

Objection Deadline: October 22, 2012 at 4:00 p.m. (prevailing Eastern Time)
Hearing Date (if necessary): November 1, 2012 at 10:00 a.m. (prevailing Eastern Time)

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

In re:

PATRIOT COAL CORPORATION, et al.,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR AN EXTENSION OF TIME
TO ASSUME OR REJECT UNEXPIRED LEASES
OF NONRESIDENTIAL REAL PROPERTY**

Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "**Debtors**") respectfully represent:

Relief Requested

1. By this motion (the "**Motion**"), the Debtors respectfully request entry of an order in the form attached hereto as Exhibit A (the "**Order**"), pursuant to section 365(d)(4) of the Bankruptcy Code, extending the time within which they may assume or

¹ The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

reject the Leases (as defined below) for 90 days, to and including February 4, 2013, or such later date as may be agreed in writing between the Debtors and the applicable lessors (the “**Extended Deadline**”). The Debtors also request confirmation that any Leases proposed to be assumed or rejected by the Debtors by a motion filed on or before the Extended Deadline (a “**Timely Election Motion**”) shall not be deemed rejected under section 365(d)(4) of the Bankruptcy Code irrespective of whether the Court has entered an order granting or denying such motion by the Extended Deadline, and such lease shall be assumed or rejected only upon further order of the Court approving such assumption or rejection.

Background and Jurisdiction

2. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (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. These chapter 11 cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The Debtors’ Unexpired Leases

4. The Debtors operate a large, multifaceted business with operations and financial interests throughout the United States. As part of their operations, the Debtors estimate that, as of the Petition Date, they were party to more than a thousand unexpired

leases of nonresidential real property (individually, a “**Lease**” and collectively, the “**Leases**”).² The Debtors have not yet had an opportunity to identify or make final determinations regarding the assumption or rejection of many of the Leases.

5. The Debtors submit that, in light of the size, complexity and demands of these cases, the number of Leases and their importance to the Debtors’ operations, it would not be practical to require them to make final determinations regarding the assumption or rejection of the Leases on or before November 6, 2012, which, absent an extension of time granted by this Court, would be the date by which the Debtors would have to make those important decisions pursuant to section 365(d)(4) of the Bankruptcy Code. Furthermore, it is essential that the Debtors retain financial and operational flexibility during this critical time. Additional time to consider the value of certain Leases would contribute greatly to that flexibility.

6. Furthermore, the Debtors’ analysis of its real property leases is complicated by the final order approving the Debtors’ post-petition lending facility (the “**DIP Order**”). Paragraph 9(c) of the DIP Order provides that, in certain circumstances, the First Out DIP Agent (as defined in the DIP Order) has a right of first refusal with respect to the proposed assignment or rejection of certain of the Debtors’ Leases, and the Debtors have an obligation to provide up to 30-days notice to the First Out DIP Agent prior to seeking the assignment or rejection of such Lease. This additional notice and

² As part of the schedules of assets and liabilities that the Debtors filed on September 19, 2012, the Debtors identified and compiled a schedule of their leases. The inclusion of any agreement on the schedules (or the receipt of any notice provided to lessors) should not be read to constitute a binding determination by the Debtors that such agreement is a nonresidential real property lease. Likewise, any inadvertent omission of a particular Lease from those schedules should not be read to preclude the effect of the extension sought herein with respect to that Lease.

right of first refusal process adds additional time constraints on the Debtors' analysis of its Leases and emphasizes the need for the requested extension.

Cause Exists to Grant the Requested Extension

7. In pertinent part, section 365(d)(4) of the Bankruptcy Code provides that

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of – (i) the date that is 120 days after the date of the order for relief; or (ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

11 U.S.C. § 365(d)(4)(A) & (B); *see also In re 2300 Xtra Wholesalers, Inc.*, 445 B.R.

113, 122 (S.D.N.Y. 2011) (“Section 365(d)(4)(B)(i) permits the bankruptcy court, upon motion to grant a 90-day extension ‘for cause’”).

8. Courts have analyzed what constitutes sufficient cause to extend the time period within which a debtor may assume or reject unexpired nonresidential real property leases. In *In re 611 Sixth Avenue Corp.*, 191 B.R. 295 (Bankr. S.D.N.Y. 1996), the court held that the following factors, among others, would indicate that “cause” exists to extend the time period:

- (i) whether the debtor has had sufficient time to appraise its financial situation and the potential value of the lease to the formulation of its plan;
- (ii) whether reversion will produce a windfall to the landlord; and
- (iii) whether any other facts show the lack of a reasonable time to decide whether to assume or reject.

Id. at 298; *see also South St. Seaport L.P. v. Burger Boys, Inc.*, 94 F.3d 755, 761 (2d Cir. 1996) (considering the complexity of the debtors' cases and the number of leases the debtors needed to evaluate); *In re Adelphia Commc'ns Corp.*, 291 B.R. 283, 293 (Bankr. S.D.N.Y. 2003) (identifying sufficiency of time to formulate a reorganization plan, importance of the contract to the debtor's business, and potential damage to the non-debtor party as factors to consider); *In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987) (considering case complexity, whether the debtor had time to intelligently appraise its financial situation and the importance of the leases to formulating a plan of reorganization); 130 Cong. Rec. S8894 (daily ed., June 29, 1984), reprinted at 1984 U.S.C.C.A.N. 590, 599 (remarks of Sen. Hatch) (stating that the sixty-day time period [then applicable under 365(d)(4)] can be extended in cases involving large numbers of leases).

9. The Debtors' cases exhibit all three of the above factors held by the *611 Sixth Avenue* court to indicate "cause" to extend the section 365(d)(4) time period.

10. Given the size and complexity of these cases, and the notice and right of first refusal provisions of the DIP Order, the initial 120-day period specified in section 365(d)(4) of the Bankruptcy Code simply will not provide enough time for the Debtors and their professionals to identify and carefully consider the value of the Debtors' many Leases. Numerous significant business and legal issues have already arisen that have required and will continue to require a great deal of time on the part of the Debtors and their professionals. Additional time is needed to evaluate the Debtors' many Leases and how they would fit into the Debtors' exit strategy. Until that exit strategy is further developed, it is critical that the Debtors retain financial and operational flexibility.

11. The Debtors' numerous Leases are essential to the Debtors' operations. Accordingly, it is imperative to the Debtors' ability to successfully reorganize that the Debtors and their professionals carefully identify and evaluate each of the Leases in order to make informed decisions about whether to assume or reject them.

12. Absent the relief requested herein, the Debtors could be severely prejudiced. They might be forced to prematurely assume economically unnecessary Leases, which would lead to administrative claims against their estates were such Leases later to be deemed unhelpful to the Debtors' reorganization. Conversely, if the Debtors prematurely rejected Leases, or were deemed to reject Leases by operation of section 365(d)(4), they would be relinquishing property interests that could later prove important to their reorganization.

13. The extension proposed herein would not unduly prejudice lessors under the Leases. The requested extension is for only 90 days, and any additional extensions will require the consent of the applicable lessor pursuant to section 365(d)(4)(B)(ii) of the Bankruptcy Code.

14. The Debtors' requested extension of time to assume or reject the Leases comports with relief granted in other cases by courts in this district. *See, e.g., In re Eastman Kodak Co.*, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. May 10, 2012) (granting 90-day extension); *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Mar. 22, 2012) (same); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. July 26, 2011) (same); *In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 8, 2011) (same); *In re Lyondell Chemical Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Apr. 30, 2009) (same).

15. Furthermore, the confirmation requested herein would allow the Debtors to take maximum advantage of the proposed extension, especially necessary in light of the notice and right of first refusal provisions in the DIP Order, and would eliminate any uncertainty regarding the timing of an assumption or rejection. The proposed Order provides that the Debtors shall be deemed to have complied with the timing requirement of section 365(d)(4) of the Bankruptcy Code by filing Timely Election Motions irrespective of whether the Court enters orders granting or denying such motions by the Extended Deadline. Courts that have considered this issue (whether under pre- or post-BAPCPA law) have consistently held that a debtor assumes a nonresidential real property lease for purposes of meeting the applicable section 365(d)(4) deadline simply by filing a motion to assume. *See, e.g., Southwest Aircraft Servs., Inc. v. City of Long Beach (In re Southwest Aircraft Servs.)*, 831 F.2d 848, 850 (9th Cir. 1987) (adopting a “more liberal reading of [section 365(d)(4) that] would allow the bankruptcy courts to operate with greater freedom and flexibility.”); *Cousins Props. v. Treasure Isles HC, Inc. (In re Treasure Isles HC, Inc.)*, 462 B.R. 645, 649 (B.A.P. 6th Cir. 2011) (collecting authority and stating “almost every pre-BAPCPA case addressing this issue holds that a [debtor] need only file its motion to assume the lease prior to the deadline under 11 U.S.C. § 365(d)(4)” and that “post-BAPCPA cases addressing this issue continue to hold” the same); *In re Citrus Tower Blvd. Imaging Ctr., LLC*, 2012 Bankr. LEXIS 2208, at *8–*9 (Bankr. N.D. Ga. April 2, 2012) (holding that the timing of the filing of the debtor’s motion to assume controls); *City of Akron v. Akron Thermal, Ltd. P’ship (In re Akron Thermal, Ltd. P’ship)*, 414 B.R. 193, 206–07 (N.D. Ohio 2009) (affirming the bankruptcy court’s ruling that “[t]he deadline in § 365(d)(4)(A) is not a deadline for the court’s

determination of the issue”); *Tigr Rest. v. Rouse S.I. Shopping Ctr.*, 79 B.R. 954, 957 (E.D.N.Y. 1987) (concluding that “the time limits of § 365(d)(4) are intended to limit actions of the debtor or trustee, but not those of the court.”); *In re Burns Fabricating Co.*, 61 B.R. 955, 958 (Bankr. E.D. Mich. 1986) (holding that “the 60-day period of section 365(d)(4) refers to the time in which the trustee or debtor must *decide* to assume or reject, and not the time in which the entire process must be completed” (emphasis in original)). At least one court in this district has granted identical relief. See *In re Pinnacle Airlines Corp.*, Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Oct. 10, 2012)

16. Finally, Local Bankruptcy Rule 6006-1 provides that, unless the Court orders otherwise, the Debtors shall seek to set a return date for a hearing on a motion to assume nonresidential real property leases on or before the Extended Deadline. The Debtors submit that the confirmation requested herein comports with section 365(d)(4) of the Bankruptcy Code and, given the complexity, size and exigencies of the Debtors’ chapter 11 cases, cause exists to waive Local Bankruptcy Rule 6006-1 to the extent it is inconsistent with the relief sought herein.

17. For the reasons set forth above, the Debtors request that this Court enter an Order (i) extending the time within which they may assume or reject the Leases for 90 days, to and including February 4, 2013, or such later date as may be agreed in writing between the Debtors and the applicable lessors and (ii) confirming that the Debtors will have complied with section 365(d)(4) of the Bankruptcy Code by the filing of a Timely Election Motion.

Notice

18. Consistent with the Order Granting Debtors' Motion for an Order Establishing Certain Notice, Case Management and Administrative Procedures entered on July 16, 2012 [ECF No. 84] (the "**Case Management Order**"), the Debtors will serve notice of this Motion on (a) the Core Parties (as defined in the Case Management Order), (b) the Non-ECF Service Parties (as defined in the Case Management Order), and (c) the Debtors' real property lessors. All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this motion and any order approving it will also be made available on the Debtors' Case Information Website (located at <http://www.patriotcaseinfo.com>). In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 21 of the Case Management Order, if no objections are timely filed and served in accordance therewith, the relief requested herein may be entered without a hearing.

No Previous Request

19. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief
requested herein and such other and further relief as is just and proper.

Dated: New York, New York
October 10, 2012

By: /s/ Brian M. Resnick

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SCHEDULE 1
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

Exhibit A

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

**ORDER EXTENDING THE PERIOD
WITHIN WHICH THE DEBTORS MAY ASSUME OR REJECT
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Upon the motion (the “**Motion**”)² of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), for an order pursuant to section 365(d)(4) of the Bankruptcy Code for an extension of the period within which the Debtors may assume or reject unexpired leases of nonresidential real property (the “**Leases**”), as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided in

¹ The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

accordance with the Case Management Order, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the relief requested in the Motion being in the best interest of the Debtors and their respective estates and creditors; and the Debtors having articulated good, sufficient and sound business justifications and compelling circumstances therefor; and this Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the relief requested in the Motion is hereby granted; and it is further

ORDERED that the time within which the Debtors may assume or reject the Leases pursuant to section 365(d)(4) of the Bankruptcy Code is extended by 90 days to and including **February 4, 2013**, or such later date as may be agreed in writing between the Debtors and the applicable lessors without the need for further order of the Court (the “**Extended Deadline**”); and it is further

ORDERED that any Leases proposed to be assumed or rejected by the Debtors by a motion filed on or before the Extended Deadline (a “**Timely Election Motion**”) shall not be deemed rejected under section 365(d)(4) of the Bankruptcy Code irrespective of whether the Court has entered an order granting or denying such motion by the Extended Deadline, and such lease shall be assumed or rejected only upon further order of the Court approving such assumption or rejection; and it is further

ORDERED that the requirements of Local Bankruptcy Rule 6006-1 are hereby waived to the extent they are inconsistent with this Order; and it is further

ORDERED that this Order shall be effective immediately upon entry; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

New York, New York

Dated: _____, 2012

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE