

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983
Marshall S. Huebner
Timothy Graulich
Brian M. Resnick
Antonio J. Perez-Marques
Jonathan D. Martin

*Counsel to Plaintiff/Debtor
and Debtor in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re : Chapter 11
PATRIOT COAL CORPORATION, *et al.*, : Case No. 12-12900 (SCC)
Debtors. : (Jointly Administered)
----- X
ROBIN LAND COMPANY, LLC, :
Plaintiff, : Adv. Pro. No. _____
v. : **COMPLAINT FOR**
STB VENTURES, INC., : **DECLARATORY RELIEF**
Defendant. :
----- X

Plaintiff Robin Land Company, LLC (“**RLC**” or “**Plaintiff**”), one of the affiliated debtor entities in the above-captioned chapter 11 case, by and through its undersigned attorneys, alleges upon personal knowledge as to RLC and its own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION AND THE NEED FOR RELIEF

1. RLC brings this adversary proceeding seeking a declaratory judgment that the STB Override Agreement (as defined below), is a standalone, integrated non-executory contract that is not subject to assumption or rejection under section 365 of title 11 of the United States Code (the “**Bankruptcy Code**”).¹ Attached hereto as Exhibit A is a redacted, true and correct copy of the STB Override Agreement.

2. As set forth below, the STB Override Agreement provides for RLC to make ongoing overriding royalty payments to STB Ventures, Inc. (“**STB**”) for coal that RLC or its affiliates mine and sell from certain coal reserves. STB does not have any continuing obligations to perform under the STB Override Agreement.

3. An actual controversy exists between the parties as to whether the STB Override Agreement is non-executory and whether the STB Override Agreement is integrated with or severable from any other agreement.

4. In order to facilitate RLC’s prompt and efficient restructuring of its liabilities, RLC requests that the Court enter an order declaring: (a) that the STB Override Agreement is a non-executory contract for purposes of section 365 of the Bankruptcy Code; and (b) that the STB Override Agreement is not integrated with, or is severable from, any other agreement.

¹ Contemporaneously herewith, the Debtors filed a Motion for an Order Approving Rejection of the STB Override Agreement pursuant to section 365 of the Bankruptcy Code, effective *nunc pro tunc* to the date hereof, to the extent the STB Override Agreement is an executory contract, thereby reserving the Debtors’ right to schedule a hearing before the Court with respect to the relief set forth in such motion.

JURISDICTION AND VENUE

5. On July 9, 2012, Patriot Coal Corporation (“**Patriot**”) and its affiliated debtor entities (collectively, the “**Debtors**”)² commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

7. The Court has core jurisdiction to consider this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334. Alternatively, this Court has noncore concurrent jurisdiction over

² The Debtors are the following entities: Affinity Mining Company; Apogee Coal Company, LLC; Appalachia Mine Services, LLC; Beaver Dam Coal Company, LLC; Big Eagle, LLC; Big Eagle Rail, LLC; Black Stallion Coal Company, LLC; Black Walnut Coal Company; Bluegrass Mine Services, LLC; Brook Trout Coal, LLC; Catenary Coal Company, LLC; Central States Coal Reserves of Kentucky, LLC; Charles Coal Company, LLC; Cleaton Coal Company; Coal Clean LLC; Coal Properties, LLC; Coal Reserve Holding Limited Liability Company No. 2; Colony Bay Coal Company; Cook Mountain Coal Company, LLC; Corydon Resources LLC; Coventry Mining Services, LLC; Coyote Coal Company LLC; Cub Branch Coal Company LLC; Dakota LLC; Day LLC; Dixon Mining Company, LLC; Dodge Hill Holding JV, LLC; Dodge Hill Mining Company, LLC; Dodge Hill of Kentucky, LLC; EACC Camps, Inc.; Eastern Associated Coal, LLC; Eastern Coal Company, LLC; Eastern Royalty, LLC; Emerald Processing, L.L.C.; Gateway Eagle Coal Company, LLC; Grand Eagle Mining, LLC; Heritage Coal Company LLC; Highland Mining Company, LLC; Hillside Mining Company; Hobet Mining, LLC; Indian Hill Company LLC; Infinity Coal Sales, LLC; Interior Holdings, LLC; IO Coal LLC; Jarrell’s Branch Coal Company; Jupiter Holdings LLC; Kanawha Eagle Coal, LLC; Kanawha River Ventures I, LLC; Kanawha River Ventures II, LLC; Kanawha River Ventures III, LLC; KE Ventures, LLC; Little Creek LLC; Logan Fork Coal Company; Magnum Coal Company LLC; Magnum Coal Sales LLC; Martinka Coal Company, LLC; Midland Trail Energy LLC; Midwest Coal Resources II, LLC; Mountain View Coal Company, LLC; New Trout Coal Holdings II, LLC; Newtown Energy, Inc.; North Page Coal Corp.; Ohio County Coal Company, LLC; Panther LLC; Patriot Beaver Dam Holdings, LLC; Patriot Coal Company, L.P.; Patriot Coal Corporation; Patriot Coal Sales LLC; Patriot Coal Services LLC; Patriot Leasing Company LLC; Patriot Midwest Holdings, LLC; Patriot Reserve Holdings, LLC; Patriot Trading LLC; PCX Enterprises, Inc.; Pine Ridge Coal Company, LLC; Pond Creek Land Resources, LLC; Pond Fork Processing LLC; Remington Holdings LLC; Remington II LLC; Remington LLC; Rivers Edge Mining, Inc.; Robin Land Company, LLC; Sentry Mining, LLC; Snowberry Land Company; Speed Mining LLC; Sterling Smokeless Coal Company, LLC; TC Sales Company, LLC; The Presidents Energy Company LLC; Thunderhill Coal LLC; Trout Coal Holdings, LLC; Union County Coal Co., LLC; Viper LLC; Weatherby Processing LLC; Wildcat Energy LLC; Wildcat, LLC; Will Scarlet Properties LLC; Winchester LLC; Winifrede Dock Limited Liability Company; and Yankeetown Dock, LLC. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

this proceeding under 28 U.S.C. §§ 1334(b) and 157(a), as the cause of action is directly related to the RLC's bankruptcy case and will have a significant impact on RLC's estate.

8. This adversary proceeding is initiated under Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") 7001(9) and 7003 and 28 U.S.C. § 2201.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

PARTIES

10. RLC is a Delaware limited liability company and a wholly owned subsidiary of Patriot.

11. On information and belief, STB is a Virginia corporation and was formerly incorporated in the state of West Virginia.

BACKGROUND

12. The Asset Purchase Agreement dated October 31, 1994 (the "**Asset Purchase Agreement**") was executed by and between STB, Eagle Minerals Company ("**Eagle**"), Guyan Mining Company, and Guyan Equipment Company (collectively, the "**Sellers**"), and Apogee Coal Company (now known as Apogee Coal Company, LLC ("**Apogee**")) and Ark Land Company ("**Ark**," and together with Apogee, the "**Purchasers**").

13. The Asset Purchase Agreement provided that the Sellers would sell, assign, and deliver to the Purchasers all of the Sellers' real property, real property leases, equipment, and other assets related to a tract of land located in West Virginia, including STB's and Eagle's three leasehold interests (the "**Guyan Leases**") in certain coal reserves (the "**Guyan Reserves**") therein. Thereafter, no further performance was required of the Sellers. In exchange, the Asset Purchase Agreement required the Purchasers to make a lump sum cash payment to the Sellers, and to assume various liabilities in connection with the assigned properties. The Asset Purchase

Agreement further required Ark to execute an agreement to provide STB with overriding royalty payments in connection with the Guyan Reserves. A true and correct copy of the Asset Purchase Agreement will be filed under seal as Exhibit B contemporaneously with the filing of this Complaint.

14. Pursuant to an Assignment and Assumption of Leases dated October 31, 1994 (the “**Guyan Lease Assignment**”), STB and Eagle assigned “all of [STB’s and Eagle’s respective] rights, benefits and interest” in the Guyan Reserves to Ark, in exchange for Ark’s assumption of the underlying leasehold interests and the duties and obligations thereunder.³ Thereafter, neither STB nor Eagle had any remaining interest in the Guyan Reserves or Guyan Leases. A true and correct copy of the Guyan Lease Assignment will be filed under seal as Exhibit C contemporaneously with the filing of this Complaint.

15. The Overriding Royalty Agreement dated October 31, 1994 (the “**STB Override Agreement**”) was executed by and between Ark and STB. The STB Override Agreement provided that Ark will make ongoing “overriding royalty” payments to STB for coal produced from the Guyan Reserves (the “**Override Payments**”). STB does not have any further duty to perform under the STB Override Agreement. Furthermore, the Override Payments are independent from the tonnage royalty payments made to acquire coal from third-party landowners pursuant to the underlying leases.

16. The STB Override Agreement provides in Section 8 that it “constitutes the entire agreement and understanding of the parties in respect to the Overriding Royalty specified herein

³ The Guyan Leases were combined and restated into (i) the Combined, Amended and Restated Coal Lease dated October 31, 1994 (the “**Lawson Heirs Lease**”) and executed by and between Ark (as lessee) and Lawson Heir, Inc. (as lessor), and (ii) the Combined, Amended and Restated Coal Lease dated October 31, 1994 (the “**Kelly-Hatfield Lease**”) executed by and between Ark (as lessee) and Kelly-Hatfield Land Co. (as lessor). True and correct copies of the Lawson Heirs Lease and the Kelly-Hatfield Lease will be filed under seal as Exhibits D and E, respectively, contemporaneously with the filing of this Complaint.

and expresses all the obligations of and the restrictions imposed upon the parties with respect to the Overriding Royalty.”

17. RLC assumed the contractual rights and obligations of Ark that are the subject of this complaint through the Assignment and Assumption Agreement, dated December 30, 2005, executed by and between Ark and RLC (the “**Ark Assignment Agreement**”). Pursuant to the Ark Assignment Agreement, Ark assigned to RLC its interests, rights, and obligations under the Asset Purchase Agreement, STB Override Agreement, the Lawson Heirs Lease, and the Kelly-Hatfield Lease. A true and correct copy of the Ark Assignment Agreement will be filed under seal as Exhibit F contemporaneously with the filing of this Complaint.

18. Because the STB Override Agreement requires ongoing performance only by RLC – *i.e.*, making royalty payments to STB – and requires no ongoing performance by STB, it is not an executory contract.

COUNT I

Declaratory Judgment

19. RLC repeats and incorporates the allegations in paragraphs 1 through 18 of this complaint.

20. An actual controversy exists between RLC and STB regarding the legal status of the STB Override Agreement, specifically whether the STB Override Agreement is a standalone, fully integrated and non-executory contract.

21. Accordingly, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001, RLC respectfully requests that this Court enter a Declaratory Judgment: (a) that the STB Override Agreement is a non-executory contract for purposes of section 365 of the Bankruptcy Code; and (b) that the STB Override Agreement is not integrated with, or is severable from, any other agreement.

REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, RLC respectfully requests that this Court enter an order:

- (a) that the STB Override Agreement is a non-executory contract for purposes of section 365 of the Bankruptcy Code; and
- (b) that the STB Override Agreement is not integrated with, or is severable from, any other agreement.

Dated: New York, New York
August 10, 2012

ROBIN LAND COMPANY, LLC

By: /s/ Timothy Graulich
Marshall S. Huebner
Timothy Graulich
Brian M. Resnick
Antonio J. Perez-Marques
Jonathan D. Martin

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000 (telephone)
(212) 607-7983 (facsimile)

Counsel to Plaintiff/Debtor and Debtor in Possession

EXHIBIT A

OVERRIDING ROYALTY AGREEMENT

THIS OVERRIDING ROYALTY AGREEMENT (the "Agreement") is made and entered into this 31st day of October, 1994, by and between ARK LAND COMPANY (Ark), a Delaware corporation, and STB VENTURES, INC., a Virginia corporation ("STB").

WITNESSETH:

WHEREAS, pursuant to that certain Asset Purchase Agreement, of even date, by and among Ark and Apogee Coal Company (collectively the "Purchasers") and STB, Eagle Minerals Company, ("Eagle"), Guyan Equipment Company ("GEC") and Guyan Mining Company ("GMC") (STB, Eagle, GEC and GMC collectively the "Sellers"), Sellers have sold and transferred to Purchasers the Acquired Assets (as defined in the Asset Purchase Agreement); and

WHEREAS, the parties desire to enter into this Agreement to provide for an overriding royalty to be paid by Ark to STB for coal produced from tracts covered from all seams of coal underlying those various tracts or boundaries of land situate on or near
REDACTED, West Virginia, currently held by Glenn Springs, lease, assignment, license or other title instrument by Sky Eagle, Inc., Island Creek Coal Company, Guyan Eagle Coal Company, Eagle, STB, or their successors, assigns, sublessees, or affiliates, from Kelly-Hatfield Land Company and Lawson Heirs, Inc. and which are assigned, transferrerd or otherwise consigned to Ark pursuant to the Asset Purchase Agreement (the "Premises"). The parties contemplate that the Premises shall be demised by those two certain novation leases from (i) the Lawson Heirs, Inc., to Ark, dated

October 31, 1994; and (ii) the Kelly-Hatfield Land Company, to Ark, dated October 31, 1994 and as they hereafter may be amended, modified, or supplemented, the "Leases".

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Asset Purchase Agreement, the parties, intending to be legally bound, hereby agree as follows:

1. Defined Terms. Any capitalized term used but not defined herein shall have the meaning assigned to it in the Asset Purchase Agreement.

2. Term. This agreement shall take effect as of the Closing Date and shall continue for a period coextensive with the primary term, and any extension or renewal thereof, of the Leases, or until the exhaustion of all minable and merchantable coal (as defined under the Leases) from the Premises.

3. Payment of Overriding Royalty. For the term hereof, Purchasers shall pay to STB an overriding royalty (the "Overriding Royalty") on all sales of coal to third parties for each ton of REDACTED

REDACTED As used herein, the term "Gross Sales Price" shall have the meaning set forth under the terms of the Leases. Terms and conditions within the Leases shall govern as to royalty determination, late payment penalties, and all similar purposes.

REDACTED
REDACTED All payments of Overriding Royalty shall be made by mailing the same, first class mail, to STB at P.O. Box 1560, Grundy, Virginia 24614, unless otherwise directed.

4. Assignment. This Lease shall be binding and shall inure to the benefit of the parties hereto, their heirs, successors and assigns.

5. Obligation to Mine. Nothing in this Agreement or implied by its execution shall be deemed to enlarge the burden of Purchasers to undertake or continue any mining operations greater than the burden provided by the provisions of the Leases.

6. Headings. The headings preceding the text of the articles of this Agreement are inserted solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.

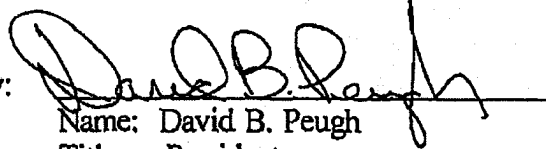
8. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties in respect to the Overriding Royalty specified herein and expresses all the obligations of and the restrictions imposed upon the parties with respect to the Overriding Royalty. All prior agreements, arrangements and understandings of the parties relating to the Overriding Royalty are hereby superseded, and this Agreement shall not be modified, supplemented or changed in whole or in part other than by an agreement in writing signed by all parties hereto or their respective successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed
hereto by the proper officers, thereunto duly authorized, as of the day and year first above
written.

ATTEST:

ARK LAND COMPANY

By:



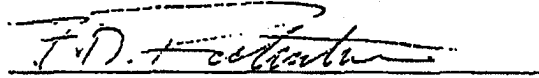
Name: David B. Peugh

Title: President

ATTEST:

STB VENTURES, INC.

By:



Name:

Title: President

EXHIBITS B - F – Filed Under Seal