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-and-

JONES & ASSOCIATES

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Joseph G. Bunn (pro hac vice *admission pending*)
Counsel to STB Ventures, Inc.

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

	:	
In re:	:	Case No.: 12-12900 (SCC)
	:	
PATRIOT COAL CORPORATION, et al.	:	Chapter 11
	:	
Debtors.	:	(Jointly Administered)
	:	
ROBIN LAND COMPANY, LLC,	:	Adv. Pro. No. 12-01793
	:	
Plaintiff,	:	NOTICE OF HEARING ON STB
	:	VENTURES, INC.’S MOTION TO
v.	:	DISMISS FOR ROBIN LAND
	:	COMPANY, LLC’S FAILURE TO JOIN A
STB VENTURES, INC.,	:	PARTY.
	:	
Defendant.	:	

PLEASE TAKE NOTICE that, upon the annexed Memorandum of Law and Certification of Joseph G. Bunn, Esq. and exhibits thereto (the “Motion”), STB Ventures, Inc., a Virginia corporation, (“STB”), will move before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, at the United States Court House, One Bowling Green, Courtroom 621, New York, New York, on **December 11, 2012 at 10:00 a.m.**, or as soon thereafter as counsel

may be heard, for entry of an order (i) to dismiss this action, or (ii) alternatively, to join Ark Land Company, a Delaware corporation, and Ark Land KH, Inc., a Delaware corporation, and order RLC to amend its pleadings consistent with such order.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requesting in the Motion must: (i) be in writing, (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules for the United Bankruptcy Court for the Southern District of New York, (iii) set forth the name of the objecting or responding party, the basis of the objection or response, and the specific grounds therefor, (iv) be filed with the Clerk of the United States Bankruptcy Court, Southern District of New York, together with proof of service and in accordance with all the applicable rules and procedures, with a hard copy delivered to the Chambers of the Honorable Shelley C. Chapman, United States Bankruptcy Judge, at the United States Court House, One Bowling Green, Courtroom 621, New York, New York, and (v) be filed and served so as to actually be received by **4:00 p.m. on December 4, 2012** by counsel for STB, Porzio, Bromberg & Newman, P.C., Attn: John S. Mairo, Esq., and Jones & Associates, Attn: Joseph G. Bunn, Esq.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order of this Court signed on July 16, 2012 Establishing Certain Notice, Case Management and Administrative Procedures, the relief requested in the Motion may be granted without a hearing if no objection is timely filed and served in accordance with all applicable rules and procedures.

Dated: September 17, 2012

Respectfully submitted,

By: /s/ John Mairo
John Mairo

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

In re: :
: Case No.: 12-12900 (SCC)
: PATRIOT COAL CORPORATION, et al. : Chapter 11
: Debtors. : (Jointly Administered)

ROBIN LAND COMPANY, LLC, :
: Plaintiff, : Adv. Pro. No. 12-01793

v. :
: **MEMORANDUM OF LAW IN SUPPORT**
: **OF STB VENTURES, INC.’S MOTION**
STB VENTURES, INC., : **TO DISMISS FOR ROBIN LAND**
: **COMPANY, LLC’S FAILURE TO JOIN A**
Defendant. : **PARTY.**

In support of its Motion to Dismiss, STB Ventures, Inc., a Virginia corporation, (“STB”), by and through its counsel, Porzio, Bromberg & Newman, P.C. and Joseph G. Bunn of Jones & Associates, for its Memorandum of Law in Support of STB Ventures, Inc.’s Motion to Dismiss for Robin Land Company, LLC’s Failure to Join a Party, respectfully states:

SUMMARY

This action should be dismissed pursuant to Fed.R.Civ.P. 12(b)(7) and Bankruptcy Rule 7012 because Robin Land Company, LLC, (“RLC”), plaintiff herein, failed to join two necessary parties who will suffer great prejudice by not being joined, while RLC will suffer no prejudice by the dismissal. Under Fed.R.Civ.P. 19(a) a third party is a “necessary” party when such third party’s non-joinder “would impair such third party’s interests,” or “would subject the present parties to future liability.” *See* Fed. R. Civ. Proc. 19(a)(1)(B)(i)-(ii).

As explained below, performance under the Overriding Royalty Agreement dated October 31, 1994, (“STB Override Agreement”), is an express requirement of the Amended and Restated Partial Assignment and Assumption of Lease dated May 22, 2007, attached as Exhibit B to the Certification of Joseph G. Bunn (“Bunn Cert.”) (“Amended and Restated Kelly Hatfield Lease”),¹ and that certain Assignment and Assumption Agreement dated December 31, 2005, (“Ark Assignment”), through which RLC acquired its interest in the subject matter of this action. As such, to the extent that this court issues a declaratory judgment which severs the STB Override Agreement from the Amended and Restated Kelly Hatfield Lease and the Ark Assignment, the interests of Ark Land Company, a Delaware corporation, (“Ark”), and Ark Land KH, Inc., a Delaware corporation, (“ALKH”), will be adversely affected as they are the primary beneficiaries of those agreements. Moreover, if Ark and ALKH are not joined to this lawsuit, RLC will be subject to future liability for the damages resulting from the breach of the Amended and Restated Kelly Hatfield Lease and the Ark Assignment. Thus, Ark and ALKH are necessary parties to this action and, as such, should be joined.

Because Ark and ALKH have not been joined, this action should be dismissed pursuant

¹ STB would like to emphasize that the Amended and Restated Kelly Hatfield Lease was notably not present in RLC’s Complaint.

to Rule 19(b). Rule 19(b) generally focuses on the prejudice suffered by third parties in the event that such third parties are not joined, the prejudice suffered by existing parties if the action is dismissed, and the adequacy of a judgment rendered in absence of the third parties. *See generally* Fed. R. Civ. Proc. 19(b). Ark and ALKH will suffer prejudice in the form of additional time and expense in bringing separate lawsuits instead of bringing counterclaims after joinder to this action. In addition, a declaratory judgment as to the STB Override Agreement's severability from the Ark Assignment and the Amended and Restated Kelly Hatfield Lease could have a preclusive effect on those agreements since the STB Override Agreement is an express requirement of those agreements. Moreover, dismissal of this action will not overly prejudice RLC as RLC may avoid any prejudice by filing a new complaint simply naming Ark and ALKH as additional defendants. Finally, in the event that this court renders a declaratory judgment in Ark and ALKH's absence, such judgment will be inadequate as it will spur future litigation among RLC, and Ark and ALKH, respectively. Therefore, this action should be dismissed, unless and until Ark and ALKH are joined as defendants.

BACKGROUND

STB; Eagle Minerals Company, a Delaware corporation, ("Eagle"); Guyan Mining Company, a Virginia general partnership, ("GMC"); and Guyan Equipment Company, a Virginia general partnership, ("GEC")(STB, Eagle, GMC, and GEC are each referred to as a "Seller" and, collectively, as the "Sellers"); and Apogee Coal Company, a Delaware corporation, ("ApogeeCo"); and Ark (collectively, ApogeeCo and Ark are referred to as the "Purchasers"), entered into an Asset Purchase Agreement on October 31, 1994 (the "Asset Purchase Agreement"). *See* Exhibit B of the Complaint.

Under the Asset Purchase Agreement, the Sellers agreed to sell, assign, and deliver to the

Purchasers certain real property, real property leases, equipment, and other assets related to a tract of land located in West Virginia (collectively, the “Assets”), including, but not limited to, three leasehold interests held collectively by the Sellers pertaining to certain coal reserves situated therein (the “Guyan Leases”) in exchange for certain consideration (the “Transaction”).

Id.

As a condition of Closing of the Transaction, the Purchasers were required to (i) deliver a certain lump sum payment to STB, *see* Exhibit B of the Complaint at Section 2.02(a)(ii); (ii) execute and deliver the STB Override Agreement granting STB a royalty equal to one and one-half percent of the gross sales price of all sales of coal to third parties for each ton coal mined and sold from the premises identified in the Guyan Leases (“STB Override”), *see* Exhibit B of the Complaint at Section 2.02(b)(i); and (iii) deliver an Apogee Liabilities Undertaking Agreement whereby the Purchasers assumed all liabilities and obligations of the Sellers relating to reclamation and mine closure (“Liabilities Undertaking Agreement”), *see* Exhibit B of the Complaint at Section 2.02(b)(ii).

As a condition to Closing of the Transaction, Sellers were required to (i) deliver a certain Assignment and Assumption of Leases dated October 31, 1994 (the “STB Assignment”) whereby Sellers assigned their respective interests in the Guyan Leases to Ark, *see* Exhibit B of the Complaint at Section 2.03(b)(iii); (ii) deliver a Special Warranty Deed sufficient to convey any real property interests of any Seller (“Special Warranty Deed”), *see* Exhibit B of the Complaint at Section 2.03(b)(ii); (iii) deliver an Assignment of Permits necessary to transfer any mining permits of the Sellers (the “Permit Assignment”), *see* Exhibit B of the Complaint at Section 2.03(b)(iv).

Contemporaneous with execution of the STB Assignment, Purchasers entered into two

novation leases with the underlying landowners of the three Guyan Leases, which combined the three leasehold estates into two leasehold estates with no interruption in the term of the leasehold estates: (i) the Combined, Amended and Restated Coal Lease between the Lawson Heirs, Incorporated, a West Virginia corporation, and Ark dated October 31, 1994, (the “Lawson Heirs Lease”), *see* Exhibit D of the Complaint; and (ii) the Combined, Amended and Restated Coal Lease between Kelly-Hatfield Land Company, a West Virginia corporation, (“Kelly Hatfield”), and Ark dated October 31, 1994, (the “Kelly Hatfield Lease”), *see* Exhibit E of the Complaint.

The Kelly-Hatfield Lease was subsequently supplemented and amended by Kelly Hatfield and Ark by the Amendment No. 1 to the Kelly-Hatfield Lease dated November 20, 2000 (the “Kelly Hatfield Lease Amendment” and, jointly with the Kelly Hatfield Lease, the “Amended Kelly Hatfield Lease”). *See* Amended and Restated Kelly Hatfield Lease at First Recital, Exhibit B, Bunn Cert.

Ark’s parent, Arch Coal, Inc. (“Arch”), entered into a Purchase and Sale Agreement with Magnum Coal Company on December 31, 2005, which Purchase and Sale Agreement provided in part for the transfer of certain assets to Robin Land Company, LLC, a Delaware limited liability company, (“RLC”), including all of the rights, titles and interests of Ark in and to the Lawson Heirs Lease, the Amended Hatfield Lease, and the STB Override Agreement. *See* Exhibit F of Complaint at Third Recital.

Pursuant to such Purchase and Sale Agreement, Arch caused Ark, as its subsidiary, to enter the Ark Assignment whereby Ark assigned all of its rights, titles and interest in and to various real property interests including, but not limited to, the Lawson Heirs Lease, the Amended Kelly Hatfield Lease, and the STB Override Agreement. *See id.*

Upon information and belief, ALKH became the owner of the premises underlying the

Amended Kelly Hatfield Lease, and other real property adjacent to and separate from the premises underlying the Amended Kelly Hatfield Lease, by that certain Confirmatory Deed dated March 7, 2007. *See* Amended and Restated Kelly Hatfield Lease at Third Recital, Exhibit B, Bunn Cert.

Sometime prior to May 22, 2007, RLC requested that ALKH amend the Amended Kelly Hatfield Lease by adding additional real property to its premises from land holdings of ALKH, which were adjacent to the premises identified in the Amended Kelly Hatfield Lease, Exhibit B, Bunn Cert.

On May 22, 2007, RLC and ALKH entered into the Amended and Restated Kelly Hatfield Lease whereby (i) ALKH assigned additional real property to RLC, which was adjacent to the real property identified under the Amended Kelly Hatfield Lease (the “ALKH Assignment”), and (ii) amended the Amended Kelly Hatfield Lease in several ways, including, but not limited to, (x) incorporating the ALKH Assignment into the premises of the Amended Kelly Hatfield Lease, and (y) obligating RLC “to pay the ‘STB Override’ as defined and identified in [the STB Override Agreement] and as assigned to [RLC] by [the Ark Assignment] to the extent that the STB Override applies to coal mined from the [premises as defined by the Amended and Restated Kelly Hatfield Lease],” and (z) obligating RLC “to indemnify and hold harmless [Ark] from any liability, expense or loss arising out of or in connection with the [Amended and Restated Kelly Hatfield Lease].” *See generally* Amended and Restated Kelly Hatfield Lease, Exhibit B, Bunn Cert.

On July 9, 2012, Patriot Coal Corporation, the parent of RLC, commenced with this Court a voluntary case under chapter 11 (the “Bankruptcy”) of the United States Bankruptcy Code (“Bankruptcy Code”).

In connection with the Bankruptcy, RLC instituted this adversary proceeding on August 17, 2012 to determine whether the STB Override Agreement is a non-executory contract for purposes of section 365 of the Bankruptcy Code, and whether the STB Override Agreement is not integrated with, or is severable from, any other agreement.

STANDARD OF REVIEW

“District courts are afforded substantial discretion in weighing the Rule 19(b) factors and in determining how heavily to emphasize certain considerations in deciding whether the action should go forward in the absence of someone needed for a complete adjudication of the dispute.” *Errico v. Stryker Corp.*, 281 F.R.D. 182, 187 (S.D.N.Y. 2012)(citing *Walker v. City of Waterbury*, 253 Fed.Appx. 58, 62 (2d. Cir. 2007)). Accordingly, “[t]he decision whether to dismiss an action for failure to join an indispensable party is . . . more in the arena of a factual determination than a legal one.” *Id.*

LEGAL ARGUMENT

This action should be dismissed pursuant to Rule 12(b)(7) because Robin Land Company, LLC, (“RLC”), failed to join two necessary parties who will suffer great prejudice by not being joined when RLC will suffer no prejudice by the dismissal. A defendant may, in lieu of an answer, assert a defense by motion if such defense pertains to the plaintiff’s failure to join a party under Rule 19. *See* Bankruptcy Rule 7012(b); Fed. R. Civ. Proc. 12(b)(7). Rule 19 sets forth a two prong test to determine whether an action must be dismissed pursuant to a Rule 12(b)(7) motion. The first prong of the test considers whether an additional party is “necessary” to an action under Rule 19(a). *See Jota v. Texaco, Inc.*, 157 F.3d 153, 161 (2d. Cir. 1998)(recognizing the “necessary” requirement in the rule); *ConnTech Dev. Co. v. University of Conn. Educ. Properties*, 102 F.3d 677, 681 (2d. Cir. 1996)(stating that the court must first

determine whether the party is necessary); *Peregrine Myanmar Ltd v. Segal*, 89 F.3d 41, 48 (2d. Cir. 1996). If the court finds that an additional party's joinder is "necessary," the Court must determine whether the court should dismiss the action pursuant to the second prong of the test, Rule 19(b). *See* Fed. R. Civ. P. 19(b); *Jota*, 157 F.3d at 162. In making its determination under Rule 12(b)(7) the Court may consider matters outside the pleadings, including affidavits and exhibits to those affidavits. *William A. Gross Constr. Assocs., Inc. v. American Manufacturers Mut. Insur. Co.*, 07 Civ. 10639 (LAK), 2009 U.S. Dist. LEXIS 21818 at **29-30 (S.D.N.Y. February 23, 2009). Based upon the foregoing considerations, the following analysis is separated into two primary parts: (I) Necessity, and (II) Dismissal.

I. Necessity

Ark's and ALKH's joinder to this action is necessary because Ark's and ALKH's nonjoinder to this action would adversely affect their interests, and would subject RLC to future liability. To determine whether a third party's joinder is necessary under Rule 19, the court must examine whether (i) failure to join a third party would impair such third party's interests, or (ii) failure to join a third party would subject the present parties to future liability. *See* Fed. R. Civ. Proc. 19(a)(1)(B)(i)-(ii). If the Court determines that the particular party is "necessary," it will join that party, if feasible. *See ConnTech*, 102 F.3d at 682. Viewing the circumstances in light of the aforementioned considerations, this part of the analysis is separated into two subparts: (a) ALKH's and Ark's interests will be adversely affected without their joinder, and (b) RLC will be subject to future liability if ALKH and Ark are not joined.

a. *ALKH's and Ark's interests will be adversely affected without their joinder.*

ALKH's interests will be impaired or impeded by disposing of this action without its joinder because rejection of the STB Override Agreement will adversely affect the Amended and

Restated Kelly Hatfield Lease. Under the Amended and Restated Kelly Hatfield Lease, RLC assumed “the obligation to pay the ‘STB Override’ as defined and identified in [STB Override Agreement] between [Ark] and [STB] and as assigned to [RLC] by [the Ark Assignment] to the extent that the STB Override applies to coal mined from [the premises of the Amended and Restated Kelly Hatfield Lease].” Accordingly, a declaratory judgment indicating that the STB Override Agreement is a stand-alone, fully integrated contract would eliminate an express requirement of the Amended and Restated Kelly Hatfield Lease, and would give rise to a claim by ALKH against RLC for breach of the Amended and Restated Kelly Hatfield Lease.

ALKH’s joinder is beneficial to this action. If ALKH is appropriately joined to this action, ALKH can speak as to the intent of the parties in including the STB Override Agreement as an express requirement of the Amended and Restated Kelly Hatfield Lease as ALKH was a party to that document. Moreover, ALKH can speak as to the damages arising in connection with the severance of the STB Override Agreement from the Amended and Restated Kelly Hatfield Lease. Conversely, in the event that ALKH is not joined to this action, that claim would be impeded as a practical matter because ALKH would have to bring a separate action against RLC incurring additional time and expense rather than asserting that claim as a counterclaim in this proceeding. Moreover, the success of ALKH’s claim for breach of the Amended and Restated Kelly Hatfield Lease could be impaired as the declaratory ruling could have a preclusive effect on the Amended and Restated Kelly Hatfield Lease as such ruling would involve an express requirement of the Amended and Restated Kelly Hatfield Lease. Thus, ALKH’s joinder in this action as defendant is necessary.

Ark’s interests would also be adversely affected by a declaratory ruling on the severability of the STB Override Agreement. Under the Ark Assignment, RLC agreed to assume

the full and complete performance of the various leasehold interests, including, but not limited to, the STB Override Agreement. In the event that this Court approved a severance of the STB Override Agreement from the Ark Assignment, such severance would be a breach of the Ark Assignment. Without Ark's joinder to this action, no one can specifically speak to the damages that Ark will suffer due to the severance of the STB Override Agreement from the Ark Assignment. Moreover, Ark can specifically speak as to its intent in requiring RLC to assume the obligations of the STB Override Agreement. Contrariwise, in the event that Ark is not joined to this action, that claim would be impeded as a practical matter because Ark must bring a separate action against RLC incurring additional time and expense rather than asserting a claim for breach of the Ark Assignment as a counterclaim in this proceeding. Moreover, the success of Ark's claim for breach of the Ark Assignment may be impaired as the declaratory ruling issued by this Court affects an essential component of the Ark Assignment. Thus, Ark's joinder in this action as defendant is necessary.

b. RLC will be subject to future liability if ALKH and Ark are not joined.

As previously mentioned, to the extent that this Court rules that the STB Override Agreement is a stand-alone, fully integrated contract without Ark's and ALKH's joinder, several causes of action will be asserted by Ark and ALKH in future proceedings. ALKH will have a separate cause of action against RLC for breach of the Amended and Restated Kelly Hatfield Lease. Ark will have a separate cause of action for breach of the Ark Assignment. Thus, an adverse ruling by this Court with respect to the STB Override Agreement shall subject RLC to future liability if ALKH and Ark are not joined. For the foregoing reasons, the joinder of ALKH and Ark is necessary and, accordingly, ALKH and Ark should be joined. Moreover, in the event that Ark and ALKH are not joined as parties to this action, the facts and circumstances

surrounding their non-joinder compel a dismissal of this action.

II. Dismissal

In the event that Ark and ALKH are not joined to this action, this action should be dismissed because the lack of Ark's and ALKH's joinder is prejudicial to their interests and RLC may avoid any prejudicial effect by simply filing a new complaint. Rule 19(b) delineates four factors to be considered by a court prior to dismissal:

[F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Fed.R.Civ.P. 19(b).

As previously mentioned, Ark and ALKH will suffer prejudice by not being joined in this action. Ark will have to institute a separate lawsuit against RLC for breach of the Ark Assignment if not joined in this action. Instituting a separate lawsuit will cause Ark to incur additional time and expense that could be avoided if Ark is joined and, accordingly, asserts a counterclaim as a defendant. Similarly, ALKH will have to institute a separate lawsuit against RLC for breach of the Amended and Restated Kelly Hatfield Lease, and will incur additional time and expense that could be avoided if ALKH is joined and, accordingly, asserts a counterclaim as a defendant. Avoiding the aforementioned prejudice to Ark and ALKH by carefully crafting the terms of declaratory judgment is highly unlikely as the STB Override Agreement is an essential component of the Ark Assignment and the Amended and Restated Kelly Hatfield Lease. Moreover, a judgment rendered in Ark's and ALKH's absence will not be adequate as such judgment will only spur additional litigation revolving around the STB Override Agreement. Finally, the only prejudice that RLC will suffer by dismissing this claim

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	:	
Debtors.	:	(Jointly Administered)
<hr/>		
ROBIN LAND COMPANY, LLC,	:	
	:	Adv. Pro. No. 12-01793
Plaintiff,	:	
	:	
v.	:	
	:	
STB VENTURES, INC.,	:	
	:	
Defendant.	:	

CERTIFICATION OF JOSEPH G. BUNN IN SUPPORT OF STB VENTURES, INC.’S MOTION TO DISMISS FOR ROBIN LAND COMPANY, LLC’S FAILURE TO JOIN A PARTY

Joseph G. Bunn, of full age, hereby certifies and states:

1. I am counsel to STB Ventures, Inc., the defendant in the above-captioned adversary proceeding.

2. Attached as Exhibit A is a true and correct copy of the e-mail I received on August 20, 2012 from Barkley J. Sturgill, Jr., Assistant General Counsel of Arch Coal, Inc.

3. Attached as Exhibit B is a true and correct copy of the Amended and Restated Partial Assignment and Assumption of Lease, dated May 22, 2007, by and between Ark Land Company, Robin Land Company, LLC and Ark Land KH, Inc., which I received as an attachment to Exhibit A.

I hereby certify, under penalty of perjury, that the foregoing statements made by me are true.

/s/ Joseph G. Bunn
Joseph G. Bunn

Dated: September 17, 2012

EXHIBIT A

From: Sturgill Jr, BJ [mailto:BSTurgill@archcoal.com]
Sent: Monday, August 20, 2012 11:06 PM
To: Joseph Bunn
Subject: STB Override

Joe:

Attached please find the Amended and Restates Assignment and Assumption Agreement between Ark Land Company, Ark Land Company KH, Inc. and Robin Land Company LLC. This sets out the obligation to pay the STB Override on Robin Land as it relates to the Assigned Lease Portion. Let me know if you have any questions.

BJ

Barkley J. Sturgill, Jr.
Assistant General Counsel
Arch Coal, Inc.
One CityPlace Drive, Ste. 300
St. Louis, Missouri 63141
(314) 994-2992 (phone)
(314) 994-2734 (fax)
bsturgill@archcoal.com

EXHIBIT B

**AMENDED AND RESTATED PARTIAL ASSIGNMENT
AND ASSUMPTION OF LEASE**

THIS AMENDED AND RESTATED PARTIAL ASSIGNMENT AND ASSUMPTION OF LEASE (“Amended and Restated Partial Assignment”) is made and entered into this 22nd day of MAY, 2007, by and between **ARK LAND COMPANY**, a Delaware corporation (“Assignor”), **ROBIN LAND COMPANY, LLC**, a Delaware limited liability company (“Assignee”) and **ARK LAND KH, INC.**, a Delaware corporation (“Consenting Lessor” and sometimes hereinafter referred to as “Lessor”).

WITNESSETH:

WHEREAS, by Combined, Amended and Restated Coal Lease dated October 31, 1994 (“1994 Lease”), between Kelly-Hatfield Land Company (“Kelly Hatfield”), remote predecessor in interest to the Consenting Lessor, and Assignor, Kelly Hatfield leased unto Assignor certain real property located in Boone and Logan Counties, West Virginia, which Combined, Amended and Restated Coal Lease was subsequently supplemented and amended by Kelly Hatfield and Assignor by the Amendment No. 1 to Combined, Amended and Restated Coal Lease dated November 20, 2000 (the “Amendment”, and jointly with the 1994 Lease, the “Lease”) (the property described in the 1994 Lease and Amendment hereinafter referred to as the “Premises”); and

WHEREAS, on December 31, 2005 pursuant to the Partial Assignment and Assumption of Lease (“Partial Assignment”), Assignor partially assigned its rights and obligations under the Lease to Assignee relating to a portion (the “December 2005 Assigned Lease Portion”) of the Premises covered by the Lease, with such Assigned Lease Portion of the Premises being more particularly described and set forth on the map attached hereto, made a part hereof and marked identification as Exhibit A; and

WHEREAS, by mesne conveyances, Consenting Lessor became the owner of the Premises as successor by merger, name change and conversion, and, thus, the successor in interest as Lessor to Kelly Hatfield under the Lease, all as more particularly described in that certain Confirmatory Deed dated March 7, 2007 and recorded in Deed Book 253, page 836, Boone County Clerk’s office, and in Deed Book 584, page 409, Logan County Clerk’s office.

WHEREAS, Assignee has requested that Assignor partially assign further rights and obligations under the Lease to Assignee relating to a portion of the Premises covered by the Lease (the “May 2007 Assigned Lease Portion”) being more particularly described as all of the mineable and merchantable coal in the Buffalo Creek Seam and all seams lying vertically above the Buffalo Creek Seam, within and underlying certain property located in Logan County, West Virginia and depicted in the color “Yellow” and the right to use that certain road depicted in the color “Red” all as set forth on the map attached hereto, made a part hereof and marked identification as Exhibit B (the May 2007

Assigned Lease Portion together with December 2005 Assigned Lease Portion, the “Assigned Lease Portion”); and

WHEREAS, Assignor is willing to amend and restate the Partial Assignment to grant the request of Assignee to acquire the May 2007 Assigned Lease Portion of the Premises by partial assignment of the rights and obligations of Assignor under the Lease in and to the May 2007 Assigned Lease Portion, and Assignee desires to accept such partial assignment of the Lease and the rights, titles and interests of Assignor thereunder relating to the May 2007 Assigned Lease Portion of the Premises on the terms and conditions herein set forth; and

WHEREAS, Consenting Lessor is willing to consent to this Amended and Restated Partial Assignment as provided herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth hereinafter, Assignor does hereby assign unto Assignee all of its rights, titles and interests under the Lease insofar as the Lease pertains only to the Assigned Lease Portion of the Premises on the following terms and conditions:

1. This Amended and Restated Partial Assignment is made upon and subject to the terms, conditions, rights, privileges, indemnities and undertakings contained in the Lease. Assignor assigns only such rights and privileges to the Assigned Lease Portion of the Premises under the Lease as it now owns, controls or possesses. Lessee excepts, reserves and retains and does not assign by this Partial Assignment all rights and interests under the Lease pertaining to that portion of the Premises remaining (the “Remaining Lease Portion”) after the partial assignment of the Assigned Lease Portion of the Premises.

2. Consenting Lessor hereby consents to the assignment of the Assigned Lease Portion of the Premises as provided herein.

3. Insofar as the Lease applies to the Assigned Lease Portion of the Premises, Assignee, as of December 31, 2005 with respect to the December 2005 Assigned Lease Portion and the date of this Amended and Restated Partial Assignment with respect to the May 2007 Assigned Lease Portion, hereby assumes, accepts and agrees to perform the duties and obligations of Assignor contained in or arising under the Lease in accordance with the terms and conditions thereof, and Assignee also assumes the obligation to pay the “STB Override” as defined and identified in that certain Overriding Royalty Agreement dated October 31, 1994 between Assignor and STB Ventures, Inc. and as assigned to Assignee by that certain Assignment and Assumption Agreement dated December 30, 2005 between Assignor and Assignee to the extent that the STB Override applies to coal mined from the Assigned Lease Portion of the Premises. Further, inasmuch as Assignor is required by the Lease to remain responsible for the performance by Assignee of the terms and conditions of the Lease, Assignee agrees to indemnify and hold harmless Assignor and its related companies from any liability, expense or loss arising out of or in connection with the Lease as it relates to the Assigned Lease Portion.

4. Assignor represents and warrants to Assignee that it has no knowledge of any default or event of default under the Lease relating to the Assigned Lease Portion of the Premises or otherwise, which with the giving of notice or the passage of time, or both, would constitute such a default, and that it has not made any prior transfer of the Lease which would affect the Assigned Lease Portion of the Premises, other than an intercompany Lease and Sublease dated January 1, 1995, between Assignor and Apogee Coal Company d/b/a Arch of West Virginia.

5. In addition to the Assigned Lease Portion, Assignor does hereby assign and set over to Assignee all of the Assignor's rights, titles and interests in and to the recoupable balance of Advance Minimum Royalty payments previously made by Assignor to Lessor pursuant to Section 6 of the Lease, and from and after the December 31, 2005, Assignee rather than Assignor shall have the right to recoup and offset Tonnage Royalties otherwise due for coal mined by Assignee from the Assigned Lease Portion of the Premises against such recoupable balance subject to the terms, conditions and limitations set forth in the Lease. Further, on each January 1st after the December 31, 2005, Assignee, rather than Assignor, shall be obligated to pay to Lessor the Advance Minimum Royalty amount currently required (i.e., \$500,000.00) by Section 6 of the Lease as and when such Advance Minimum Royalty Payments become due, and on a going forward basis, Assignor shall not take any recoupment for Tonnage Royalties due for coal mined from the Remaining Lease Portion. For all taxes which are required to be paid by the lessee under the Lease, Assignor and Assignee understand and agree that as and when such taxes are due and payable Assignor and Assignee shall each timely pay their proportionate part of such taxes based on the portion of such taxes as are attributable to the portion of the Premises held by Assignor and Assignee

6. Further, the parties hereto understand and agree that Assignor shall retain all of its rights relating to the Spruce Fork Surface Property, as more particularly described and set forth in the Amendment, but Assignee agrees, and does hereby assume all obligations of Assignor, to make the eight (8) remaining Six Hundred Fifty Thousand Dollar (\$650,000.00) payments as are required pursuant to Paragraph 4 of the Amendment, but Assignee shall not acquire any rights in and to the Spruce Fork Surface Property by virtue of such payments.

7. Assignee hereby acknowledges that Ark Land KH, Inc. is the successor in interest as lessor under the Lease and that all duties and obligations under the Lease assumed by the Assignee hereunder and owed to the Lessor under the Lease and under this Amended and Restated Partial Assignment shall be owed to Ark Land KH, Inc.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

9. This Agreement and all applicable provisions of the Lease set forth the entire agreement between the parties and supercede all prior and contemporaneous agreements, representations and understandings of the parties. No supplement,


modification or amendment to this Agreement shall be binding on the parties hereto unless executed in writing by Assignor and Assignee.


10. The parties hereto further understand and agree that the "Effective Date" of this Agreement shall be the date on which all parties hereto have added their signatures hereto.

IN WITNESS WHEREOF, the parties, through their duly authorized officers or representatives have caused this Agreement to be executed as of the date which follows their individual signatures.


ARK LAND COMPANY
(Assignor)

ROBIN LAND COMPANY, LLC
(Assignee)

By: 
Its: Vice President & Treasurer
Dated: 6-1-07

By: 
Its: President
Dated: 5/22/07

ARK LAND KH, INC.
(Consenting Lessor)

By: 
Its: President
Dated: 6/1/07

STATE OF Missouri)
) SS:
COUNTY OF St. Louis)

I, the undersigned, a Notary Public, in and for said State and County aforesaid, do hereby certify that JAMES E. FLOZAK, personally known to me to be the same person whose name is as the Vice President & Treasurer of **Ark Land Company**, a Delaware corporation, subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said corporation and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of June, 2007.

Stacy E. Carr
Notary Public

My Commission Expires:



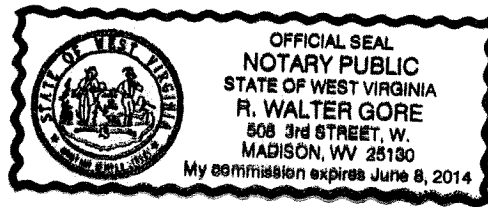
STATE OF WEST VIRGINIA)
) SS:
COUNTY OF KANAWHA)

I, the undersigned, a Notary Public, in and for said State and County aforesaid, do hereby certify that DAVID D. TURNBULL, personally known to me to be the same person whose name is as the PRESIDENT of **Robin Land Company, LLC**, a Delaware limited liability company, subscribed to he foregoing instrument, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited liability company and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 22nd day of May, 2007.

R. Walter Gore
Notary Public

My Commission Expires: 6-8-14



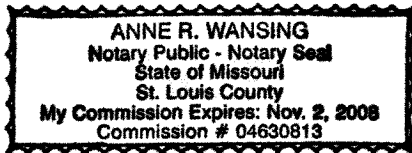
STATE OF Missouri)
) SS:
COUNTY OF St. Louis)

I, the undersigned, a Notary Public, in and for said State and County aforesaid, do hereby certify that Jeffrey Addison, personally known to me to be the same person whose name is as the President of **Ark Land KH, Inc**, a Delaware corporation, subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said corporation and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of June, 2007.

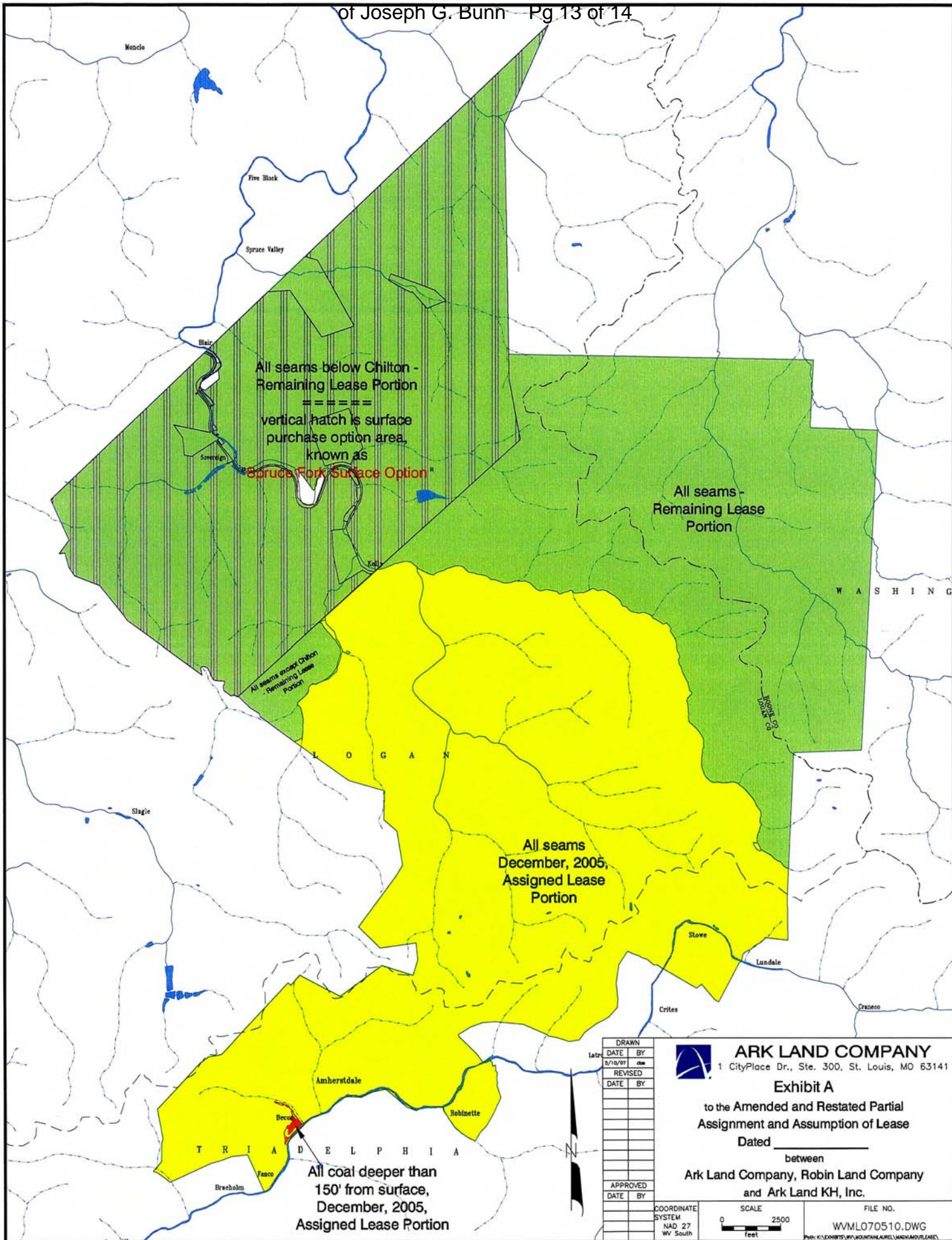
Anne R. Wansing
Notary Public

My Commission Expires:



THIS INSTRUMENT PREPARED BY:

Barkley J. Sturgill, Jr, Esq.
CityPlace One, Suite 300
St. Louis, Missouri 63141



All seams below Chilton -
Remaining Lease Portion
=====
vertical hatch is surface
purchase option area,
known as
Spruce Fork Surface Option

All seams -
Remaining Lease
Portion

All seams except Chilton
- Remaining Lease
Portion

All seams
December, 2005,
Assigned Lease
Portion

All coal deeper than
150' from surface,
December, 2005,
Assigned Lease Portion

DRAWN	
DATE	BY
9/10/07	dm
REVISED	
DATE	BY
APPROVED	
DATE	BY

ARK LAND COMPANY
1 CityPlace Dr., Ste. 300, St. Louis, MO 63141

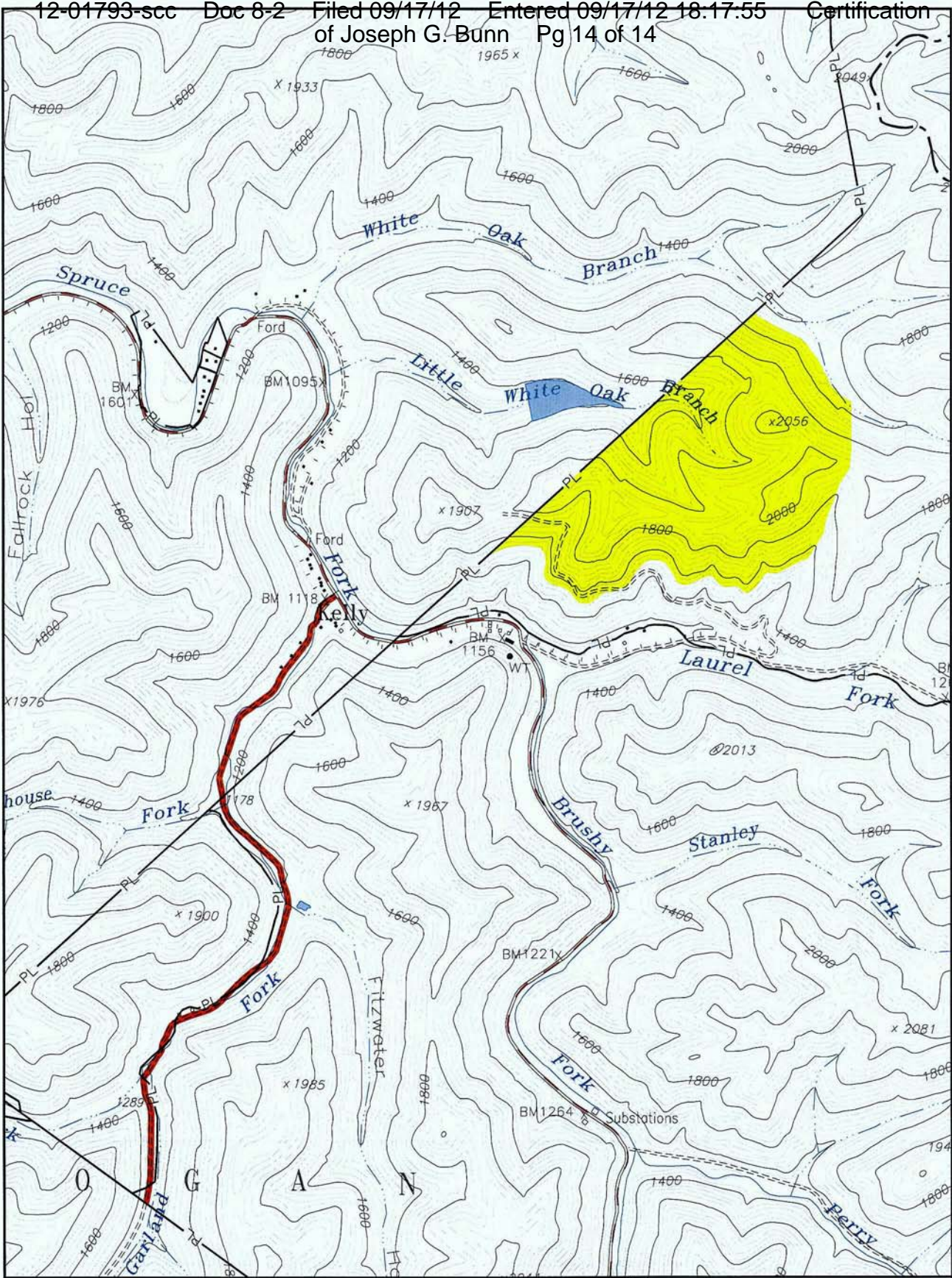
Exhibit A
to the Amended and Restated Partial
Assignment and Assumption of Lease
Dated _____


between
**Ark Land Company, Robin Land Company
and Ark Land KH, Inc.**


COORDINATE
SYSTEM
NAD 27
W. South

SCALE
0 2500
feet

FILE NO.
WVLM070510.DWG
Path: K:\EXPORTS\WV\MOUNTAIN\ARL\WVLM070510.DWG



 Lease of Buffalo Creek and all seams above

 Access road



DRAWN	
DATE	BY
REVIS	
DATE	BY
APPROVED	
DATE	BY

ARK LAND COMPANY
 1 CityPlace Dr., Ste. 300, St. Louis, MO 63141

Exhibit B
 to the Amended and Restated Partial
 Assignment and Assumption of Lease
 Dated _____
 between
 Ark Land Company, Robin Land Company
 and Ark Land KH, Inc.

COORDINATE SYSTEM: NAD 27 W. South
 SCALE: 0 2000 Feet
 FILE NO.: WVML070508.DWG

PORZIO, BROMBERG & NEWMAN, P.C.

156 West 56th St.
New York, NY 10001
(212) 265-6888
(212) 957-3983 Facsimile
John S. Mairo
Douglas A. Amedeo

-and-

JONES & ASSOCIATES

P.O. Box 1989
Charleston, West Virginia 25327
(304) 343-9466
(304) 345-2456 Facsimile
Joseph G. Bunn (pro hac vice *admission pending*)
Counsel to STB Ventures, Inc.

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

	:	
In re:	:	Case No.: 12-12900 (SCC)
	:	
PATRIOT COAL CORPORATION, et al.	:	Chapter 11
	:	
Debtors.	:	(Jointly Administered)
	:	
ROBIN LAND COMPANY, LLC,	:	Adv. Pro. No. 12-01793
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
STB VENTURES, INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

MARIA P. DERMATIS, of full age, hereby states as follows:

1. I am a paralegal at the law firm of Porzio Bromberg & Newman P.C., counsel to STB Ventures, Inc. in the above captioned case.

2. On September 17, 2012, the following documents were electronically filed with the United States Bankruptcy Court for the Southern District of New York

- **Notice of Hearing on STB Ventures, Inc.’s Motion to Dismiss for Robin Land Company, LLC’s Failure to Join a Party;**
- **Memorandum of Law in Support of STB Ventures, Inc.’s Motion to Dismiss for Robin Land Company, LLC’s Failure to Join a Party; and**
- **Certification of Joseph G. Bunn, Esq. in STB Ventures, Inc.’s Motion to Dismiss for Robin Land Company, LLC’s Failure to Join a Party (the “Motion”).**

3. In addition to those parties receiving electronic notice of the filing of the Motion through the Court's CM/ECF electronic filing system, on September 17, 2012, I also served a copy of the Motion on the below Service List via Regular Mail.

I hereby certify under penalty of perjury that the above documents were sent using the mode of service indicated.

Dated: September 17, 2012

/s/ Maria P. Dermatis

Maria P. Dermatis

Service List
In re Patriot Coal Corporation, et. al.

<p>Marshall S. Huebner, Esq. and Brian M. Resnick, Esq. Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017</p> <p><i>Counsel to the Debtors</i></p>	<p>Steven J. Reisman, Esq. and Michael A. Cohen, Esq. Curtis, Mallet-Prevost, Colt & Mosle LLP 101 Park Avenue New York, NY 10178</p> <p><i>Conflict Counsel to the Debtors</i></p>
<p>Elisabetta G. Gasparini, Esq. and Paul K. Schwartzberg, Esq. Office of the United States Trustee for the Southern District of New York 33 Whitehall Street, Suite 2100 New York, NY 10004</p> <p><i>US Trustee</i></p>	<p>Honorable Shelley C. Chapman, U.S.B.J. United States Bankruptcy Court for the Southern District of New York One Bowling Green, Courtroom 621 New York, NY 10004-1408</p> <p><i>Chambers</i></p>
<p>Marcia Goldstein, Esq. and Joseph Smolinsky, Esq. Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153</p> <p><i>Attorneys for the Administrative Agents for the Debtors' Proposed Postpetition Lenders</i></p>	<p>Margot B. Schonholtz, Esq. and Ana Alfonso, Esq. Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, NY 10019</p> <p><i>Attorneys for the Administrative Agents for the Debtors' Proposed Postpetition Lenders</i></p>
<p>Patriot Coal Corporation c/o GCG, Inc. P.O. Box 9898 Dublin, OH 43017-5798</p> <p><i>Claims and Noticing Agent</i></p>	<p>Kramer Levin Naftalis & Frankel LLP Attn: T. Mayer, A. Rogoff, B. O'Neill 1177 Avenue of the America NEW YORK, NY 10036</p> <p><i>Counsel for the Official Committee of Unsecured Creditors</i></p>