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

----- X	
In re	: Chapter 11
PATRIOT COAL CORPORATION, <i>et al.</i> ,	: Case No. 12-12900 (SCC)
Debtors.	: (Jointly Administered)
----- X	
MAGNUM COAL COMPANY LLC,	: Adv. Pro. No. _____
Plaintiff,	:
v.	:
ROYALTYCO, LLC,	: COMPLAINT FOR
Defendant.	: DECLARATORY RELIEF
----- X	

Plaintiff Magnum Coal Company LLC (“**Magnum**” 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 Magnum 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. Magnum brings this adversary proceeding seeking a declaratory judgment that the Payment Agreements (defined below) are not executory contracts for purposes of section 365 of title 11 of the United States Code (the “**Bankruptcy Code**”).¹

2. As set forth below, the Payment Agreements provide for Magnum, a Debtor entity, to make ongoing, overriding royalty payments to RoyaltyCo, LLC (“**RoyaltyCo**”) for each ton of coal mined and sold from certain coal reserves in West Virginia and Illinois. RoyaltyCo does not have any continuing obligations to perform under any of the Payment Agreements.

3. An actual controversy exists between the parties as to whether the Payment Agreements are non-executory and whether the Payment Agreements are integrated with or severable from any other agreement.

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

JURISDICTION AND VENUE

5. On July 9, 2012, Patriot Coal Corporation (“**Patriot**”) and its affiliated debtor entities (collectively, the “**Debtors**”)² each commenced with this Court a voluntary case under

¹ Contemporaneously herewith, the Debtors filed a motion for an order approving rejection of the Payment Agreements pursuant to section 365 of the Bankruptcy Code, effective *nunc pro tunc* to the date hereof, to the extent the Payment Agreements are executory contracts, thereby reserving the Debtors’ right to schedule a hearing before the Court with respect to the relief set forth in such motion.

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. This Court has core jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334. Alternatively, this Court has noncore, concurrent jurisdiction over this proceeding under 28 U.S.C. §§ 1334(B) and 157(a), as this cause of action is directly related to Magnum's bankruptcy case and will have a significant impact on Magnum's estate.

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

(continued...)

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 Yankeeetown Dock, LLC. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

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

PARTIES

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

11. On information and belief, RoyaltyCo is a Delaware limited liability company.

BACKGROUND

12. Since January 4, 2007, RoyaltyCo has been the beneficiary of certain overriding royalty payments based on coal mined and sold from certain coal reserves in West Virginia and Illinois, pursuant to the Payment Agreements (defined below). RoyaltyCo became the beneficiary of these overriding royalty payments through a series of assignments, discussed below.

13. Magnum, a Debtor entity, became obligated to make these overriding royalty payments to RoyaltyCo, after Magnum acquired two of the original obligors, Trout Coal Holdings, LLC (“**Trout**”) and Panther LLC (“**Panther**”), and New Trout Holdings II, LLC, which came to own the relevant assets of the third original obligor, Trout Coal Holdings II, LLC (“**Trout II**”).

14. The Payment Agreements are non-executory contracts because they currently require performance only by Magnum – i.e., making the overriding royalty payments to RoyaltyCo – and require no performance by RoyaltyCo.

15. The right to receive the overriding royalty payments was originally held by Christopher Cline (“**Cline**”) pursuant to two agreements executed in 2003: (1) the Second Amended and Restated Purchase Option Agreement dated December 30, 2003, by and among Cline, Trout, Trout II and Panther, as amended by Amendment No. 1 to the Second Amended

and Restated Purchase Option Agreement dated March 21, 2005 (the “**Purchase Option Agreement**”); and (2) the Wildcat Adjacent Reserves and Royalty Payment Agreement dated December 30, 2003, by and between Cline and Trout, as amended by Amendment No. 1 to the Wildcat Adjacent Reserves and Royalty Payment Agreement dated March 21, 2005 (the “**Wildcat Agreement**” and, together with the Purchase Option Agreement and the Royalty Clarification Agreement (defined below), the “**Payment Agreements**”). Attached hereto as Exhibits A and B are redacted, true and correct copies of the Purchase Option Agreement and the Wildcat Agreement, respectively.

16. The Purchase Option Agreement and the Wildcat Agreement each provide that Trout and/or Trout II would make ongoing overriding royalty payments (the “**Override Payments**”) to Cline based on the tonnage of coal that was mined and sold from certain coal reserves, including coal reserves in which Trout and/or Trout II had previously acquired a leasehold interest from Cline. These Override Payments are independent from and in addition to the payments made to acquire coal from third-party landowners pursuant to the underlying leases.

17. In late 2006, RoyaltyCo obtained Cline’s interest in the override payments through a series of transactions. First, Cline assigned the override payments to Trout II in exchange for a cash payment of \$19 million pursuant to an agreement dated December 14, 2006 (the “**Royalty Contribution Agreement**”). Trout II then assigned its rights and obligations under the Royalty Contribution Agreement to RoyaltyCo pursuant to an agreement dated December 28, 2006 (the “**Assignment Agreement**”). Finally, Cline assigned directly to RoyaltyCo all of his interests in the Override Payments, independent of the underlying coal reserve leases, pursuant to an agreement dated January 4, 2007 (the “**Assignment and Bill of**

Sale”). True and correct copies of the Royalty Contribution Agreement, the Assignment Agreement, and the Assignment and Bill of Sale will be filed under seal as Exhibits C, D, and E, respectively, contemporaneously with the filing of this Complaint.

18. By 2007, the Override Payments were being paid to RoyaltyCo by Magnum, a Debtor entity, which owned Trout.

19. On March 4, 2008, RoyaltyCo and Magnum, among others, executed an agreement clarifying that (i) RoyaltyCo had been since January 4, 2007, and shall continue to be the sole payee of the Override Payments; and (ii) all Override Payments have been and shall continue to be made by Magnum (the “**Royalty Clarification Agreement**,” as amended on March 26, 2008). The Royalty Clarification Agreement does not require any performance on the part of RoyaltyCo. Attached hereto as Exhibit F is a redacted, true and correct copy of the Royalty Clarification Agreement.

20. The Payment Agreements require Magnum to pay Override Payments, but require no performance on the part of RoyaltyCo. RoyaltyCo simply collects the Override Payments, which is an ongoing payment obligation of Magnum without a termination date. Thus, none of the Payment Agreements is an executory contract.

COUNT I

Declaratory Judgment

21. Magnum repeats and incorporates the allegations in paragraphs 1 through 20 of this complaint.

22. An actual controversy exists between the parties as to whether the Payment Agreements are non-executory and whether the Payment Agreements are integrated with or severable from any other agreement.

23. Accordingly, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001, Magnum respectfully requests that this Court enter a Declaratory Judgment: (a) that the Payment Agreements are non-executory contracts for purposes of section 365 of the Bankruptcy Code; and (b) that the Payment Agreements are not integrated with or are severable from any other agreement.

REQUEST FOR RELIEF

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

- (a) that the Payment Agreements are non-executory contracts for purposes of section 365 of the Bankruptcy Code; and
- (b) that the Payment Agreements are not integrated with or are severable from any other agreement.

Dated: New York, New York
August 10, 2012

MAGNUM COAL COMPANY LLC

By: /s/ Timothy Graulich
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EXHIBIT A

Execution Copy

Dated as of December 30, 2003

**TROUT COAL HOLDINGS, LLC,
TROUT COAL HOLDINGS II, LLC
PANTHER, LLC
and
CHRISTOPHER CLINE**

**SECOND AMENDED AND RESTATED
PURCHASE OPTION AGREEMENT**



FRESHFIELDS BRUCKHAUS DERINGER LLP

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SECOND AMENDED AND RESTATED PURCHASE OPTION AGREEMENT

SECOND AMENDED AND RESTATED PURCHASE OPTION AGREEMENT
dated as of December 30, 2003 (as such may be hereafter amended, modified or supplemented from time to time, this *Agreement*) by and among **TROUT COAL HOLDINGS, LLC**, a Delaware limited liability company (*Trout*), **TROUT COAL HOLDINGS II, LLC**, a Delaware limited liability company (*Trout II*), **PANTHER, LLC**, a West Virginia limited liability company (*Panther*) and **MR. CHRISTOPHER CLINE**, a resident of the State of Florida (*Cline*, and, together with Trout, Trout II and Panther, the *Parties*).

WHEREAS

- (A) On December 19, 2002, Cline and Trout entered into a Redemption Agreement (the *Redemption Agreement*) with ArcLight Energy Partners Fund I, L.P., a Delaware limited partnership (*ArcLight*) and Timothy Elliott (*Elliott*), pursuant to which Cline agreed to retire, and Trout agreed to redeem from Cline, all of Cline's right, title and interest in his ownership interests in Trout, on the terms provided in the Redemption Agreement;
- (B) As part of the consideration for the redemption, Trout requested that Cline, and Cline agreed to, grant to Trout, the options provided for in the Purchase Option Agreement dated as of December 19, 2002 (the *Purchase Option Agreement*), including the option to purchase certain properties referred to therein as the Illinois Basin Properties (the *Illinois Basin Option*);
- (C) Following the purchase by Remington Holdings, LLC (*Remington Holdings*) and Rainbow Trout Coal, LLC (*Rainbow Trout*) of certain entities from Cline pursuant to a Purchase and Sale Agreement dated as of July 3, 2003 (the *Purchase Agreement*), Cline issued to Trout and Trout II certain purchase options in addition to those provided for in the Purchase Option Agreement pursuant to the Amended and Restated Purchase Option Agreement dated as of July 3, 2003 (the *Amended and Restated Purchase Option Agreement*);
- (D) Trout wishes to transfer the Illinois Basin Option and all rights and obligations related thereto to Steelhead Development Company, LLC, a Delaware limited liability company (*Steelhead*) pursuant to the Illinois Basin Property Agreement dated as of the date hereof (the *Illinois Basin Property Agreement*) between Steelhead and Cline;
- (E) Brook Trout wishes to transfer after the date hereof, all of its membership interests in Wildcat LLC, a West Virginia limited liability company (*Wildcat*), to Trout, which in turn, wishes to transfer such membership interests to Trout Coal Holdings III, LLC, a newly formed Delaware limited liability company (*Trout III*);

- (F) Cline and Trout wish to transfer after the date hereof the Adjacent Reserves Option to the extent it relates to additional coal reserves adjacent to the REDACTED REDACTED acquired by Cline after the date hereof to Trout III. In anticipation thereof, Cline and Trout wish to enter into the Wildcat Adjacent Reserves Agreement dated as of the date hereof (the *Wildcat Adjacent Reserves Agreement*) which agreement is expected to be assigned from Trout to Trout III after the date hereof;
- (G) Cline acquired leases relating to coal reserves that (1) are listed on Schedule A (the *Scheduled Reserves*), (2) are listed on Schedule B (the *Swap II Reserves*) and (3) are listed on Schedule C (the *Additional Swap II Reserves* and, together with the Scheduled Reserves, the Swap II Reserves and the Adjacent Reserves (as defined herein), the *Reserves*);
- (H) Cline issued to Trout and Trout II an option to purchase and Trout and Trout II exercised the option to purchase Cline's rights in the Reserves;
- (I) The parties hereto wish to amend and restate the Amended and Restated Purchase Option Agreement to (a) reflect the transfer of the Illinois Basin Option to Steelhead by removing the provisions in the Amended and Restated Purchase Option Agreement providing for the Illinois Basin Option, (b) move the provisions under the Amended and Restated Purchase Option Agreement relating to additional future reserves adjacent to the REDACTED to a separate agreement in anticipation of the assignment thereof by Trout to Trout III and to remove the references to Wildcat in the Amended and Restated Purchase Option Agreement; and (c) clarify the agreed number of tons covered by Schedules A, B, and C.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. INTERPRETATION

Definitions

1.1 Capitalized terms used and not defined herein shall have the meaning set forth in the Redemption Agreement. In addition, as used herein, the following capitalized terms have the following meanings:

ABC Mine Properties has the meaning assigned to that term in the Purchase Agreement.

Additional Swap II Reserves means the coal reserves described in Schedule C.

Additional Swap II Reserves Royalty means the amount payable by Trout to Cline in respect of the Additional Swap II Reserves, equal to REDACTED

REDACTED

Adjacent Reserves means the coal reserves that are adjacent to the
REDACTED

Adjacent Reserves Option has the meaning assigned to that term in Section 3.1.

Adjacent Reserves Royalty means the amount payable by Trout or Trout II, as the case
may be, to Cline in respect of the Adjacent Reserves, equal to
REDACTED

ArcLight has the meaning assigned to that term in the recitals.

Cline has the meaning assigned to that term in the preamble.

Discount Offer has the meaning assigned to that term in Section 3.3.

Elliott has the meaning assigned to that term in the recitals.

KRVII means Kanawha River Ventures II LLC, a West Virginia limited liability
company.

Little Creek Dock means the real property described in that certain lease agreement dated
as of April 4, 2001 by and between Ark Land Company, a Delaware corporation and
Little Creek Dock Company.

Little Creek Dock Company means Little Creek Dock Company, Inc., a West Virginia
corporation.

Little Creek Dock Exercise Notice has the meaning assigned to that term in Section 4.2.

Little Creek Dock Option has the meaning assigned to that term in Section 4.1.

MLP Units has the meaning assigned to that term in Section 3.5.

Offer has the meaning assigned to that term in Section 3.2.

Panther has the meaning assigned to that term in the preamble.

Potential Buyer has the meaning assigned to that term in Section 3.3.

Proceedings has the meaning assigned to that term in Section 6.10(a).

Purchase Agreement has the meaning assigned to that term in the recitals.

Redemption Agreement has the meaning assigned to that term in the recitals.

Relevant Holding Company has the meaning assigned to that term in Section 3.1.

Relevant Subsidiaries means, at any time (a) with respect to Adjacent Reserves adjacent to REDACTED and, with respect to Scheduled Reserves, REDACTED taken as a whole; (b) with respect to Adjacent Reserves adjacent to REDACTED taken as a whole; provided that to the extent that the EBITDA for any of REDACTED as shown on the then most recent monthly unaudited financial statements, is less than REDACTED per clean ton of coal sold by such entity, such entity or entities shall not be included as a **Relevant Subsidiary** for purposes of calculating the Adjacent Reserves Royalty not involving Adjacent Reserves adjacent to the REDACTED owned by it; (c) with respect to Additional Swap II Reserves, REDACTED taken as a whole, provided, that, with respect to Additional Swap II Reserves adjacent to REDACTED taken as a whole; provided, further, that to the extent that the EBITDA for any of REDACTED as shown on the then most recent monthly unaudited financial statements, is less than REDACTED per clean ton of coal sold by such entity, such entity or entities shall not be included as a **Relevant Subsidiary** for purposes of calculating the Additional Swap II Reserves Royalty not involving Adjacent Reserves adjacent to the REDACTED owned by it.

Remington II means Remington II LLC, a West Virginia limited liability company.

Reserves means the Scheduled Reserves, the Additional Swap II Reserves and the Adjacent Reserves.

Scheduled Reserves means the coal reserves that are described on Schedule A.

Scheduled Reserves Purchase has the meaning assigned to that term in Section 2.1.

Scheduled Reserves Royalty means the amount payable by Trout to Cline in respect of the Scheduled Reserves Purchase, equal to REDACTED

REDACTED

Swap II Reserves means the coal reserves listed in Schedule B hereto.

Third Party Mining Engineer means (a) Weir, (b) Marshall Miller or (c) any other mining engineer upon whom ArcLight and Cline mutually agree.

Trout has the meaning assigned to that term in the preamble.

Trout II has the meaning assigned to that term in the preamble.

Winchester means Winchester LLC, a West Virginia limited liability company.

Rules of Construction

- 1.1 Unless the context otherwise clearly requires:
- (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;
 - (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
 - (c) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";
 - (d) the word "will" shall be construed to have the same meaning and effect as the word "shall";
 - (e) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as, from time to time, is amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);
 - (f) any reference herein to any entity shall be construed to include such entity's successors and assigns;
 - (g) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;
 - (h) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Agreement unless otherwise indicated; and
 - (i) the headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

2. SCHEDULED RESERVES PURCHASE, SWAP II RESERVES PURCHASE AND ADDITIONAL SWAP II RESERVES PURCHASE

Purchase of the Scheduled Reserves

2.1 In consideration of the payment of the Basic Compensation by Trout to Cline, Cline irrevocably and unconditionally transferred to Trout, and Trout purchased from Cline, all of the Scheduled Reserves acquired directly or indirectly by Cline (the *Scheduled Reserves Purchase*) in exchange for the payment by Trout to Cline of the Scheduled Reserves Royalty with respect to such Scheduled Reserves. The Scheduled

Reserves Royalty shall be payable by Trout to Cline in quarterly installments until paid in full. Each quarterly payment shall be at a rate of REDACTED

REDACTED The Scheduled Reserves Royalty shall be payable solely out of cash flow from Trout arising out of the operations of Brook Trout and/or its Subsidiaries, which cash flows are otherwise available to Trout's members (whether in respect of their ownership interests or debt owing by Trout to its members) and therefore subordinate to payments of the senior indebtedness of Trout and its direct and indirect Subsidiaries.

2.2 [Intentionally Left Blank]

2.3 [Intentionally Left Blank]

Additional Payment for Swap II Reserves

2.4 As additional consideration for the Swap II Reserves, Panther paid to Cline REDACTED on June 19, 2003.

Purchase of Additional Swap II Reserves

2.5 In consideration of the payment of the Basic Compensation under the Redemption Agreement by Trout, in each case to Cline, Cline transferred to Trout, and Trout purchased from Cline, all of the Additional Swap II Reserves acquired directly or indirectly by Cline (the *Additional Swap II Reserves Purchase*) in exchange for the payment by Trout to Cline of the Additional Swap II Reserves Royalty with respect to such Additional Swap II Reserves. The Additional Swap II Reserves Royalty shall be payable by Trout to Cline in quarterly installments until paid in full. REDACTED

REDACTED The Additional Swap II Reserves Royalty shall be payable solely out of cash flow from Trout arising out of the operations of Relevant Subsidiaries of Trout that indirectly own such Additional Swap II Reserves, which cash flows are otherwise available to Trout's members (whether in respect of their ownership interests or debt owing by Trout to its members) and therefore subordinate to payments of the senior indebtedness of Trout and its direct and indirect Subsidiaries.

2.6 [Intentionally Left Blank]

2.7 [Intentionally Left Blank]

3. ADJACENT RESERVES OPTION

Grant of the Adjacent Reserves Option

3.1 In consideration of the payment of the Basic Compensation under the Redemption Agreement and the Basic Purchase Price under the Purchase Agreement, in each case to

Cline, Cline hereby irrevocably and unconditionally grants (a) to Trout the right, but not the obligation, to purchase all or part of the Adjacent Reserves adjacent to the REDACTED REDACTED offered to Trout by Cline pursuant to the terms of Section 3.2 or Section 3.3 below and (b) to Trout II the right, but not the obligation, to purchase all or part of the Adjacent Reserves adjacent to any of the REDACTED REDACTED offered to Trout II by Cline pursuant to the terms of Section 3.2 or Section 3.3 below (the *Adjacent Reserves Option*); **provided** that (a) any exercise of the Adjacent Reserves Option shall be subject to Section 3.2 or Section 3.3, as applicable, and Section 3.4, (b) neither Trout nor Trout II shall have any obligation to exercise the option with respect to any Adjacent Reserves if such Adjacent Reserves or the manner of contribution thereof to Trout or Trout II, as applicable, are not satisfactory to ArcLight and (c) with respect to any Adjacent Reserves, all payments by Trout or Trout II, as the case may be, to Cline with respect to such Adjacent Reserves shall be payable solely out of cash flow from Trout or Trout II, as the case may be, arising out of the operations of the Relevant Subsidiaries of Trout or Trout II, respectively, that indirectly own such Adjacent Reserves (the *Relevant Holding Company*), which cash flow is otherwise available to Trout's or Trout II's members and therefore subordinate to payments of the senior indebtedness of Trout and Trout II and their respective direct and indirect Subsidiaries.

Right of First Offer

3.2 If, at any time, Cline directly or indirectly acquires ownership rights to any Adjacent Reserves, then Cline shall make a *bona fide* written offer (the *Offer*) to Trout to sell to Trout or Trout II (depending on which REDACTED such Adjacent Reserves are adjacent to and whether it is indirectly owned by Trout or Trout II) all of his interests (or cause the entity that has acquired such interests) in such Adjacent Reserves for a purchase price equal to the Adjacent Reserves Royalty. Trout or Trout II, as the case may be, shall then have 14 days to give notice to Cline that it wishes to purchase such Adjacent Reserves pursuant to the Offer. Such notice from Trout or Trout II will state a closing date no later than 45 days after the date of the Offer. If Trout or Trout II (a) does not give such notice within the 14-day period following the Offer or (b) does give such notice but fails to close the sale within the time period stated within the immediately preceding sentence, then Cline may, no later than 365 days after the Offer, sell such Adjacent Reserves to one or more purchasers, **provided** that Cline sell such Adjacent Reserves to such purchasers for a purchase price no less REDACTED REDACTED

Right of First Refusal

3.3 If at any time after Trout or Trout II, as the case may be, has failed to accept the Offer relating to any Adjacent Reserves as provided above, Cline thereafter receives a *bona fide* offer to purchase any of the Adjacent Reserves for a purchase price less than REDACTED from the date of transfer of such Adjacent Reserves to the purchaser (a *Discount Offer*) and Cline intends to

accept such Discount Offer, then Cline shall give written notice to Trout or Trout II, as applicable, of his intention to sell such Adjacent Reserves pursuant to such Discount Offer, including (a) the identity of the proposed purchaser (the **Potential Buyer**), (b) the proposed purchase price and (c) the other material terms and conditions of such Discount Offer. Trout or Trout II, as the case may be, shall have 14 days to give notice to Cline that Trout or Trout II wishes to purchase such Adjacent Reserves at the price and on the terms and conditions set forth in such Discount Offer (other than with respect to the payment terms, which shall be in accordance with the last sentence of Section 3.4). Such notice from Trout or Trout II shall state a closing date no later than 45 days after the date it received written notice of such Discount Offer. If Trout or Trout II (x) does not give such notice within the 14-day period following its receipt of written notice such Discount Offer or (y) does give such notice but fails to close the sale within the time period stated within the immediately preceding sentence, then Cline may, no later than 365 days after Trout's or Trout II's receipt of notice of such Discount Offer, sell such Adjacent Reserves to the Potential Buyer pursuant to the terms and conditions of such Discount Offer.

Closing of Sale Pursuant to Notice by Trout

3.4 If Trout or Trout II shall have elected to exercise the Adjacent Reserves Option with respect to any of the Adjacent Reserves by delivering or causing to be delivered to Cline (x) notice to Cline that Trout or Trout II wishes to purchase such Adjacent Reserves pursuant to the Offer pursuant to Section 3.2 or (y) notice to Cline that Trout or Trout II wishes to purchase such Adjacent Reserves at the price and on the terms and conditions set forth in such Discount Offer pursuant to Section 3.3, **provided** that:

- (a) Trout or Trout II, as the case may be, shall not have rescinded such election by notice to Cline;
- (b) Trout or Trout II, as the case may be, shall be satisfied with the results of due diligence performed with respect to such Adjacent Reserves; and
- (c) the manner of contribution of such Adjacent Reserves and the documentation to give effect thereto are satisfactory in form and substance to Trout or Trout II, as the case may be, and Cline (including, without limitation, with respect to the representations by Cline as to such Adjacent Reserves),

then on the closing date that is mutually acceptable to Trout or Trout II, as the case may be, and Cline at the offices of Trout or Trout II, as applicable, set forth in Section 6.2 or such other location as may be selected by Trout or Trout II, as applicable, and be reasonably acceptable to it, Cline will assign and transfer to Trout or Trout II, as the case may be, all of Cline's right, title and interest in such Adjacent Reserves in exchange for payment of the Adjacent Reserves Royalty. The Adjacent Reserves Royalty shall be payable by Trout or Trout II, as the case may be, to Cline in quarterly installments until paid in full, beginning after the closing date referred to in this Section 3.4 on the first date on which the Relevant Holding Company and/or any of its Subsidiaries sells clean coal (irrespective of whether such coal is mined from the Adjacent Reserves). Each quarterly

payment shall be at a rate of **REDACTED** reflected in the Offer or the Discount Offer, as the case may be, payable with respect to each ton of clean coal sold by Relevant Holding Company and/or the Relevant Subsidiary thereof during the then immediately preceding quarter.

MLP Option

3.5 If ArcLight and Elliott initiate a public offering of master limited partnership units of Trout or Trout II (**MLP Units**), in lieu of receiving (x) the Scheduled Reserves Royalty (if any) owed over time by Trout to Cline with respect to the Scheduled Reserves purchased by Trout and (y) the amount (if any) owed over time by Trout or Trout II to Cline with respect to any Adjacent Reserves purchased by Trout and Trout II, respectively, from Cline pursuant to Section 3.2 or Section 3.3, Cline will have the right to elect to receive MLP Units, at the public offering price per MLP Unit, representing the sum of (a) the amount Cline is owed at such time with respect to Reserves theretofore sold to Trout or Trout II, as the case may be, but only to the extent such Reserves are held by a direct or indirect Subsidiary of Trout or Trout II, as the case may be, at the time the interests of ArcLight and Elliott are contributed or otherwise transferred to the master limited partnership and (b) **REDACTED** of such amount, **provided** that (i) Reserves acquired by Trout or Trout II from Cline after the initial public offering of MLP Units will not be counted for such purposes. The maximum amount of common MLP Units that Cline shall be entitled to receive shall be no greater than Cline's proportionate share of the common MLP Units that ArcLight is entitled to receive pursuant to such public offering and (ii) Cline may elect to convert only such portion of his right to receive the Scheduled Reserves Royalty and the Adjacent Reserves Royalty as necessary to obtain such common MLP Units and shall retain his right to continue to receive the Scheduled Reserves Royalty and the Adjacent Reserves Royalty as to the balance thereof on the terms agreed in this Agreement.

4. THE LITTLE CREEK DOCK OPTION

Grant of the Little Creek Dock Option

4.1 In consideration of the payment of the Basic Compensation by Trout to Cline, Cline hereby irrevocably and unconditionally grants to Trout the right, but not the obligation, to purchase all of his ownership interests in Little Creek Dock Company (the **Little Creek Dock Option**) in exchange for the payment by Trout to Cline of **REDACTED**

Exercise of Option

4.2 Trout exercised the Little Creek Dock Option and paid the **REDACTED** consideration in exercise thereof.

Closing of Sale Pursuant to Little Creek Dock Exercise Notice

4.3 If the following is true

- (a) Trout shall not have rescinded such election by notice to Cline; and
- (b) the manner of contribution of Little Creek Dock Company and the documentation to give effect thereto are satisfactory in form and substance to Trout and Cline (including, without limitation, with respect to the representations by Cline as to Little Creek Dock Company and the Little Creek Dock),

then on March 1, 2004, at the offices of Trout set forth in Section 6.2 or such other location as may be selected by Trout and be reasonably acceptable to Trout, Cline will assign and transfer to Trout all of Cline's right, title and interest in and to Little Creek Dock Company and the Little Creek Dock; **provided** that Cline obtains from Ark Land Company its consent to such transfer.

5. REPRESENTATIONS AND WARRANTIES

Representations and Warranties of Cline

5.1 Cline represents and warrants to Trout and Trout II as of the date hereof as follows:

- (a) He is domiciled in Martin County, Florida, and he has not made any election for his estate to be governed on his death by a law other than the law of the jurisdiction where he is domiciled.
- (b) He is *sui juris* and of full capacity to execute this Agreement and any other documentation relating to this Agreement to which he is a party, to deliver this Agreement and any other documentation relating to this Agreement that he is required by this Agreement to deliver and to perform his obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance; and this Agreement has been, and each other such document will be, duly executed and delivered by him.
- (c) Such execution, delivery and performance do not and will not violate or conflict with any law applicable to him or his assets, any order or judgment of any court or other agency of government applicable to him or any of his assets or any contractual restriction binding on or affecting him or any of his assets.
- (d) All governmental and other consents that are required to have been obtained by him with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (e) This Agreement constitutes his legal, valid and binding obligation, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

- (f) There is not pending or, to his knowledge, threatened against him or any of his Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against him of this Agreement or his ability to perform his obligations under this Agreement.

Representations and Warranties of Trout and Trout II

5.2 Each of Trout, Trout II and Panther represents and warrants to Cline as of the date hereof as follows:

- (a) It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance; and this Agreement has been, and each other such document will be, duly executed and delivered by it.
- (b) Such execution, delivery and performance do not and will not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (c) All governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (d) This Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (e) There is not pending or, to its knowledge, threatened against it or any of its affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.

6. MISCELLANEOUS

No Waivers

6.1 A failure or delay in exercising any right, power or privilege in respect of this Agreement will not operate as a waiver, and a single or partial exercise of any right, power or privilege will not preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege. The remedies provided herein and in any other agreement or instrument referred to herein or delivered in connection herewith are cumulative, are not exclusive of any remedies provided by law and may be exercised by a party from time to time.

Notices

6.2 All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally or by facsimile transmission or mailed (first class postage prepaid) to the parties at the following addresses or facsimile numbers:

(a) in the case of Trout, Trout II or Panther, to:

Trout Coal Holdings, LLC
106 Lockheed Drive
Beaver, WV 25813
Facsimile:
Attention: Timothy Elliott

(b) in the case of Cline, to:

Mr. Christopher Cline
c/o Cline Resource and Development Company
430 Harper Park Drive, Suite A
Beckley, WV 25801
Facsimile: (304) 255-4908

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section, be deemed given upon receipt, and (iii) if delivered by mail in the manner described above to the address as provided in this Section, be deemed given upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Section). Any Party from time to time may change its address, facsimile number or other information for the purpose of notices to that Party by giving notice specifying such change to the other Parties hereto.

Entire Agreement

6.3 This Agreement amends and restates the Amended and Restated Purchase Option Agreement in its entirety and the Amended and Restated Purchase Option Agreement shall be without further force or effect.

Expenses/Payments

- 6.4 (a) Each of the parties to this Agreement will bear such costs and expenses (including legal and tax advisory fees) incurred in connection with the negotiation, preparation and execution of this Agreement and the completion of the transactions herein contemplated. Each of the parties hereto will bear its own costs and expenses incurred in connection with any amendment or supplement to or other modification of this Agreement. Each of Trout and Trout II, on the one hand, and Cline, on the other hand, shall bear half of the costs of hiring the Third Party Mining Engineer (if any) referred to in the definition of Scheduled Reserves Royalty and in Sections 2.1 and 2.4.
- (b) If a Party defaults in the performance of any of its obligations under this Agreement, it will, on demand, indemnify and hold harmless the non-defaulting Party for and against all reasonable out-of-pocket expenses, including reasonable legal fees, incurred by the non-defaulting Party by reason of the enforcement and protection of its rights under this Agreement, including, but not limited to, costs of collection.

Amendment

6.5 This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

Benefit of Agreement

6.6 This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their successors and permitted assigns. No Person other than the parties hereto shall have any rights under or be entitled to rely upon this Agreement.

Severability

6.7 If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

No Assignment; Binding Effect

6.8 Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Parties hereto and any attempt to do so will be void, except (a) for assignments and transfers by operation of Law and (b) Trout and Trout II may assign any or all of their respective rights, interests and obligations hereunder to (i) a wholly-owned direct or indirect subsidiary, provided that any such subsidiary agrees in writing to be bound by all of the terms, conditions and provisions contained herein, or (ii) any financial institution providing purchase money or other financing to ArcLight, Trout, Trout II or the direct or indirect subsidiaries of Trout or Trout II, from time to time as collateral security for such financing, but no such assignment shall relieve Trout or Trout II of its obligations hereunder. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

Governing Law

6.9 This Agreement shall be construed in accordance with, and this Agreement and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Agreement shall be governed by, the law of the State of New York.

Jurisdiction; Service of Process; Waiver of Immunities

6.10 (a) With respect to any suit, action or proceedings relating to this Agreement (*Proceedings*), Cline irrevocably:

- (i) submits to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan and of the United States District Court for the Southern District of New York, and any appellate court therefrom; and
- (ii) waives any objection which he may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over Cline.

Nothing in this Agreement precludes a Party from bringing Proceedings in any other jurisdiction, nor will the bringing of Proceedings by a Party in any one or more jurisdictions preclude the bringing of Proceedings by a Party in any other jurisdiction. Cline hereby agrees that a final judgment in any such Proceedings shall be conclusive and may be enforced in other jurisdictions otherwise having jurisdiction over Cline by suit on such final judgment or in any other manner provided by law.

- (b) Cline hereby agrees that service of process in any Proceeding may be effected by mailing a copy thereof by registered or certified mail or by overnight courier service, postage prepaid, to it at its address specified in Section 6.2. Nothing in this Agreement will affect the right of a Party to serve process in any other manner permitted by law.

Counterparts

6.11 This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Waiver of Trial by Jury

6.12 EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Illinois Basin Property

6.13 The parties hereto agree that on and after the date hereof all rights and obligations in respect of the Illinois Basin Option and the property to which it relates shall be governed by the Illinois Basin Property Agreement and not by this Agreement. Trout hereby confirms the (a) assignment by it to Steelhead of all of its rights under and in respect of the Illinois Basin Option, and (b) Steelhead's assumption of all of Trout's obligations in respect of the Illinois Basin Option. Cline hereby consents to such assignment and assumption.

Wildcat Property

6.14 (a) The parties hereto agree that on and after the date hereof all rights and obligations in respect of future Adjacent Reserves acquired after the date hereof and adjacent to the Wildcat Mines shall be governed by the Wildcat Adjacent Reserves and Royalty Payment Agreement and not by this Agreement.

(b) Wildcat's payment obligations in respect of certain Reserves already delivered under the Purchase Option Agreement and the Amended and Restated Purchase Option Agreement shall be governed by the Wildcat Adjacent Reserves and Royalty Payment Agreement.

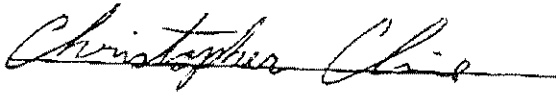
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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized respective officers or directors as of the day and year first above written.

CHRISTOPHER CLINE



TROUT COAL HOLDINGS, LLC

By: _____
Name:
Title:

TROUT COAL HOLDINGS II, LLC

By: _____
Name:
Title:

PANTHER, LLC

By: _____
Name:
Title:

Second Amended and Restated Purchase Option Agreement Signature Page

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized respective officers or directors as of the day and year first above written.

CHRISTOPHER CLINE

TROUT COAL HOLDINGS, LLC

By: Timothy Elliott
Name: Timothy Elliott
Title: Managing Member

TROUT COAL HOLDINGS II, LLC

By: Timothy Elliott
Name: Timothy Elliott
Title: Managing Member

PANTHER, LLC

By: Timothy Elliott
Name: Timothy Elliott
Title: Manager

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager

By: _____

Name:

Title:

TIMOTHY ELLIOTT

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager

By: _____
Name:
Title:

TIMOTHY ELLIOTT

 _____

SCHEDULE A: SCHEDULED RESERVES

REDACTED



SCHEDULE B: SWAP II RESERVES

REDACTED



SCHEDULE C: ADDITIONAL SWAP II RESERVES

REDACTED



**AMENDMENT NO. 1 TO THE SECOND AMENDED AND
RESTATED PURCHASE OPTION AGREEMENT**

AMENDMENT NO. 1 dated as of March 21, 2005 (this *Amendment*) to the **SECOND AMENDED AND RESTATED PURCHASE OPTION AGREEMENT** dated as of December 30, 2003 (as amended, amended and restated or otherwise modified and in effect from time to time, the *Agreement*) by and among **TROUT COAL HOLDINGS, LLC**, a Delaware limited liability company (*Trout*), **TROUT COAL HOLDINGS II, LLC**, a Delaware limited liability company (*Trout II*), **PANTHER, LLC**, a West Virginia limited liability company (*Panther*) and **MR. CHRISTOPHER CLINE**, a resident of the State of Florida (*Cline*, and, together with Trout, Trout II and Panther, the *Parties*).

WHEREAS, the Parties desire to amend the Agreement under the terms and conditions described herein;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

Definitions and Interpretation

1.1 Terms used but not defined herein have the meanings given to such terms in the Agreement.

Amendment and Agreement

2. Subject to the execution and delivery of this Amendment by each party hereto, but with effect on and after the date hereof, the Agreement is amended as follows:

2.1 Section 1.1 is amended to add the following definition in the appropriate alphabetical location:

"Trout Companies means Trout and Trout II."

2.2 The fourth sentence of Section 2.1 is amended to read in its entirety as follows:

"The Scheduled Reserves Royalty shall be payable solely out of cash flow from Trout arising out of the operations of Brook Trout and/or its Subsidiaries. Such payments shall be made at the same level of priority as operating expenses of Trout."

2.3 The fourth sentence of Section 2.5 is amended to read in its entirety as follows:

"The Additional Swap II Reserves Royalty shall be payable solely out of cash flow from Trout arising out of the operations of Relevant Subsidiaries of Trout that indirectly own such additional Swap II Reserves. Such payments shall be made at the same level of priority as operating expenses of Trout."

2.4 Clause (c) of the proviso in Section 3.1 is amended to read in its entirety as follows:

"(c) with respect to any Adjacent Reserves, all payments by Trout or Trout II, as the case may be, to Cline with respect to such Adjacent Reserves shall be payable solely out of cash flow from Trout or Trout II, as the case may be, arising out of the operations of the Relevant Subsidiaries of Trout or Trout II, respectively, that indirectly own such Adjacent Reserves (the *Relevant Holding Company*). Such payments shall be made at the same level of priority as operating expenses of Trout or Trout II, as the case may be."

2.5 A new Section 3.6 is added to read as follows:

"Overdue Interest

3.6 Trout agrees to pay interest to Cline in respect of any Scheduled Reserves Royalty, Additional Swap II Reserves Royalty or Adjacent Reserves Royalty relating to any Adjacent Reserves adjacent to the REDACTED acquired by it, and Trout II agrees to pay interest in respect of the Adjacent Reserves Royalty relating to any Adjacent Reserves adjacent to any of the REDACTED acquired by it, in each case to the extent the same shall not have been paid within 30 days after the date when due under the terms of this Agreement at a rate per annum equal to REDACTED
REDACTED

2.6 Section 6.8 is amended to read in its entirety as follows:

"No Assignment; Binding Effect

6.8 Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Parties hereto and any attempt to do so will be void, except (a) for assignments and transfers by operation of Law, (b) Trout and Trout II may assign any or all of their respective rights, interests and obligations hereunder to (i) a wholly-owned direct or indirect subsidiary, provided that any such subsidiary agrees in writing to be bound by all of the terms, conditions and provisions contained herein, or (ii) any financial institution providing purchase money or other financing to ArcLight, Trout, Trout II or the direct or indirect subsidiaries of Trout or Trout II, from time to time as collateral security for such financing, but no such assignment shall relieve Trout or Trout II of its obligations hereunder and (c) Cline may assign his right (if any) to receive the Scheduled Reserves Royalty, the Additional Swap II Reserves Royalty and the Adjacent Reserves Royalty together with any overdue interest thereon pursuant to Section 3.6 (the *Royalty Stream*); provided that:

(i) (A) for so long as ArcLight owns (taking into account both direct and indirect membership), at least REDA of the then outstanding membership interests of each of Trout or Trout II, such assignment is made to any of the following assignees:

- (1) a company that is traded on the New York Stock Exchange other than (x) a coal mining company, (y) a company that owns or controls a coal mining

company or a (z) company that is, directly or indirectly, at least 20% owned or controlled by a private equity fund,

(2) any company, directly or indirectly, wholly-owned or controlled by Cline,

(3) any other person or entity with the prior written consent of Trout (which consent, other than in the case of an assignee that is, directly or indirectly, at least RED ACT owned or controlled by, a private equity fund, not to be unreasonably withheld or delayed), or

(4) if otherwise not permitted pursuant to clauses (x), (y) or (z) above, Resource Capital Funds or an entity controlled by Resource Capital Funds or any affiliate thereof, provided that Resource Capital Funds and such assignee (if other than Resource Capital Funds) shall agree not to invest in a coal mining company or coal mining operation in West Virginia for at least three years from the date of the relevant assignment; and

(B) if ArcLight ceases to own (taking into account both direct and indirect membership), at least RED ACT of the then outstanding membership interests of each of Trout or Trout II, such assignment is made to any Person other than any then existing landlord of Trout, Trout II or any of their respective affiliates or to any company engaged in the coal mining business.

Any assignee permitted pursuant to clauses (A) or (B) shall be referred to as a *Permitted Assignee*.

(ii) the Permitted Assignee shall have entered into a confidentiality agreement with Trout and Trout II in form and substance reasonably satisfactory to Trout and Trout II,

(iii) the Permitted Assignee shall not be permitted to further assign the Royalty Stream without the prior written consent of Trout, and

(iv) prior to making such assignment, Cline shall have offered Trout the right to purchase the Royalty Stream on the same terms as the proposed Permitted Assignee is willing to purchase the Royalty Stream from Cline, and Trout shall have rejected such offer in writing.

Each Trout Company agrees, in connection with any permitted assignment of the Royalty Stream, that it will afford the Permitted Assignee thereof, during normal business hours, reasonable access to the financial information prepared by its auditors relating to its financial performance for purposes of confirming the amounts due to such Permitted Assignee under this Agreement. In addition, each Trout Company will provide such Permitted Assignee with such appropriate financial information as it has heretofore been providing to Cline for the purpose of assessing the accuracy of payment of the Royalty Stream payable by it. Promptly after consummation of a permitted assignment as described above, Cline agrees to notify Trout and Trout II of the name, address, fax and other contact details of the relevant Permitted Assignee. At any time and from time to time prior to the assignment by Cline of the Royalty Stream, each Trout Company agrees to provide to Cline, promptly upon his request, a certification as to the amounts theretofore paid by it to Cline in respect of the

Royalty Stream. Any assignment made in violation of the provisions of this Section 6.8 shall be void *ab initio* and without effect."

Agreement Otherwise Unchanged

3. Except as herein provided, the Agreement shall remain unchanged and in full force and effect, and each reference to "the Agreement" and words of similar import in the Agreement, as amended hereby, shall be a reference to the Agreement as amended hereby and as the same may be further amended, supplemented and otherwise modified and in effect from time to time.

Representations

4. Each party hereto represents and warrants to each other party that (a) it is duly authorized to execute and deliver this Amendment and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (b) the person signing this Amendment on its behalf is duly authorized to do so on its behalf; (c) it has obtained all authorizations of any governmental body required in connection with this Amendment and the transactions contemplated hereby and such authorizations are in full force and effect; and (d) the execution, delivery and performance of this Amendment and the transactions contemplated hereby will not violate any law, ordinance, charter, by-law or rule applicable to it or any other agreement by which it is bound or by which any of its assets are affected.

Notices

5. Any notice, request or other communication to be given or made under this Amendment shall be given as provided in Section 6.2 of the Agreement.

Term of Agreement

6. This Amendment shall continue in force so long as the Agreement shall remain in force.

Governing Law; Waiver of Jury Trial

7. The terms of Section 6.10 and 6.12 of the Agreement are incorporated by reference into this Amendment as if they were set out *in extenso* herein.

Successors and Assignees

8. This Amendment binds and benefits the respective successors and assignees of the Parties.

Amendments Waivers and Consents

9. Any amendment or waiver of, or any consent given under, any provision of this Amendment shall be in writing and, in the case of an amendment, signed by the Parties.

Counterparts

10. This Amendment may be executed in one or more counterparts, each of which will be an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the date first written above.

CHRISTOPHER CLINE

Christopher Cline

TROUT COAL HOLDINGS, LLC

By: Timothy Elliott
Name: Timothy Elliott
Title: Managing Member

TROUT COAL HOLDINGS II, LLC

By: Timothy Elliott
Name: Timothy Elliott
Title: Managing Member

PANTHER, LLC

By: Timothy Elliott
Name: Timothy Elliott
Title: Manager

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager

By: Robb E. Turner
Name: Robb E. Turner
Title: Senior Partner

TIMOTHY ELLIOTT

Timothy Elliott

EXHIBIT B

EXECUTION COPY

Dated as of December 30, 2003

TROUT COAL HOLDINGS, LLC

CHRISTOPHER CLINE

**WILDCAT ADJACENT RESERVES AND
ROYALTY PAYMENT AGREEMENT**



FRESHFIELDS BRUCKHAUS DERINGER LLP

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EXECUTION COPY

WILDCAT ADJACENT RESERVES AND
ROYALTY PAYMENT AGREEMENT

THIS AGREEMENT dated as of December 30, 2003 (as such may be hereafter amended, modified or supplemented from time to time, this *Agreement*) by and among TROUT COAL HOLDINGS, LLC (*Trout*), a Delaware limited liability company and MR. CHRISTOPHER CLINE, a resident of the State of Florida (*Cline*, and, together with Trout, the *Parties*).

WHEREAS

- (A) ArcLight Energy Partners Fund I, L.P. (*ArcLight*) and Mr. Timothy Elliott (*Elliott*) are the members of Trout;
- (B) Trout indirectly owns, through Brook Trout LLC, 100% of the membership interests in Wildcat LLC (*Wildcat*), which operates the Wildcat Mine (as defined in the Redemption Agreement referred to below);
- (C) On December 19, 2002, Cline and Trout entered into a Redemption Agreement (the *Redemption Agreement*) with ArcLight and Elliott, pursuant to which Cline agreed to retire, and Trout agreed to redeem from Cline, all of Cline's right, title and interest in his ownership interests in Trout, on the terms provided in the Redemption Agreement;
- (D) Cline may in the future acquire leases relating to coal reserves (the *Wildcat Adjacent Reserves*) that are adjacent to the REDACTED (as defined in the Redemption Agreement);
- (E) As part of the consideration for the redemption, Trout requested that Cline, and Cline agreed to grant to Trout, the options provided for in the Purchase Option Agreement dated as of December 19, 2002 (the *Purchase Option Agreement*) which include the option to purchase Wildcat Adjacent Reserves and certain other reserves that have been purchased;
- (F) Following the purchase by Remington Holdings, LLC (*Remington Holdings*) and Rainbow Trout Coal, LLC (*Rainbow Trout*) of certain entities from Cline pursuant to a Purchase and Sale Agreement dated as of July 3, 2003 (the *Purchase Agreement*), Cline issued to Trout certain purchase options in addition to those provided for in the Purchase Option Agreement pursuant to the Amended and Restated Purchase Option Agreement dated as of July 3, 2003 (the *Amended and Restated Purchase Option Agreement*);
- (G) In connection with the transactions contemplated by the Note Purchase Agreement dated as of the date hereof (the *Note Agreement*) between Trout, Dakota LLC and the Purchasers party thereto, Trout wishes to transfer after the date hereof all its membership interests in Wildcat to Trout Coal Holdings III (*Trout III*), a newly formed Delaware limited liability company to be owned by ArcLight and Elliott, and in connection with such transfer

of membership interests, transfer the purchase option with regards to the Wildcat Adjacent Reserves to Trout III (the *Transfer*), subject to the provisions of the Note Agreement;

(H) In anticipation of the Transfer, Trout wishes to amend and restate the Amended and Restated Purchase Option Agreement as of the date hereof (the *Second Amended and Restated Purchase Option Agreement*) to remove the option to purchase the Wildcat Adjacent Reserves from such Second Amended and Restated Purchase Option Agreement;

(I) Consent must be obtained from a certain lessor in order to execute the Transfer, and until such consent is obtained, Trout wishes, and Cline agrees, to reissue the option to purchase the Wildcat Adjacent Reserves to Trout pursuant to this Agreement in anticipation of the Transfer; and

(J) Trout wishes to provide for Cline to be paid royalties with respect to the mining associated with the **REDACTED** on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. INTERPRETATION

Definitions

1.1 Capitalized terms used and not defined herein shall have the meaning set forth in the Redemption Agreement. In addition, as used herein, the following capitalized terms have the following meanings:

ArcLight has the meaning assigned to that term in the recitals.

Cline has the meaning assigned to that term in the preamble.

Discount Offer has the meaning assigned to that term in Section 2.3

Offer has the meaning assigned to that term in Section 2.2.

Option has the meaning assigned to that term in Section 2.1.

Potential Buyer has the meaning assigned to that term in Section 2.3

Proceedings has the meaning assigned to that term in Section 4.10(a).

Trout has the meaning assigned to that term in the preamble.

Trout III has the meaning assigned to that term in the recitals.

Wildcat has the meaning assigned to that term in the recitals.

Wildcat Adjacent Reserves has the meaning assigned to that term in the recitals.

Wildcat Adjacent Reserves Royalty means the amount payable by Trout to Cline in respect of the Wildcat Adjacent Reserves, equal to REDACTED
REDACTED

Rules of Construction

1.2 Unless the context otherwise clearly requires:

- (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;
- (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
- (c) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";
- (d) the word "will" shall be construed to have the same meaning and effect as the word "shall";
- (e) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as, from time to time, is amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);
- (f) any reference herein to any entity shall be construed to include such entity's successors and assigns;
- (g) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;
- (h) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Agreement unless otherwise indicated; and
- (i) the headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

2. ADJACENT RESERVES OPTION AND ROYALTY PAYMENT

Grant to Wildcat of the Adjacent Reserves Option

2.1 In consideration of the payment of the Basic Compensation under the Redemption Agreement to Cline, Cline hereby irrevocably and unconditionally grants to Trout the right, but not the obligation, to purchase all or part of the Wildcat Adjacent Reserves offered to Trout by Cline pursuant to the terms of Section 2.2 or Section 2.3 below (the **Option**); **provided** that (a) any exercise of the Option shall be subject to Section 2.2 or Section 2.3, as applicable, and Section 2.4, (b) Trout shall not have any obligation to exercise the Option with respect to any Wildcat Adjacent Reserves if such Wildcat Adjacent Reserves or the manner of contribution thereof to Trout are not satisfactory to ArcLight and (c) with respect to any Wildcat Adjacent Reserves, all payments by Trout to Cline with respect to such Wildcat Adjacent Reserves shall be payable solely out of cash flow from Trout arising out of the operations of Wildcat, which cash flow is otherwise available to Trout's members and therefore subordinate to payments of the senior indebtedness of Trout and its respective direct and indirect subsidiaries.

2.2 If, at any time, Cline directly or indirectly acquires ownership rights to any Wildcat Adjacent Reserves, then Cline shall make a *bona fide* written offer (the **Offer**) to Trout to sell to Trout all of his interests (or cause the entity that has acquired such interests) in such Wildcat Adjacent Reserves for a purchase price equal to the Wildcat Adjacent Reserves Royalty. Trout shall then have 14 days to give notice to Cline that it wishes to purchase such Wildcat Adjacent Reserves pursuant to the Offer. Such notice from Trout will state a closing date no later than 45 days after the date of the Offer. If Trout (a) does not give such notice within the 14-day period following the Offer or (b) does give such notice but fails to close the sale within the time period stated within the immediately preceding sentence, then Cline may, no later than 365 days after the Offer, sell such Wildcat Adjacent Reserves to one or more purchasers, **provided** that Cline sell such Wildcat Adjacent Reserves to such purchasers for a purchase price no less than **REDACTED** per clean ton of coal mined from such Wildcat Adjacent Reserves from the date of transfer to such purchasers.

Right of First Refusal

2.3 If at any time after Trout has failed to accept the Offer relating to any Wildcat Adjacent Reserves as provided above, Cline thereafter receives a *bona fide* offer to purchase any of the Wildcat Adjacent Reserves for a purchase price less than **REDACTED** per clean ton of coal mined from such Wildcat Adjacent Reserves from the date of transfer of such Wildcat Adjacent Reserves to the purchaser (a **Discount Offer**) and Cline intends to accept such Discount Offer, then Cline shall give written notice to Trout of his intention to sell such Wildcat Adjacent Reserves pursuant to such Discount Offer, including (a) the identity of the proposed purchaser (the **Potential Buyer**), (b) the proposed purchase price and (c) the other material terms and conditions of such Discount Offer. Trout shall have 14 days to give notice to Cline that Trout wishes to purchase such Wildcat Adjacent Reserves at the price and on the terms and conditions set forth in such Discount Offer (other than with respect to

the payment terms, which shall be in accordance with the last sentence of Section 2.4). Such notice from Trout shall state a closing date no later than 45 days after the date it received written notice of such Discount Offer. If Trout (x) does not give such notice within the 14-day period following its receipt of written notice such Discount Offer or (y) does give such notice but fails to close the sale within the time period stated within the immediately preceding sentence, then Cline may, no later than 365 days after Trout's receipt of notice of such Discount Offer, sell such Wildcat Adjacent Reserves to the Potential Buyer pursuant to the terms and conditions of such Discount Offer.

2.4 If Trout shall have elected to exercise the Option with respect to any of the Wildcat Adjacent Reserves by delivering or causing to be delivered to Cline (x) notice to Cline that Trout wishes to purchase such Wildcat Adjacent Reserves pursuant to the Offer pursuant to Section 2.2 or (y) notice to Cline that Trout wishes to purchase such Wildcat Adjacent Reserves at the price and on the terms and conditions set forth in such Discount Offer pursuant to Section 2.3, **provided that**:

- (a) Trout shall not have rescinded such election by notice to Cline;
- (b) Trout shall be satisfied with the results of due diligence performed with respect to such Wildcat Adjacent Reserves; and
- (c) the manner of contribution of such Wildcat Adjacent Reserves and the documentation to give effect thereto are satisfactory in form and substance to Trout, as the case may be, and Cline (including, without limitation, with respect to the representations by Cline as to such Wildcat Adjacent Reserves),

then on the closing date that is mutually acceptable to Trout and Cline at the offices of Trout set forth in Section 4.2 or such other location as may be selected by Trout and be reasonably acceptable to it, Cline will assign and transfer to Trout all of Cline's right, title and interest in such Wildcat Adjacent Reserves in exchange for payment of the Wildcat Adjacent Reserves Royalty. The Wildcat Adjacent Reserves Royalty shall be payable by Trout to Cline in quarterly installments until paid in full, beginning after the closing date referred to in this Section 2.4 on the first date on which Trout and/or any of its subsidiaries sells clean coal (irrespective of whether such coal is mined from the Adjacent Reserves). Each quarterly payment shall be at a rate of **RED ACTED** of the per ton price reflected in the Offer or the Discount Offer, as the case may be, payable with respect to each ton of clean coal sold by Trout and/or Wildcat during the then immediately preceding quarter.

2.5 Trout shall pay Cline **RED ACTED** per ton for every ton of clean coal mined from the Wildcat Mine other than Wildcat Adjacent Reserves (for which Trout shall pay the Wildcat Adjacent Reserves Royalty). All payments by Trout to Cline with respect to this Section 2.5 shall be payable in quarterly installments until paid in full. Each quarterly payment shall be paid solely out of cash flow from Trout arising out of the operations of Wildcat, which cash flow is otherwise available to Trout's members and therefore subordinate to payments of the senior indebtedness of Trout and its respective direct and indirect subsidiaries at a rate of

REDACTED per ton of clean coal mined from the Wildcat Mine. The obligation to make payments under this Section 2.5 (a) will continue until the payment in full of all royalties owed to Cline in respect of Reserves set forth in Schedules A, B and C of the Second Amended and Restated Purchase Option Agreement and (b) when added to the obligations to Cline in respect of the Reserves listed on said Schedules pursuant to the Second Amended and Restated Purchase Option Agreement shall not exceed the sum of the Additional Swap II Reserves Royalty and the Scheduled Reserves Royalty for the tons reflected on said Schedules.

2.6 Upon assignment of the Option to Trout III or any other entity in accordance with Section 4.8, Trout will be released from all further obligations or liabilities with respect to the Option or its exercise of the Option, including the obligation to purchase the Wildcat Adjacent Reserves and the obligation to pay the Wildcat Adjacent Reserves Royalty. All references to Trout in this Agreement shall thereafter be references to Trout III or such other entity.

3. REPRESENTATIONS AND WARRANTIES

Representations and Warranties of Cline

3.1 Cline represents and warrants to Trout as of the date hereof as follows:

- (a) He is domiciled in Martin County, Florida, and he has not made any election for his estate to be governed on his death by a law other than the law of the jurisdiction where he is domiciled.
- (b) He is *sui juris* and of full capacity to execute this Agreement and any other documentation relating to this Agreement to which he is a party, to deliver this Agreement and any other documentation relating to this Agreement that he is required by this Agreement to deliver and to perform his obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance; and this Agreement has been, and each other such document will be, duly executed and delivered by him.
- (c) Such execution, delivery and performance do not and will not violate or conflict with any law applicable to him or his assets, any order or judgment of any court or other agency of government applicable to him or any of his assets or any contractual restriction binding on or affecting him or any of his assets.
- (d) All governmental and other consents that are required to have been obtained by him with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (e) This Agreement constitutes his legal, valid and binding obligation, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization,

insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

- (f) There is not pending or, to his knowledge, threatened against him or any of his Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against him of this Agreement or his ability to perform his obligations under this Agreement.

Representations and Warranties of Trout

3.2 Trout represents and warrants to Cline as of the date hereof as follows:

- (a) It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance; and this Agreement has been, and each other such document will be, duly executed and delivered by it.
- (b) Such execution, delivery and performance do not and will not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (c) All governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (d) This Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (e) There is not pending or, to its knowledge, threatened against it or any of its affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.

4. MISCELLANEOUS

No Waivers

4.1 A failure or delay in exercising any right, power or privilege in respect of this Agreement will not operate as a waiver, and a single or partial exercise of any right, power or privilege will not preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege. The remedies provided herein and in any other agreement or instrument referred to herein or delivered in connection herewith are cumulative, are not exclusive of any remedies provided by law and may be exercised by a party from time to time.

Notices

4.2 All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally or by facsimile transmission or mailed (first class postage prepaid) to the parties at the following addresses or facsimile numbers:

(a) in the case of Trout, to:

Trout Coal Holdings, LLC
106 Lockheed Drive
Beaver, WV 25813

(b) in the case of Cline, to:

Mr. Christopher Cline
c/o Cline Resource and Development Company
430 Harper Park Drive, Suite A
Beckley, WV 25801
Facsimile: (304) 255-4908

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section, be deemed given upon receipt, and (iii) if delivered by mail in the manner described above to the address as provided in this Section, be deemed given upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Section). Any Party from time to time may change its address, facsimile number or other information for the purpose of notices to that Party by giving notice specifying such change to the other Parties hereto.

Entire Agreement

4.3 This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof and thereof and contain the sole and entire agreement between the parties hereto with respect to the subject matter hereof and thereof.

Expenses/Payments

- 4.4 (a) Each of the parties to this Agreement will bear such costs and expenses (including legal and tax advisory fees) incurred in connection with the negotiation, preparation and execution of this Agreement and the completion of the transactions herein contemplated. Each of the parties hereto will bear its own costs and expenses incurred in connection with any amendment or supplement to or other modification of this Agreement.
- (b) If a Party defaults in the performance of any of its obligations under this Agreement, it will, on demand, indemnify and hold harmless the non-defaulting Party for and against all reasonable out-of-pocket expenses, including reasonable legal fees, incurred by the non-defaulting Party by reason of the enforcement and protection of its rights under this Agreement, including, but not limited to, costs of collection.

Amendment

4.5 This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

Benefit of Agreement

4.6 This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their successors and permitted assigns. No Person other than the parties hereto shall have any rights under or be entitled to rely upon this Agreement.

Severability

4.7 If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

Assignment; Binding Effect

4.8 Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Parties hereto and any

attempt to do so will be void, except (a) for assignments and transfers by operation of Law and (b) Trout may assign any or all of its respective rights, interests and obligations hereunder to (i) a wholly-owned Subsidiary, provided that any such Subsidiary agrees in writing to be bound by all of the terms, conditions and provisions contained herein, (ii) Trout III or any other entity owned directly or indirectly by ArcLight and Elliott or (iii) any financial institution providing purchase money or other financing to ArcLight, Trout or the direct or indirect subsidiaries of Trout, from time to time as collateral security for such financing, but no such assignment shall relieve Trout of its obligations hereunder. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

Governing Law

4.9 This Agreement shall be construed in accordance with, and this Agreement and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Agreement shall be governed by, the law of the State of New York.

Jurisdiction; Service of Process; Waiver of Immunities

4.10 (a) With respect to any suit, action or proceedings relating to this Agreement (*Proceedings*), Cline irrevocably:

- (i) submits to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan and of the United States District Court for the Southern District of New York, and any appellate court therefrom; and
- (ii) waives any objection which he may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over Cline.

Nothing in this Agreement precludes a Party from bringing Proceedings in any other jurisdiction, nor will the bringing of Proceedings by a Party in any one or more jurisdictions preclude the bringing of Proceedings by a Party in any other jurisdiction. Cline hereby agrees that a final judgment in any such Proceedings shall be conclusive and may be enforced in other jurisdictions otherwise having jurisdiction over Cline by suit on such final judgment or in any other manner provided by law.

- (b) Cline hereby agrees that service of process in any Proceeding may be effected by mailing a copy thereof by registered or certified mail or by overnight courier service, postage prepaid, to it at its address specified in Section 4.2. Nothing in this Agreement will affect the right of a Party to serve process in any other manner permitted by law.

Counterparts

4.11 This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Waiver of Trial by Jury

4.12 EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

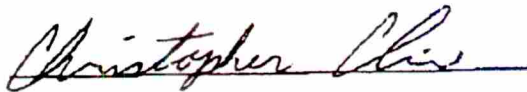
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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized respective officers or directors as of the day and year first above written.

CHRISTOPHER CLINE



TROUT COAL HOLDINGS, LLC

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager

By: _____
Name:
Title:

TIMOTHY ELLIOTT

Wildcat Adjacent Reserves Agreement Signature Page

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized respective officers or directors as of the day and year first above written.

CHRISTOPHER CLINE

TROUT COAL HOLDINGS, LLC

By: Timothy Elliott
Name: Timothy Elliott
Title: Managing Member

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager

By: _____
Name:
Title:

TIMOTHY ELLIOTT

Timothy Elliott

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized respective officers or directors as of the day and year first above written.

CHRISTOPHER CLINE

TROUT COAL HOLDINGS, LLC


By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager

By: 
Name:
Title:

TIMOTHY ELLIOTT

**AMENDMENT NO. 1 TO THE WILDCAT ADJACENT RESERVES
AND ROYALTY PAYMENT AGREEMENT**

AMENDMENT NO. 1 dated as of March 21, 2005 (this *Amendment*) to the **WILDCAT ADJACENT RESERVES AND ROYALTY PAYMENT AGREEMENT** dated as of December 30, 2003 (as amended, amended and restated or otherwise modified and in effect from time to time, the *Agreement*) by and among **TROUT COAL HOLDINGS, LLC**, a Delaware limited liability company (*Trout*) and **MR. CHRISTOPHER CLINE**, a resident of the State of Florida (*Cline*, and, together with Trout, the *Parties*).

WHEREAS, the Parties desire to amend the Agreement under the terms and conditions described herein;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

Definitions and Interpretation

1.1 Terms used but not defined herein have the meanings given to such terms in the Agreement.

Amendment and Agreement

2. Subject to the execution and delivery of this Amendment by each party hereto, but with effect on and after the date hereof, the Agreement is amended as follows:

2.1 Section 1.1 is amended to add the following definition in its appropriate alphabetical location:

"Scheduled Royalty means the royalties (if any) payable to Cline by Trout pursuant to Section 2.5 of the Agreement."

2.1 Clause (c) of the proviso in Section 2.1 is amended to read in its entirety as follows:

"with respect to any Wildcat Adjacent Reserves, all payments by Trout to Cline with respect to such Wildcat Adjacent Reserves shall be payable solely out of cash flow from Trout arising out of the operations of Wildcat. Such payments shall be made at the same level of priority as operating expenses of Trout."

2.2 The third sentence of Section 2.5 is amended to read in its entirety as follows:

"Each quarterly payment shall be paid solely out of cash flow from Trout arising out of the operations of Wildcat, at a rate of REDA per ton of clean coal mined from the Wildcat Mine. Such payments shall be made at the same level of priority as operating expenses of Trout."

2.3 A new Section 2.3 is added to read as follows:

"Overdue Interest

2.3 Trout agrees to pay interest to Cline in respect of any Wildcat Adjacent Reserves Royalty and the Scheduled Royalty in each case to the extent the same shall not have been paid within 30 days after the date when due under the terms of this Agreement, at a rate per annum equal to REDACTED

REDACTED

2.4 Section 4.8 is amended to read in its entirety as follows:

"No Assignment; Binding Effect

4.8 Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Parties hereto and any attempt to do so will be void, except (a) for assignments and transfers by operation of Law, (b) Trout may assign any or all of its rights, interests and obligations hereunder to (i) a wholly-owned direct or indirect subsidiary, provided that any such subsidiary agrees in writing to be bound by all of the terms, conditions and provisions contained herein, or (ii) any financial institution providing purchase money or other financing to ArcLight, Trout or the direct or indirect subsidiaries of Trout, from time to time as collateral security for such financing, but no such assignment shall relieve Trout of its obligations hereunder and (c) Cline may assign his right (if any) to receive the Wildcat Adjacent Reserves Royalty and the Scheduled Royalty together with any overdue interest thereon pursuant to Section 2.3 (the *Royalty Stream*); provided that:

- (i) (A) for so long as ArcLight owns (taking into account both direct and indirect membership), at least 10% of the then outstanding membership interests of Trout, such assignment is made to any of the following assignees:
 - (1) a company that is traded on the New York Stock Exchange other than (x) a coal mining company, (y) a company that owns or controls a coal mining company or a (z) company that is, directly or indirectly, at least 20% owned or controlled by a private equity fund,
 - (2) any company, directly or indirectly, wholly-owned or controlled by Cline,
 - (3) any other person or entity with the prior written consent of Trout (which consent, other than in the case of an assignee that is, directly or indirectly, at least 20% owned or controlled by, a private equity fund, not to be unreasonably withheld or delayed), or

(4) if otherwise not permitted pursuant to clauses (x), (y) or (z) above, Resource Capital Funds or an entity controlled by Resource Capital Funds or any affiliate thereof, **provided that** Resource Capital Funds and such assignee (if other than Resource Capital Funds) shall agree not to invest in a coal mining company or coal mining operation in West Virginia for at least three years from the date of the relevant assignment; and

(B) if ArcLight ceases to own (taking into account both direct and indirect membership), at least 10% of the then outstanding membership interests of Trout, such assignment is made to any Person other than any then existing landlord of Trout or any of its affiliates or to any company engaged in the coal mining business.

Any assignee permitted pursuant to clauses (A) or (B) shall be referred to as a *Permitted Assignee*.

(ii) such assignee shall have entered into a confidentiality agreement with Trout in form and substance reasonably satisfactory to Trout,

(iii) such assignee shall not be permitted to further assign the Royalty Stream without the prior written consent of Trout, and

(iv) prior to making such assignment, Cline shall have offered Trout the right to purchase the Royalty Stream on the same terms as the proposed assignee is willing to purchase the Royalty Stream from Cline, and Trout shall have rejected such offer in writing.

Trout agrees, in connection with any permitted assignment of the Royalty Stream, that it will afford the assignee thereof, during normal business hours, reasonable access to the financial information prepared by its auditors relating to its financial performance for purposes of confirming the amounts due to such assignee under this Agreement. In addition, Trout will provide such assignee with such appropriate financial information as it has heretofore been providing to Cline for the purpose of assessing the accuracy of payment of the Royalty Stream payable by it. Promptly after consummation of a permitted assignment as described above, Cline agrees to notify Trout of the name, address, fax and other contact details of any permitted assignee.

At any time and from time to time prior to the assignment by Cline of the Royalty Stream, Trout agrees to provide to Cline, promptly upon his request, a certification as to the amounts theretofore paid by it to Cline in respect of the Royalty Stream.

Any assignment made in violation of the provisions of this Section 4.8 shall be void *ab initio* and without effect."

Agreement Otherwise Unchanged

3. Except as herein provided, the Agreement shall remain unchanged and in full force and effect, and each reference to "the Agreement" and words of similar import in the Agreement, as amended hereby, shall be a reference to the Agreement as amended hereby and as the same may be further amended, supplemented and otherwise modified and in effect from time to time.

Representations

4. Each party hereto represents and warrants to each other party that (a) it is duly authorized to execute and deliver this Amendment and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (b) the person signing this Amendment on its behalf is duly authorized to do so on its behalf; (c) it has obtained all authorizations of any governmental body required in connection with this Amendment and the transactions contemplated hereby and such authorizations are in full force and effect; and (d) the execution, delivery and performance of this Amendment and the transactions contemplated hereby will not violate any law, ordinance, charter, by-law or rule applicable to it or any other agreement by which it is bound or by which any of its assets are affected.

Notices

5. Any notice, request or other communication to be given or made under this Amendment shall be given as provided in Section 4.2 of the Agreement.

Term of Agreement

6. This Amendment shall continue in force so long as the Agreement shall remain in force.

Governing Law; Waiver of Jury Trial

7. The terms of Section 4.10 and 4.12 of the Agreement are incorporated by reference into this Amendment as if they were set out *in extenso* herein.

Successors and Assignees

8. This Amendment binds and benefits the respective successors and assignees of the Parties.

Amendments Waivers and Consents

9. Any amendment or waiver of, or any consent given under, any provision of this Amendment shall be in writing and, in the case of an amendment, signed by the Parties.

Counterparts

10. This Amendment may be executed in one or more counterparts, each of which will be an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the date first written above.

CHRISTOPHER CLINE

Christopher Cline

TROUT COAL HOLDINGS, LLC

By: Timothy Elliott
Name: Timothy Elliott
Title: Managing Member

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager


By: Robb E. Turner
Name: Robb E. Turner
Title: Senior Partner

TIMOTHY ELLIOTT

Timothy Elliott

EXHIBITS C - E – Filed Under Seal

EXHIBIT F


Magnum Coal Company, a Delaware corporation
500 Lee Street, E, Suite 900, Charleston, WV 25301

RoyaltyCo, LLC
c/o ArcLight Capital Partners
200 Clarendon Street, 55th Floor
Boston, MA 02117

March 4, 2008

Dear Sirs:

Clarification of Royalty Agreements

Reference is made to:

- (a) the Wildcat Adjacent Reserves and Royalty Payment Agreement dated as of December 30, 2003 by and between Trout Coal Holdings, LLC (*Trout*) and Christopher Cline (*Cline*), as amended by Amendment No. 1 to the Wildcat Adjacent Reserves and Royalty Payment Agreement dated as of March 21, 2005 (the *Wildcat Agreement*);
- (b) the Second Amended and Restated Purchase Option Agreement dated as of December 30, 2003 by and between Trout Coal Holdings, LLC, Trout Coal Holdings II, LLC (*Trout II*), Panther LLC and Cline, as amended by Amendment No. 1 to the Second Amended and Restated Purchase Option Agreement dated as of March 21, 2005 (the *Purchase Option Agreement*);
- (c) the Royalty Contribution Agreement dated as of December 14, 2006 (the *Royalty Contribution Agreement*) by and among Trout II and Cline;
- (d) the Assignment Agreement dated as of December 28, 2006 (the *Assignment Agreement*) by and between Trout II and RoyaltyCo, LLC (*RoyaltyCo*); and

- (e) the Assignment and Bill of Sale of Royalty dated as of January 4, 2007 (*Bill of Sale*) by and between RoyaltyCo, and Cline.

Capitalized terms used herein have the meanings ascribed to such terms in the Wildcat Agreement and the Purchase Option Agreement. In addition, *Magnum* shall mean Magnum Coal Company, a Delaware corporation.

Pursuant to the Purchase Option Agreement and the Wildcat Agreement, Cline is entitled to the payment of the Royalty Stream, as such term is defined in Section 4.8 of the Wildcat Agreement and as such term is defined in Section 6.8 of the Purchase Option Agreement. Pursuant to the Royalty Contribution Agreement, Cline agreed to assign all of his right, title and interest in and to the Royalty Stream to Trout II or a designee of Trout II. Trout II assigned its right to purchase the Royalty Stream to RoyaltyCo under the Assignment Agreement and notified Cline that RoyaltyCo was its designee for purposes of purchasing the Royalty Stream. The Bill of Sale gave effect to the sale of the Royalty Stream from Cline to RoyaltyCo.

To avoid any confusion regarding the payment terms of the Royalty Stream, the purpose of this letter is to clarify the following:

1. RoyaltyCo has been since January 4, 2007, and shall continue to be (except to the extent of an assignment by RoyaltyCo to another person or entity), the sole payee of the Royalty Stream; and all payments in respect of the Royalty Stream since January 7, 2007 have been made to RoyaltyCo.
2. The aggregate unpaid amount (or gross recoupable balance) of the Royalty Stream as of January 31, 2008, is approximately **REDACTED**
3. Prior to the assignment to RoyaltyCo, payments in respect of the Royalty Stream were made to Cline by Magnum. All payments of the Royalty Stream have been, and shall continue to be, made to RoyaltyCo by Magnum rather than by Trout, Trout II or any other Subsidiary thereof.
4. The gross recoupable balance of the Royalty Stream indicated in paragraph 2 above shall be payable on the 25th day of each month as follows until paid in full:
REDACTED
5. The Royalty Stream has been, and shall continue to be, treated as an operating expense of Magnum and not subordinated to debt service or be subject to any

restricted payments or similar tests under any credit agreement (or similar agreement) to which Magnum or any of its Subsidiaries is a party.

6. Magnum agrees to pay interest to RoyaltyCo in respect of overdue payments of the Royalty Stream on the same basis as was applicable to Cline when he owned the Royalty Stream, to wit, at a rate **REDACTED**

REDACTED

7. Until the amount referred to in Section 2 above is indefeasibly paid in full, Magnum shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, sell, transfer, lease or otherwise dispose of any of its ownership interests in any of the Specified Subsidiaries or any of such Specified Subsidiary's owned or leased coal reserves (other than the sale of coal in the ordinary course of business), without in each case the prior written consent of RoyaltyCo., which consent shall not be unreasonably withheld, delayed or conditioned.
8. This letter agreement may not be amended or otherwise modified except in writing signed by the parties hereto. This letter agreement shall be construed in accordance with, and this letter and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this letter shall be governed by, the law of the State of New York. This letter agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to each of the other parties. **EACH OF THE PARTIES HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS LETTER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**
9. Neither this letter agreement nor any right, interest or obligation hereunder may be assigned by any party hereto without the prior written consent of the other parties hereto, except that RoyaltyCo may, at its discretion, at any time sell, assign (including, without limitation, as collateral security), or otherwise transfer any or all of its right, title and interest in and to the Royalty Stream (and all rights related thereto) to any Person. RoyaltyCo shall promptly thereafter provide written notice to Magnum indicating the name and address and payment details of such Person.

10. Magnum agrees that it will continue to afford RoyaltyCo (as it had Cline) or any assignee thereof with respect to the Royalty Stream, during normal business hours, reasonable access to the financial information prepared by its auditors relating to its financial performance for purposes of confirming the amounts due to such Permitted Assignee under this Agreement. In addition, Magnum will provide RoyaltyCo or such assignee with such other financial information as it had been providing to Cline for the purpose of assessing the accuracy of payment of the Royalty Stream payable by it..

11. The provisions of Sections 6.1, 6.2 (except the addresses for notices shall be as set forth on the signature pages hereto), 6.5, 6.6, 6.7, 6.10 (except that references to Cline shall instead be references to the parties hereto) and 6.12 of the Purchase Option Agreement, as amended from time to time, are hereby incorporated by reference *mutatis mutandis*.

Please acknowledge that the foregoing reflects your agreement and understanding.

Yours sincerely,

MAGNUM COAL COMPANY

By: B. Scott Spears
Name: B. SCOTT SPEARS
Title: VP & TREASURER

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

TROUT COAL HOLDINGS, LLC

By: B. Scott Spears
Name: B. SCOTT SPEARS
Title: VP & TREASURER

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

NEW TROUT COAL HOLDINGS II, LLC

By: B. Scott Spears
Name: B. Scott Spears
Title: VP & TREASURER

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

PANTHER, LLC

By: B. Scott Spears
Name: B. Scott Spears
Title: VP & TREASURER

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

Acknowledged and agreed:

ROYALTYCO, LLC

By: _____
Name:
Title:

Address for Notices:

c/o ArcLight Capital Partners
200 Clarendon Street, 55th Floor
Boston, MA 02117

NEW TROUT COAL HOLDINGS II, LLC

By: _____

Name:

Title:

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

PANTHER, LLC

By: _____

Name:

Title:

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

Acknowledged and agreed:

ROYALTYCO, LLC

By:  _____

Name: Daniel R. Revers

Title: President

Address for Notices:

c/o ArcLight Capital Partners
200 Clarendon Street, 55th Floor
Boston, MA 02117

REDACTED

Execution Copy

RoyaltyCo, LLC
c/o ArcLight Capital Partners
200 Clarendon Street, 55th Floor
Boston, MA 02117

March 26, 2008

Dear Sirs:

Amended and Restated Royalty Clarification Letter Agreement

Reference is made to:

- (a) the Wildcat Adjacent Reserves and Royalty Payment Agreement dated as of December 30, 2003 by and between Trout Coal Holdings, LLC (*Trout*) and Christopher Cline (*Cline*), as amended by Amendment No. 1 to the Wildcat Adjacent Reserves and Royalty Payment Agreement dated as of March 21, 2005 (the *Wildcat Agreement*);
- (b) the Second Amended and Restated Purchase Option Agreement dated as of December 30, 2003 by and between Trout Coal Holdings, LLC, Trout Coal Holdings II, LLC (*Trout II*), Panther LLC and Cline, as amended by Amendment No. 1 to the Second Amended and Restated Purchase Option Agreement dated as of March 21, 2005 (the *Purchase Option Agreement*);
- (c) the Royalty Contribution Agreement dated as of December 14, 2006 (the *Royalty Contribution Agreement*) by and among Trout II and Cline;
- (d) the Assignment Agreement dated as of December 28, 2006 (the *Assignment Agreement*) by and between Trout II and RoyaltyCo, LLC (*RoyaltyCo*);
- (e) the Assignment and Bill of Sale of Royalty dated as of January 4, 2007 (*Bill of Sale*) by and between RoyaltyCo, and Cline; and
- (f) the Letter Agreement dated March 4, 2008 (the *Royalty Clarification Letter Agreement*) by and among the parties hereto.

Capitalized terms used herein have the meanings ascribed to such terms in the Wildcat Agreement and the Purchase Option Agreement. In addition, *Magnum* shall mean Magnum Coal Company, a Delaware corporation. This letter agreement amends, restates and replaces in its entirety the Royalty Clarification Letter Agreement.

Pursuant to the Purchase Option Agreement and the Wildcat Agreement, Cline is entitled to the payment of the Royalty Stream, as such term is defined in Section 4.8 of the Wildcat Agreement and as such term is defined in Section 6.8 of the Purchase Option Agreement. Pursuant to the Royalty Contribution Agreement, Cline agreed to assign all of his right, title and interest in and to the Royalty Stream to Trout II or a designee of Trout II. Trout II assigned its right to purchase the Royalty Stream to RoyaltyCo under the Assignment Agreement and notified Cline that RoyaltyCo was its designee for purposes of purchasing the Royalty Stream. The Bill of Sale gave effect to the sale of the Royalty Stream from Cline to RoyaltyCo.

To avoid any confusion regarding the payment terms of the Royalty Stream, the purpose of this letter agreement is to clarify the following:

1. RoyaltyCo has been since January 4, 2007, and shall continue to be (except to the extent of an assignment by RoyaltyCo to another person or entity), the sole payee of the Royalty Stream; and all payments in respect of the Royalty Stream since January 7, 2007 have been made to RoyaltyCo.
2. The aggregate unpaid amount (or gross recoupable balance) of the Royalty Stream as of January 31, 2008, is approximately REDACTED
3. Prior to the assignment to RoyaltyCo, payments in respect of the Royalty Stream were made to Cline by Magnum. All payments of the Royalty Stream have been, and shall continue to be, made to RoyaltyCo by Magnum rather than by Trout, Trout II or any other Subsidiary thereof.
4. The gross recoupable balance of the Royalty Stream indicated in paragraph 2 above shall be payable on the 25th day of each month as follows until paid in full: REDACTED
5. The Royalty Stream has been, and shall continue to be, treated as an operating expense of Magnum and not subordinated to debt service or be subject to any restricted payments or similar tests under any credit agreement (or similar agreement) to which Magnum or any of its Subsidiaries is a party.
6. Magnum agrees to pay interest to RoyaltyCo in respect of overdue payments of the Royalty Stream on the same basis as was applicable to Cline when he owned the Royalty Stream, to wit, at a rate per annum equal to REDACTED

REDACTED

7. Until the amount referred to in Section 2 above is indefeasibly paid in full, Magnum shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, sell, transfer, lease or otherwise dispose (each, a *Transfer*) of any of its ownership interests in any of the Specified Subsidiaries or any of such Specified Subsidiary's owned or leased coal reserves (other than the sale of coal in the ordinary course of business), without in each case the prior written consent of RoyaltyCo, which consent shall not be unreasonably withheld, delayed or conditioned; provided that if that certain agreement and plan of merger (the *Merger Agreement*) proposed to be entered into by and among Magnum, Patriot Coal Corporation (*Patriot*), Colt Merger Corporation, a wholly-owned subsidiary of Patriot, and ArcLight Energy Partners Fund I, L.P. and ArcLight Energy Partners Fund II, L.P., acting jointly, as stockholder representative, is entered into, no such consent shall be required in connection with any Transfer made on or after the Effective Time under and as defined in the Merger Agreement if (a) Magnum has provided reasonable prior written notice of the Transfer to RoyaltyCo (including, without limitation, the identity of the transferee and the ownership interests and/or coal reserves being transferred (the *Relevant Properties*)), (b) the transferee of the Relevant Properties has unconditionally agreed with RoyaltyCo in writing (i) to pay to RoyaltyCo the portion of the Royalty Stream that relates to the Relevant Properties on the same terms set forth in the Purchase Option Agreement and the Wildcat Agreement, as clarified by this letter agreement, (ii) to provide such information (or access to such information, as the case may be) from time to time to RoyaltyCo relating to the Relevant Properties as described in Section 10 below and (iii) not to Transfer the Relevant Properties without the transferee thereof agreeing in writing to be bound by the terms and conditions of this letter agreement insofar as they relate to the Relevant Properties and (c) Patriot has entered into an unconditional guarantee of payment of the obligations of such transferee under this letter agreement in favor of RoyaltyCo and a provided a legal opinion relating thereto, in each case in form and substance reasonably satisfactory to RoyaltyCo.
8. This letter agreement may not be amended or otherwise modified except in writing signed by the parties hereto. This letter agreement shall be construed in accordance with, and this letter and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this letter shall be governed by, the law of the State of New York. This letter agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts

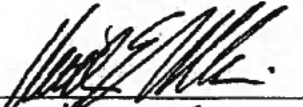
have been signed by each of the parties and delivered to each of the other parties. **EACH OF THE PARTIES HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS LETTER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

9. Neither this letter agreement nor any right, interest or obligation hereunder may be assigned by any party hereto without the prior written consent of the other parties hereto, except that RoyaltyCo may, at its discretion, at any time sell, assign (including, without limitation, as collateral security), or otherwise transfer any or all of its right, title and interest in and to the Royalty Stream (and all rights related thereto) to any Person. RoyaltyCo shall promptly thereafter provide written notice to Magnum indicating the name and address and payment details of such Person. All rights and obligations of the parties under this letter agreement shall bind and inure to the benefit of the parties hereto and their respective permitted assigns.
10. Magnum agrees that it will continue to afford RoyaltyCo (as it had Cline) or any assignee thereof with respect to the Royalty Stream, during normal business hours, reasonable access to its coal production information and financial information prepared by its auditors relating to its financial performance for purposes of confirming the amounts due to such Permitted Assignee under this Agreement. In addition, Magnum will provide RoyaltyCo or such assignee with such other financial and coal production information as it had been providing to Cline for the purpose of assessing the accuracy of payment of the Royalty Stream payable by it.
11. The provisions of Sections 6.1, 6.2 (except the addresses for notices shall be as set forth on the signature pages hereto), 6.5, 6.6, 6.7, 6.10 (except that references to Cline shall instead be references to the parties hereto) and 6.12 of the Purchase Option Agreement, as amended from time to time, are hereby incorporated by reference *mutatis mutandis*.

Please acknowledge that the foregoing reflects your agreement and understanding.

Yours sincerely,

MAGNUM COAL COMPANY

By: 
Name: KENNETH STELMA
Title: CFO

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

TROUT COAL HOLDINGS, LLC

By: B. Scott Spears
Name: B. Scott SPEARS
Title: VP & TREASURER

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

NEW TROUT COAL HOLDINGS II, LLC

By: B. Scott Spears
Name: B. Scott SPEARS
Title: VP & TREASURER

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

PANTHER LLC

By: B. Scott Spears
Name: B. Scott SPEARS
Title: VP & TREASURER

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

Acknowledged and agreed:

ROYALTYCO, LLC

By: 

Name: Daniel R. Revers

Title: President

Address for Notices:

c/o ArcLight Capital Partners
200 Clarendon Street, 55th Floor
Boston, MA 02117