall resume performance and complete its operations in accordance with all of the terms and conditions of this Contract.

15. Assignment

Partnership Operator may assign its rights and obligations under this contract, in whole or part; with respect to work to be performed hereunder by subcontractors or assignees, without prior notice to Non-Partnership Operator.

Thacklight Coal Mine, LLP

July 15, 2011

16. Law and Binding Effect.

This Contract shall be binding upon and inure to the benefit of the parties and to their respective heirs, legal representatives, successors and assigns, and shall be in all respects subject to and interpreted under the exclusive venue and jurisdiction of and in accordance with the laws of the State of Nevada.

- (a) All disputes or breaches hereunder shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association then pertaining in Nevada (or any other such place at Partnership Operator's sole choice).
- (b) All arbitration or court proceedings shall take place in Nevada at Partnership Operator's sole option, except the Partnership Operator may in its sole discretion change the location to any location of its choice.
- (c) As used herein, "Proportionate Share" or "Pro-rata" share shall mean same percentage of all charges as the percentage the parties owns of the Mining Interest in the mine.

17. Construction and Use of Terms.

Where required by the context, the use of the one gender shall include the others, and the singular shall be deemed to include the plural, and the plural to include the singular.

18. Entire Agreement.

This contract and such documents incorporated herein by reference constitute the entire agreement between the parties hereto and may be amended only by written instrument executed by all the parties.

19. Notices.

All notices, demands, requests or payments provided for or given pursuant to this Agreement must be in writing and be deemed to have been properly given or served by depositing the same in the United States mail addressed to the persons and addresses set forth herein above in this contract.

IN WITNESS WHEREOF the parties have executed this agreement as of the date first above written:

PARTNERSHIP OPERATOR-CONTRACTOR:

By: _____
New Century Coal, Inc. Partnership Operator
James Robinson, President

NON-PARTNERSHIP OPERATOR:

By: _____
Thacklight Coal Mine LLP, Non-Partnership Operator
By: New Century Coal, Inc., Issuer/ Sponsor for Thacklight Coal Mine, LLP
James Robinson, President

INSTRUCTIONS TO PURCHASE UNITS IN THE:

Thacklight Coal Mine, LLP

1. Complete and initial each page, and sign Exhibit "F"
2. Complete and initial each page, and sign Exhibit "G"
3. Make check payable to Thacklight Coal Mine, LLP in the amount to purchase the number of Units you desire to purchase.
4. Call your representative, so he / she can arrange for an express service pickup at your location. 855-4USCOAL
(487-2625)

ALL NECESSARY SUBSCRIPTION DOCUMENTS ARE
INCLUDED IN THE PACKAGE SENT TO YOU.

Thacklight Coal Mine, LLP

July 15, 2011

PURCHASER SUITABILITY QUESTIONNAIRE

Thacklight Coal Mine, LLP

July 15, 2011 or later

THE FOLLOWING PURCHASER SUITABILITY QUESTIONNAIRE IS ESSENTIAL TO INSURE THAT THIS PRIVATE OFFERING IS CONDUCTED IN FULL COMPLIANCE WITH THE RULES OF REGULATION "D" PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, THE QUESTIONNAIRE WILL REMAIN ON FILE IN ABSOLUTE CONFIDENCE IN THE OFFICE OF THE COMPANY, EXCEPT THAT THIS QUESTIONNAIRE MAY BE PRESENTED TO SUCH PARTIES AS DEEMED APPROPRIATE OR NECESSARY TO ESTABLISH THAT THE SALE OF THE UNITS TO ME WILL NOT RESULT IN VIOLATION OF THE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAW WHICH ARE BEING RELIED UPON IN CONNECTION WITH THE SALE OF THE INTERESTS.

New Century Coal, Inc.
1009 Lark Street Ste. 1A
Johnson City, TN 37604

Gentlemen:

The undersigned ("Investor / Unit Holder") understands that Thacklight Coal Mine, LLP ("Partnership"), is offering Forty (40) Units of the Partnership pursuant to the Private Placement Memorandum dated July 15, 2011. The Units are priced at \$80,000 each. The Partnership has been organized by New Century Coal, Inc. as Issuer / Sponsor, for the purpose of acquiring mining interest in Thacklight Mine LLP as described in described in the Memorandum.

1. SUBSCRIPTION. I hereby subscribe for and agree to purchase Units as stated in (Exhibit "G") ("Subscription and Customer Agreement").

2. ACCEPTANCE OF SUBSCRIPTION. I understand and agree that the Issuer / Sponsor, on behalf of the Partnership, reserves the right, in its sole discretion and for any reason, to accept or reject my subscription, in whole in part, and that my subscription shall be deemed accepted when and only if and when it is signed by a duly authorized officer of the Issuer / Sponsor.

3. REPRESENTATIONS AND WARRANTIES OF THE SUBSCRIBER. I have been advised and understand that the Units are being offered and sold in reliance upon certain exemptions from registration provided by The Securities Act of 1933, as amended, and Rules 501, 502, and 506 (as applicable) of Regulation D promulgated thereunder, as well as certain exemption from registration under the Securities laws of the states in which Units may be offered. As a condition to purchasing Units, and know that you will rely upon the statements made herein in order for the Partnership to avail itself of such exemptions

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and to determine my suitability as a Unit Holder / Investor, I represent and warrant to you that:

A. The offering of Partnership Units was made only through direct, personal contact between an employee, officer, or director of New Century Coal, Inc., the Issuer / Sponsor for the Thacklight Coal Mine, LLP;

B. I have received a copy of the Private Placement Memorandum dated July 15, 2011 including all of the exhibits attached thereto. I have reviewed it carefully and therefore am relying solely upon it and investigations made by me or my representative in making my decision to purchase the Units. I have not relied on, and / or did not rely on, any other representations, oral or written, in making my investment decision, including, but not limited to, the Company website, the Company brochure and video, projected cash flow tables, projected tax saving projections, or the Executive Summary.

C. I understand and acknowledge that the investment in the Units is speculative and suitable only for an investor who can afford the loss of his or her entire investment. I specifically acknowledge that I have read the section in the Private Placement Memorandum entitled "RISK FACTORS," and that I understand the Partnership's proposed activities are highly speculative in nature, that my investment is subject to risk of total loss, and that there would be no recourse for the loss of my investment.

Individual Investors ONLY

- 1. Name _____
- 2. SS# _____
- 3. Date of Birth: _____
- 4. Marital Status: _____
- 5. Residence Address:
 - (Street) _____
 - (City) _____ (State) _____ (Zip Code) _____
- 6. Residence Phone Number: (_____) _____
- Cell Phone Number: (_____) _____
- E-MAIL Address: _____
- 7. Occupation: _____
- 8. Business Address: _____
 - (Street) _____
 - (City) _____ (State) _____ (Zip Code) _____

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My net worth falls within the following bracket
(please initial whichever applies)

\$1,000,000	-	\$5,000,000	<input type="checkbox"/>
\$5,000,001	-	\$10,000,000	<input type="checkbox"/>
\$10,000,001	-	\$15,000,000	<input type="checkbox"/>
\$15,000,001	-	\$20,000,000	<input type="checkbox"/>
\$20,000,001	-	or more	<input type="checkbox"/>

ENTITY INVESTORS - ONLY

(Individual Investors or Joint Investors need not fill out)

1. Entity Name: _____
2. Address: _____
(Street) _____
(City) _____ (State) _____ (Zip Code) _____
3. Phone Number: (____) _____
4. Type of Organization: _____
5. Date and Place of Organization: _____
6. Federal I. D. # _____
7. Total Assets: _____
8. The undersigned, on behalf of the named entity, represents that the entity was not established solely to invest in this Partnership.

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9. Business Phone Number: () _____

10. Business Fax Number: () _____

FINANCIAL INFORMATION FOR INDIVIDUALS ONLY

"ACCREDITED" Investor Status

Check the Below Statement that applies to you as an Investor

(Check one)

_____ (a) My individual income was in excess \$200,000 in each of the two most recent years or my joint income with my spouse was in excess of \$300,000 in each of those years, and I reasonably expect an income in excess of \$200,000 or a joint income with my spouse in excess of \$300,000 in the current year.

_____ (b) My net worth, or joint net worth with my spouse is in excess of \$1,000,000.

_____ (c) Both

Investment History

Which of the following types of investments have you participated in:

(Check all that apply)

- | | | |
|--------------|--------------------------------|--------------------|
| _____ Stocks | _____ Oil and Gas Partnerships | _____ Mutual Funds |
| _____ Bonds | _____ Real Estate | _____ Other |

Please explain other _____

Check below that applies to you as an Investor

My current liquidity is:

- _____ \$ 25,000 - \$ 50,000
- _____ \$ 50,001 - \$100,000
- _____ \$100,001 - \$200,000
- _____ \$200,001 - \$300,000
- _____ \$300,001 - \$400,000
- _____ \$400,001 - \$750,000
- _____ \$750,001+

Thacklight Coal Mine, LLP

July 15, 2011

THE SIGNATURE PAGE IS TO BE EXECUTED BY THE PURCHASER

AND

New Century Coal, Inc. Issuer / Sponsor

For: Thacklight Coal Mine, LLP

EXECUTED this _____ day of _____, 20__

PURCHASER:

Signature of Unit Purchaser

Print Name Here

Signature of Unit Co-Purchaser

Print Name Here

(Wife, Partner, Other)

ISSUER / SPONSOR:

By: _____

New Century Coal, Inc.

By: Issuer / Sponsor for Thacklight Coal Mine LLP

James Robinson, President

A SIGNED COPY OF THIS QUESTIONNAIRE WILL BE MAILED
BACK TO YOU ALONG WITH YOUR OWNERSHIP CERTIFICATE.

Thacklight Coal Mine, LLP

July 15, 2011

SUBSCRIPTION AND CUSTOMER AGREEMENT

Thacklight Coal Mine, LLP
c/o New Century Coal, Inc.
Issuer / Sponsor
1009 Lark Street, Ste. 1A
Johnson City, TN 37604

GENTLEMEN:

The undersigned ("investor/ Unit Holder") understands that Thacklight Coal Mine, LLP is offering Forty (40) Units of Partnership Interest (Units), with each Unit owning (before investor payback) 2.50% based on a full 40 unit sale of the Partnership pursuant to the Private Placement Memorandum dated July 15, 2011 at a price of \$80,000 each. The Partnership has been organized by New Century Coal, Inc. as Issuer/ Sponsor, for the purpose of acquiring mining interest in one coal mine as described in the Memorandum. The Company will acquire, for the Partnership a 30.00% of 100% Mining Interest in the Thacklight Coal Mine located in Lawrence County, Kentucky.

SUBSCRIPTION.

I hereby subscribe for and agree to purchase _____ Unit/s at a subscription cost of \$80,000 each, for a total of _____ U. S. Dollars, with each Unit having an initial ownership interest in the Partnership of 2.50% each Unit, (which interest is subject to the Issuer / Sponsor's 10% of 100% reversionary interest upon investor investment payback as described in the Memorandum), then (after payback) each Unit shall own it's pro-rata share of 90% of 100% of the Partnership (then being % ownership each Unit); and, tender this Subscription and Customer Agreement ("Subscription Agreement"), together with a check made payable to the order of "Thacklight Coal Mine, LLP". Not New Century Coal, Inc.

ACCEPTANCE OF SUBSCRIPTION.

I understand and agree that the Issuer / Sponsor, on behalf of the Partnership, reserves the right, in its sole discretion and for any reason, to accept or reject my subscription, in whole or part, and that my subscription shall be deemed accepted when and only if and when it is signed by a duly authorized officer of the Issuer / Sponsor.

REPRESENTATIONS AND WARRANTIES OF THE SUBSCRIBER.

I am aware and understand that the Units are being offered and sold in reliance upon certain exemptions from registration provided by The Securities Act of 1933, as amended, and Rules 501, 502, and 506 (as applicable) of Regulation D promulgated thereunder, as well as certain exemptions from registration under the Securities laws of the states in which Units may be offered. As a condition to purchasing Units, and

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knowing that you will rely upon the statements made herein in order for the Partnership to avail itself of such exemptions and to determine my suitability as a Unit holder / Investor, I represent and warrant to you that:

A. The offering of the Partnership Unit was made only through direct, personal contact between the undersigned and an authorized representative of New Century Coal, Inc. the Issuer / Sponsor.

B. I have received a copy of the Private Placement Memorandum dated July 15, 2011, including all of the exhibits attached thereto. I have reviewed it carefully and therefore am relying solely upon it and investigations made by me or my representative in making my decision to purchase the Units and have not relied on, and / or did not rely on, any other representations and / or any written, electronic, video, audio, materials not contained within the Memorandum and / or any oral representations or marketing materials not contained in the Memorandum in making my investment decision. _____initial

C. I understand and acknowledge that the investment in the Units is speculative and suitable only for an investor who can afford the loss of his or her entire investment. I specifically acknowledge that I have read the section in the Private Placement memorandum entitled "RISK FACTORS", and that I understand the Partnership's proposed would be no recourse for the loss of my investment. _____initial

D. I am an investor who can afford the loss of his or her entire investment. I specifically acknowledge that I have read the section in the Private Placement Memorandum entitled "RISK FACTORS," and that I understand the Partnership's proposed activities are highly speculative in nature, that my investment is subject to risk of total loss, and that there would be no recourse for the loss of my investment.

E. I represent and warrant that my true residential address is that set forth on the Purchaser Suitability Questionnaire attached hereto, and that I am purchasing the Units for my own account, without any view to resale I further represent that I understand that I must hold the Units indefinitely, that I have no need for liquidity in this investment, and that I am able to bear the economic risk of the investment I am making.

F. I represent that I have completed a Purchaser Suitability Questionnaire (Exhibit "F") and understand that the Issuer / Sponsor will rely on the accuracy and completeness of the information set forth therein in determining whether to accept this offer and in complying with its obligations under applicable state and federal securities statutes and regulations. I understand and acknowledge that this subscription may be accepted or rejected by the Issuer / Sponsor of the Partnership. If it is rejected, the original subscription and customer Agreement and the complete investment will be returned to me. If it is accepted, a copy of this agreement showing acceptance by the Issuer / Sponsor of the Partnership will be promptly returned. _____initial

G. I fully understand that the Units I am acquiring have not been registered under The Securities Act of 1933, as amended (the "Act"), nor under any state securities laws, because the Units are sold and issued in reliance upon exemptions from registration pursuant to Section 4(2) of the Act and regulations promulgated thereunder, including Rules 501, 502, and 506 (as applicable) of Regulation D. I understand such exemptions are available only if I, and other purchasers of the Units, acquire such Units for investment purposes only and not with a view to resale or distribution.

H. I further represent and acknowledge my understanding that the Units that I am acquiring must be held by me until the Units are registered under the Act, or in the opinion of counsel satisfactory to counsel for the Partnership, an exemption from such registration requirements is available.

Thacklight Coal Mine, LLP

July 15, 2011

I. I represent that there are no legal restrictions applicable to me which would preclude my purchase of the subject Units for investment, as set forth herein, and I acknowledge that I am purchasing the Units for my own account, not as a trustee or nominee for any other person or persons, and that the funds invested are my own.

J. In connection with the decision to purchase the Units, I acknowledge and confirm that I have carefully reviewed, investigated and evaluated such matters and considerations as I considered material with respect to the Partnership and the nature of my investment in the Units. I represent and warrant that I have such knowledge and experience in financial and business matters, or (if applicable), have such knowledge and experience together with my Purchaser Representative, that I am able to evaluate the merits and risk of proposed investment. I represent that I have an opportunity to ask questions of, and receive answers those questions, from officers and employees of the Issuer / Sponsor, concerning the terms and conditions of the offering, and the proposed business of the Sponsor, and that all such questions have been answered to my full satisfaction. I acknowledge that the representatives of the Partnership have made available to me the unrestricted opportunity to obtain any additional information necessary to verify the accuracy of the information furnished to me or obtained by me in connection with my investment in the Units. I also confirm that I have either consulted or have had the opportunity to consult with my personal advisors with respect to the purchase of the Units, and have otherwise conducted such investigations as I deem feasible and necessary to satisfy myself as to all material aspects concerning the Partnership and my investment, including tax matters, and that I now desire to confirm such investment without any guarantee of subsequent value. I further represent that my decision to invest has been made solely on the information contained in the Private Placement Memorandum. _____initial

K. I understand that no Federal or State agency has made any finding or determination as to the fairness of this investment, nor any recommendation or endorsement of the Units.

L. I represent and acknowledge that the amount of my investment in the Units is from funds which I have available for speculative investments and will not interfere in any respect with my long range investment plans, immediate family or personal obligations, and other commitments. I further represent I have adequate means of providing for my current needs, personal obligations, and contingencies without any need of liquidity or return of the investment I am making.

M. The funds to be tendered for the purchase of Units subscribed will not represent funds borrowed by me from any person or lending institution except to the extent that I have a source of repaying such funds other than from the sale of the Units. Such Units will not have been pledged or otherwise hypothecated for any such borrowing.

N. I represent that all of the information contained in the Purchaser Suitability Questionnaire was supplied by me and that it is true and correct.

O. I understand and acknowledge that this Subscription may be accepted or rejected at the sole discretion of the Partnership. If it is rejected, the original Subscription Agreement and the complete investment will be returned to the Investor within ten business days, without interest. If it is accepted, a copy showing acceptance by the Partnership will promptly be returned to the Investor.

P. I have been advised and understand that if my subscription is accepted, my execution and delivery of this Subscription Agreement is an appointment of the Issuer / Sponsor as my attorney-in-fact to take certain actions as specified herein. I hereby appoint the Issuer / Sponsor of this Partnership, with full power of substitution and re-substitution, my true and lawful attorney-in-fact for all matters related

Thacklight Coal Mine, LLP

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to Partnership business. I also appoint the Issuer / Sponsor of this Partnership, with full power of substitution and re-substitution, to act as the Tax Matters Partner for the Partnership.

Q. I understand that the Memorandum was prepared by the Issuer / Sponsor only for the use of qualified Accredited Investors and agree not to reproduce, copy or otherwise distribute or make the Memorandum or information contained therein available to any other person (other than my Purchaser Representative and legal tax advisors).

R. I have read and understood, and am relying solely on the information contained in the Memorandum and the attachments thereto and the answers to questions with respect thereto furnished to me by the Issuer / Sponsor, and further, I hereby warrant that no representations or warranties have been made to me by the Issuer / Sponsor as to the tax consequences of this investment, or as to any profits, losses or cash flow which may be received or sustained as a result of this investment, other than those contained in the Memorandum.

S. I represent that I am the sole party in interest and am not acquiring the Units as an agent or otherwise for any other person, and that I am a legal resident of the state which is set forth on the signature page of this Subscription and Customer Agreement. If the undersigned subscriber is a corporation, partnership, trust or other form of business organization; it has its principal office within such state, and was not formed for the specific purpose of purchasing Units in this Partnership.

T. I have read and understand, and hereby confirm and accept, all of the provisions of the Registered Limited Liability Partnership Agreement attached as (Exhibit "C") to the Memorandum and of the Turnkey Mining Development Agreement and Mine Operating Contract, attached as (Exhibit "E") to the Memorandum.

Unit Purchaser's Initials: _____

U. I represent that I have the knowledge and experience in financial and business matters and am capable evaluating the merits and risks of an investment in the Partnership Units, and am able to bare the economic risks of my purchase. Furthermore, I have had the opportunity to consult with my attorney, accountant and/or purchaser representative Regarding an investment in the program

SURVIVAL AND INDEMNIFICATION.

All representations, warranties and covenants contained in this Subscription & Customer Agreement and the indemnification provisions of this Section 5, shall survive: (i) the acceptance of the Subscription & Customer Agreement by the Issuer / Sponsor on behalf of the Partnership; (ii) changes in the transactions, documents and instruments described in the Memorandum that are not material or which are to the benefit of the Investor; and (iii) the death or disability of an investor. I hereby acknowledge the meaning and legal consequences of the representations, warranties and covenants in Section 4 of this Subscription and Customer Agreement, and acknowledge that the Issuer / Sponsor, on behalf of the Partnership, has relied upon such representations, warranties and covenants in determining my qualification and suitability to purchase Units, as well as in determining the availability of exemptions from registration under State and Federal securities laws. I hereby agree to indemnify, defend and hold harmless the Partnership and the Issuer / Sponsor, and their respective officers, directors, employees, agents, affiliates, and controlling persons, from any and all losses, claims, damages, liabilities, expenses (including attorneys' fees and expenses), judgments or amounts paid in settlement of actions arising out of or resulting from the untruth of any representation herein or the breach of any warranty or covenant herein. Notwithstanding the foregoing, however, no representation, warranty, covenant or acknowledgment made herein by the undersigned

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shall in any manner be deemed to constitute a waiver of any rights granted under the Federal Securities Acts or State Securities Acts. The sale of Units to the undersigned is expressly conditioned on the requirement that the representations and warranties of the Investor set forth in Section 4 be true and correct in all material respects as of the date of acceptance of this Subscription Agreement (if accepted).

BINDING EFFECT.

Except as otherwise provided herein, this Subscription Agreement shall be binding upon and insure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and assigns, and the agreements, representations, warranties and acknowledgments contained herein shall be deemed to be made by and be binding upon such heirs, executors, administrators, successors, legal representatives and assigns.

ARBITRATION OF DISPUTES.

WITH RESPECT TO THE ARBITRATION OF ANY DISPUTE, THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT:

- a. ARBITRATION IS FINAL AND BINDING ON THE PART;
- b. THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THEIR RIGHT TO JURY TRIAL;
- c. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED AND DIFFERENT FROM COURT PROCEEDINGS;
- d. THE ARBITRATOR'S AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING;
- e. ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED;
- f. THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY; AND
- g. ALL ARBITRATION SHALL TAKE PLACE IN TENNESSEE OR ANY OTHER SUCH PLACE AS CHOSEN EXCLUSIVELY BY THE PARTNERSHIP OPERATOR IN ITS SOLE DISCRETION.

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (i) THE CLASS CERTIFICATION IS DENIED; OR (ii) THE CLASS IS DE-CERTIFIED; OR (iii) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

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July 15, 2011

IN THE EVENT THAT A DISPUTE ARISES BETWEEN THE UNDERSIGNED SUBSCRIBER AND THACKLIGHT COAL MINE, LLP AND / OR THE ISSUER / SPONSOR, OR ANY OF THEIR EMPLOYEES, LEGAL REPRESENTATIVES, ATTORNEYS, ACCOUNTANTS, AGENTS, EMPLOYEES OR ANY OTHER SECURITIES BROKER-DEALER EMPLOYED BY THE SPONSOR AS A SELLING AGENT, SAID DISPUTE ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THE SUBSCRIPTION HEREBY MADE, THE UNDERSIGNED HEREBY EXPRESSLY AGREES THAT SAID DISPUTE SHALL BE RESOLVED THROUGH ARBITRATION RATHER THAN LITIGATION. THE UNDERSIGNED HEREBY AGREES TO SUBMIT THE DISPUTE TO EITHER THE AMERICAN ARBITRATION ASSOCIATION, WITHIN FIVE (5) DAYS AFTER RECEIVING A WRITTEN REQUEST TO DO SO FROM ANY OF THE AFORESAID PARTIES. IF THE UNDERSIGNED FAILS TO SUBMIT THE DISPUTE TO ARBITRATION IN WYMOING AS REQUIRED, THEN THE REQUESTING PARTY MAY COMMENCE DIRECTLY TO AN ARBITRATION PROCEEDING WITHOUT THE OTHER PARTY PRESENT. THE UNDERSIGNED FURTHER AGREES THAT THE FEDERAL ARBITRATION ACT SHALL GOVERN THE PROCEEDING AND ALL ISSUES RAISED BY THIS AGREEMENT TO ARBITRATE.

JURISDICTION AND VENUE.

THIS AGREEMENT AND ALL OF ITS PROVISIONS ARE MADE TO BE PERFORMED IN NEVADA, WHERE JURISDICTION AND VENUE SHALL LIE FOR ALL PURPOSES, INCLUDING, BUT NOT LIMITED TO, ANY ARBITRATION OR LITIGATION INVOLVING THE VALIDITY OR ENFORCEABILITY OF THE REQUIREMENT OF ARBITRATION HEREOF, OR ANY DISPUTE ARISING REGARDING THIS AGREEMENT AS A WHOLE, OR ANY DISPUTE ARISING THEREUNDER, OR THE VALIDITY OR ENFORCEMENT OF ANY PORTION OF THIS AGREEMENT WHATSOEVER. HOWEVER, ANY OTHER LOCATION AND JURISDICTION MAY BE CHOSEN, AT THE SOLE DISCRETION OF THE PARTNERSHIP OPERATOR.

Number of Units Subscribed: _____

At the Invest Amount of \$80,000 each

Type of Ownership

(check one)

- | | | |
|--------------------------------------|---|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Irrevocable Living Trust | <input type="checkbox"/> Family Limited Partnership |
| <input type="checkbox"/> Joint | <input type="checkbox"/> Revocable Living Trust | <input type="checkbox"/> Holding Company |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> LLP or LLC | <input type="checkbox"/> Other _____ |

SINGATURE PAGE TO FOLLOW

Exhibit "G" 7 of 7

Thacklight Coal Mine, LLP

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The foregoing representations and warranties are true and accurate as of the date hereof and will be true and correct as of the date that I purchase such Units, if this subscription is accepted. In witness hereof, I have executed this Subscription and Customer Agreement on this ____ day of _____, 20__.

Signed: _____

Investor-Owner

Joint Owner (if any)
(Wife, Partner, Other)

Print Name

Print Name

Purchaser Representative Signature (if any)

Print Name

Briefly List Purchaser Rep. Qualifications (IF USED):

NOT VALID UNTIL ACCEPTED BY THE ISSUER / SPONSOR ON BEHALF OF THE PARTNERSHIP.

New Century Coal, Inc, Issuer / Sponsor
For: Thacklight Coal Mine, LLP

By: New Century Coal, Inc., Issuer / Sponsor
James Robinson, President