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

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11**

**Case No. 12-12900 (SCC)**

**(Jointly Administered)**

**DEBTORS' MOTION FOR AN ORDER (i) CONFIRMING  
THE MASSEY PAYMENT AGREEMENT IS NOT AN  
EXECUTORY CONTRACT OR, ALTERNATIVELY, (ii) APPROVING  
REJECTION OF THE MASSEY PAYMENT AGREEMENT**

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

**Relief Requested**

1. By this motion (the "**Motion**"), the Debtors seek an order in the  
form attached hereto as Exhibit A (i) confirming that the Massey Payment Agreement (as  
defined below) is not an executory contract for purposes of section 365 of title 11 of the

United States Code (the “**Bankruptcy Code**”) and (ii) approving the Debtors’ rejection of the Massey Payment Agreement, effective as of the date of this Motion, to the extent the Massey Payment Agreement is deemed an executory contract.

**Background and Jurisdiction**

2. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the Bankruptcy Code (the “**Petition**”). 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.

3. Contemporaneously with the Petition, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

4. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, which is incorporated herein by reference.

5. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Basis for Relief**

**(A) The Massey Payment Agreement Is Not An Executory Contract Because Massey Has No Further Duty To Perform**

6. The Payment Agreement dated August 31, 2005 (the “**Massey Payment Agreement**” or “**Agreement**”) was executed by and between Boone East Development Co., Performance Coal Company, and New River Energy Corporation, each a subsidiary of Alpha Natural Resources, Inc. (collectively, “**Massey**”), and Eastern Royalty LLC f/k/a Eastern Royalty Corp. (“**ERC**”), a Debtor entity. Attached hereto as Exhibit B is a redacted, true and correct copy of the Massey Payment Agreement and the exhibits attached thereto.

7. The Massey Payment Agreement provided that, upon execution of the Agreement, the Massey entities and ERC would separately execute five independent agreements pursuant to which the Massey entities would transfer their interests in certain West Virginia coal reserves to ERC. Specifically, the Massey entities and ERC entered into four separate Assignment and Assumption Agreements (the “**Assignment Agreements**”) by which Massey irrevocably assigned to ERC its entire interest, right and title to leasehold estates on four separate coal reserves. In the Assignment Agreements, ERC agreed, among other things, to assume Massey’s obligations under the assigned leases. Copies of the Assignment Agreements are attached as Exhibits A through D to the Massey Payment Agreement. One of the Massey entities (Boone East Development Co.) also entered into a lease agreement that provided ERC with coal and mining rights

on a fifth coal reserve in West Virginia (the “**Boone East Lease**”). A copy of the Boone East Lease is attached as Exhibit E to the Massey Payment Agreement.<sup>1</sup>

8. Massey completed its performance under the Agreement once the Assignment Agreements and the Boone East Lease were executed.

9. The Massey Payment Agreement further provides that ERC will make ongoing “tonnage payments” to Massey for each ton of coal that ERC mines and sells from the five coal reserves that are the subject of the separate Assignment Agreements and Boone East Lease. The tonnage payments are commonly referred to as “override” payments in the coal mining industry. The tonnage payments are in addition to the rental payments that ERC makes directly to landowners pursuant to the underlying leases, including the rental payments that ERC pays to Massey under the Boone East Lease.<sup>2</sup>

10. Because the Massey Payment Agreement requires performance only by ERC – i.e., making the override payments to Massey – and requires no ongoing performance by Massey, the Massey Payment Agreement is not an executory contract. *See In re Worldcom, Inc.*, No. 02-13533, 2010 Bankr. LEXIS 1917 (Bankr. S.D.N.Y., June 11, 2010) (“Under the Countryman test, [a] contract is executory if performance is still required by both parties such that failure of either party to perform would excuse the other party’s performance.”). Massey’s performance under the Agreement was complete

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<sup>1</sup> The Debtors reserve the right to assume or reject, as necessary and appropriate, the Assignment Agreements and the Boone East Lease, all of which are distinct agreements that are separate from each other and the Massey Payment Agreement.

<sup>2</sup> In separate agreements entered into contemporaneously with the Massey Payment Agreement, ERC transferred certain coal reserves to Massey, with Massey agreeing to make override payments to ERC based on coal mined and sold from those reserves. Those agreements are wholly separate from the Massey Payment Agreement and do no reference the Massey Payment Agreement in any way. The Debtors reserve the right to assume or reject, as necessary and appropriate, the separate payment agreements entered into with Massey.

when it executed the independent and enforceable Assignment Agreements and Boone East Lease. Thereafter, Massey owed no further duty to perform under the Agreement, whereas ERC remains obligated to make override payments on an ongoing basis, without a termination date.<sup>3</sup>

11. Courts routinely conclude that agreements that provide solely for unilateral payment obligations, like the Massey Payment Agreement, are not executory contracts. *See In re Calpine Corp.*, 2008 Bankr. LEXIS 2152 (Bankr. S.D.N.Y. Aug. 4, 2008) (holding that a loan agreement is not executory where one party has already lent another party all of the funds called for under the agreement and, therefore, has no remaining performance obligations); *In re Chateaugay Corp.*, 102 B.R. 335, 347 (Bankr. S.D.N.Y. 1989) (holding that obligations for the payment of money only are insufficient to make an agreement executory); *see also In re Exide Technologies*, No. 02-11125 (KJC), 2007 Bankr. LEXIS 4014 (Bankr. D. Del. Dec. 5, 2007) (holding that a retirement agreement plan was not an executory contract where a debtor company was required to make annual payments to a retired employee, but the retired employee had already discharged all his duties thereunder); *In re Indian River Homes, Inc.*, No. 89-254-CMW, 1989 U.S. Dist. LEXIS 14964 (D. Del. Dec. 1, 1989) (holding that a brokerage agreement is not an executory contract where the sole remaining obligation of a debtor was to pay a broker's commissions and the agreement called for no further performance on the part of the broker).

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<sup>3</sup> Assumption of the Massey Payment Agreement would bring no benefit to the Debtors' estates, further evidence that this Agreement is not an executory contract. *See In re Worldcom*, 2010 Bankr. LEXIS 1917 at \*14 (applying an alternative "functional" test which "finds an executory contract where assumption of a contract would benefit a debtor's estate").

**(B) The Separate Boone East Lease And Assignment Agreements Do Not Make The Massey Payment Agreement An Executory Contract**

12. Nothing in the separate Assignment Agreements or Boone East Lease makes the Massey Payment Agreement executory. Under each of those agreements, Massey's transfer of its leasehold interests in the coal reserves is not contingent on, and does not require, the payments by ERC pursuant to the Massey Payment Agreement.

13. Under the Assignment Agreements, Massey transferred to ERC "all of [Massey's] right, title and interest" in the assigned coal reserves, without a right of reversion, in exchange for ERC's assumption of the underlying leasehold interests and certain covenants. The Assignment Agreements do not reference the Massey Payment Agreement or ERC's obligation to make override payments thereunder. The Assignment Agreements transferred, for specified consideration that did not include the override payments, all of Massey's interests in the subject coal reserves to ERC, and the assignments cannot be revoked. *See* 6 AM. JUR. 2D ASSIGNMENTS § 122 ("[O]nce a valid and unqualified assignment is made, all interests and rights of the assignor are transferred to the assignee; the assignor loses all control over the thing assigned, and cannot do anything to defeat the assignee's rights."); *see also Easley Coal Co. v. Brush Creek Coal Co.*, 112 S.E. 512, 514 (W. Va. 1922) (holding that lessor and former assignee may not oust mining corporation's assignee because "[f]orfeitures of estates are not favored in law," and "[t]he right to forfeit must be clearly stipulated for in terms, else it does not exist").

14. Likewise, the Boone East Lease is a standalone agreement that fully sets forth the lease terms and consideration for ERC's leasehold interest in that coal

reserve. The Boone East Lease specifies rental rates for ERC's leasehold interest, and its termination provision provides for termination only if ERC defaults on amounts "required to be paid under the terms of this Lease . . . ." Boone East Lease, Sec. 19.1(a) (emphasis added). Massey cannot terminate the Boone East Lease if ERC fails to make the separate override payments; indeed, the Boone East Lease never references the Massey Payment Agreement at all. To the contrary, the Boone East Lease has an integration clause that provides that the lease "constitutes the sole and entire existing agreement between the parties and expresses all the obligations of and restrictions imposed upon the parties"—clear evidence that the parties did not intend ERC's rights under the Boone East Lease to be contingent on the override payments required by Massey Payment Agreement. Boone East Lease, Sec. 23.7; *see also Peirce v. New York Dock Co.*, 265 F. 148, 152 (2d Cir. N.Y. 1920) (citing *Henderson v. Carbondale Coal & Coke Co.*, 140 U.S. 25, 33 (1891) ("Equity always leans against [forfeitures], and only decrees in their favor when there is full, clear, and strict proof of a legal right thereto."); 5-44 THOMPSON ON REAL PROPERTY, Thomas Editions § 40.08(b)(3)(i) ("Forfeiture of a coal lease will not be decreed absent a forfeiture clause in the lease that possesses the requisite degree of specificity for enforcement by a court of equity.").

15. For all of these reasons, the Court should confirm the Debtors' view that the Massey Payment Agreement is not an executory contract.

**(C) The Debtors Seek To Reject The Massey Payment Agreement Should It Be Deemed An Executory Contract**

16. In the alternative, if the Court concludes that the Massey Payment Agreement is an executory contract, the Debtors seek to reject the Agreement pursuant to section 365 of the Bankruptcy Code.

17. The Debtors have determined that the Massey Payment Agreement provides no ongoing benefit to the Debtors' estates. Rejection of the Massey Payment Agreement would allow the Debtors to avoid the ongoing payment obligations required under the Massey Payment Agreement. While the actual savings to the Debtors' estates from terminating the Massey Payment Agreement will ultimately depend on, among other things, the amount of coal mined and changes in price over time, the savings could be as much as \$80 million or more over the next five years with additional savings thereafter.

**Notice**

18. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on (a) the Office of the United States Trustee for the Southern District of New York, (b) those creditors holding the five largest secured claims against the Debtors' estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) attorneys for the administrative agents for Debtors' proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency, (h) the United States Attorney's Office for the Southern District of New York, and (i) Massey.

**No Previous Request**

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

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

Dated: New York, New York  
July 9, 2012

By: /s/ Jonathan D. Martin  
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Damian S. Schaible  
Brian M. Resnick  
Jonathan D. Martin  
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*Proposed Counsel to the Debtors  
and Debtors in Possession*

**Exhibit A**

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

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11**

**Case No. 12-12900 (SCC)**

**(Jointly Administered)**

**ORDER REGARDING THE MASSEY PAYMENT AGREEMENT**

Upon the motion (the “**Motion**”)<sup>1</sup> of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for confirmation that the Massey Payment Agreement is not an executory contract or, alternatively, approval of the rejection of the Massey Payment Agreement; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided to (a) the Office of the United States Trustee for the Southern District of New York, (b) those creditors holding the five largest secured claims against the Debtors’ estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors’ estates on a consolidated basis, (d) attorneys for the administrative agents for Debtors’ proposed postpetition lenders, (e) the Internal Revenue Service, (f) the Securities and

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<sup>1</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

Exchange Commission, (g) the United States Environmental Protection Agency, (h) the United States Attorney's Office for the Southern District of New York, and (i) Massey, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Massey Payment Agreement is deemed a separate and independent non-executory contract for the purpose of section 365 of title 11 of the United States Code; and it is further

ORDERED that, to the extent the Massey Payment Agreement is an executory contract, the Debtors' rejection of the Massey Payment Agreement pursuant to section 365 of title 11 of the United States Code is approved<sup>2</sup>, effective *nunc pro tunc* to the Petition Date; and it is further

ORDERED that claims arising out of the treatment or rejection of the Massey Payment Agreement must timely be filed in accordance with any order pursuant to Bankruptcy Rule 3003(c) establishing a deadline by which prepetition general unsecured claims must be filed. Any claim not timely filed shall be irrevocably barred; and it is further

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<sup>2</sup> This Order shall not alter or affect the rights of the parties to the Assignment Agreements and the Boone East Lease, which are attached as exhibits to the Massey Payment Agreement and which the Debtors have expressly reserved the right to seek to assume or reject.

ORDERED that the notice of the Motion is good and sufficient notice and satisfies Bankruptcy Rule 9014 by providing the counterparties with a notice and an opportunity to object and be heard at a hearing.

Dated: New York, New York

\_\_\_\_\_, 2012

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**THIS PAYMENT AGREEMENT**, effective as of August 31, 2005, between **BOONE EAST DEVELOPMENT CO.** ("Boone East"), a West Virginia corporation; **PERFORMANCE COAL COMPANY** ("PCC"); a West Virginia corporation, **NEW RIVER ENERGY CORPORATION** ("New River") a West Virginia corporation (collectively Boone East, PCC and New River are hereinafter referred to as the "Massey Entities") and "**EASTERN ROYALTY CORP.** ("ERC"), a Delaware corporation

**RECITALS:**

**A. WEST FORK RESERVES (New River)**

**WHEREAS**, New River is the owner of a leasehold estate in certain lands in REDACTED under Agreement of Lease dated August 15, 1995, between Berwind Land Company ("Berwind"), as lessor, and Federal Development Corporation, as lessee. Federal Development Corporation changed its name to New River Energy Corporation effective September 29, 2000. This Agreement of Lease is referred to herein as the "Berwind- New River Lease"; and

**WHEREAS**, New River will assign to ERC and ERC will assume a portion of the coal reserves covered by the Berwind- New River Lease.

**B. WEST FORK RESERVES (PCC- Berwind)**

**WHEREAS**, PCC is the owner of a portion of the leasehold estate in certain lands in REDACTED under a Supplemental Agreement of Lease dated March 10, 1978, between Berwind Land Company ("Berwind"), as lessor, and Armco Steel Corporation, as lessee. This Supplemental Agreement of Lease as amended, supplemented, partially subleased and assigned, is referred to herein as the "Berwind- Performance Lease"; and

**WHEREAS**, Performance will assign to ERC and ERC will assume a portion of the coal reserves covered by the Berwind- Performance Lease.

**C. WEST FORK RESERVES (WPP)**

**WHEREAS**, PCC is the owner of a leasehold estate in certain lands in REDACTED Coal Mining Lease dated October 15, 1994, between Western Pocahontas Properties Limited Partnership, as lessor, and Performance Coal Company, as lessee, as amended by Letter Agreement dated June 26, 1997 between Western Pocahontas Properties Limited Partnership. Western Pocahontas Properties Limited Partnership conveyed the lands and the leasehold estate to WPP LLC by Deed dated October 14, 2002. This Coal Mining Lease, as amended, is referred to herein as the "WPP – Performance Lease"; and

**WHEREAS**, PCC will assign to ERC and ERC will assume a portion of the coal reserves covered by the WPP - Performance Lease.

**D. VAN RESERVES (WPP)**

**WHEREAS**, Boone East is the owner of a portion of the leasehold estate in certain lands in REDACTED under a Coal Mining Lease dated January 1, 1956, between Western Pocahontas Corporation, as lessor, and Traux-Traer Coal Company, as lessee. This coal lease has been amended, supplemented, subleased and assigned. This Coal Mining Lease as so amended, supplemented, partially subleased and assigned, is referred to herein as the "WPP – Boone East Lease;"

**WHEREAS**, Boone East will assign to ERC and ERC will assume a portion of the coal reserves covered by the WPP-Boone East Lease; and

**E. VAN RESERVES (Boone East)**

**WHEREAS**, Boone East is the owner of certain tracts or parcels of land located in REDACTED and Boone East will lease to ERC certain coal and mining rights on a portion of said tracts or parcels of land by Coal Lease of even date hereof and is referred to herein as the "Boone East – Van Lease".

WITNESSETH:

NOW THEREFORE, as additional consideration for the coal reserves to be assign and leased to ERC by the Massey entities pursuant to this agreement, the parties agree as follows:

**1. Partial Assignments.**

Upon execution of this Agreement:

- a. New River and ERC will execute the partial assignment and assumption agreement, attached as Exhibit A, (“Berwind-New River Partial Assignment”);
- b. Performance and ERC will execute the partial assignment and assumption agreement, attached as Exhibit B, (“Berwind-Performance Partial Assignment”);
- c. Performance and ERC will execute the partial assignment and assumption agreement, attached as Exhibit C, (“WPP-Performance Partial Assignment”);
- d. Boone East and ERC will execute the partial assignment and assumption agreement, attached as Exhibit D, (“WPP-Boone East Partial Assignment”); and
- e. Boone East and ERC will execute the Boone East – Van Lease, attached as Exhibit E.

**2. Tonnage Payments.**

ERC agrees to pay the respective Massey Entities for each ton of coal mined and sold from (a) the Assigned Reserves (as defined in the Berwind-New River Partial Assignment), (b) the Assigned Reserves (as defined in the Berwind-Performance Partial Assignment), (c) the Assigned Reserves (as defined in the WPP-Performance

Partial Assignment), (d) the Assigned Reserves (as defined in the WPP-Boone East Performance Partial Assignment), and (e) the Leased coal (as defined in the Boone East – Van Lease) REDACTED

REDACTED

Additionally, ERC further agrees to pay New River for each ton of coal mined and sold from only those Assigned Reserves specified in and subject to the Berwind-New River Partial Assignment) REDACTED

REDACTED

Subject to the qualification hereinafter stated in this paragraph, "gross sales price per ton" shall, for all purposes herein, mean the actual average weighted sales price for steam coal for sales in the steam market (unless the steam coal is commingled with coal of substantially different quality from the coal covered by the Payment Agreement, in which case, the "gross sales price per ton" shall mean the actual average weighted sales price for sales of similar quality coals) or met coal (unless the met coal is commingled with coal that is substantially different from No. 2 Gas, Eagle, Hernshaw, and/or Powellton seam coals, in which case, the "gross sales price per ton" shall mean the actual average weighted sales price for sales of similar quality coal) for sales in the met market from the Assigned Reserves and the Leased coal by ERC or its parent company, or any of their affiliates,

associates, subsidiaries, contractors or lessees to bona fide arms-length purchasers, f.o.b. ERC's tipple, cleaning plant or other shipping point from the Assigned Reserves and the Leased coal after final preparation and loading, during any certain calendar month without any deductions whatsoever.

Tonnage Payments will be REDACTED  
REDACTED

3. **Records/Audit.**

ERC shall furnish unto the Massey Entities on or before the 20th day of each month, a complete, correct and itemized statement, in a form or forms reasonably acceptable to the Massey Entities showing for the preceding calendar month the total number of tons of coal mined and sold from the Assigned Reserves and the Leased coal and the gross sales price per ton for such coal mined and sold. ERC shall keep and preserve for a period of not less than five years full and complete records satisfactory to the Massey Entities, which shall be open to a nationally recognized independent audit firm selected by the Massey Entities at all reasonable times and upon reasonable prior written notice from the Massey Entities, at the offices of ERC, to permit verification of the Tonnage Payments provided for under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed and delivered in its name and on its behalf by officers who are duly authorized.

**BOONE EAST DEVELOPMENT CO.**

By: R. Fred Maje  
Its: PRESIDENT

**PERFORMANCE COAL COMPANY**

By: Bill Potter  
Its: President

**NEW RIVER ENERGY CORPORATION**

By: R. Fred Mize  
Its: VICE PRESIDENT

**EASTERN ROYALTY CORP.**

By: John M. Egan  
Its: Vice President

REDACTED

**Exhibit F**

**Tonnage Payment Schedules for Metallurgical Coal Sales**

Base Threshold & Sales Price Table		Example ----- Revised Threshold & Sales Price Table	
REDACTED	REDACTED	REDACTED	REDACTED
<b>Base Gross Sales Price Values</b> (\$/ton)	<b>Base Tonnage Payment</b> (\$/ton)	<b>Hypothetical Percent Change from Attachment I</b> (%)	<b>Adjusted Gross Sales Price Values</b> (\$/ton)  <b>Adjusted Tonnage Payment</b> (\$/ton)
REDACTED	REDACTED	REDACTED	REDACTED

REDACTED

Notes:

1. REDACTED

2. REDACTED REDACTED

3. REDACTED

Attachment I

Threshold Adjustments for Inflation and Government Impositions  
(Underground Coal)

REDACTED

REDACTED

REDACTED

Subtotal

REDACTED

Total

REDACTED

**EXHIBIT A**

**PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT**  
REDACTED

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT** (“Partial Assignment”), dated this \_\_\_ day of \_\_\_\_\_, 2005, by and between **NEW RIVER ENERGY CORPORATION**, a West Virginia corporation (“Assignor”); and **EASTERN ROYALTY CORP.**, a Delaware corporation (“Assignee”):

RECITALS:

**WHEREAS**, Assignor is the owner of a leasehold estate in certain lands in REDACTED TFD under Agreement of Lease dated August 15, 1995, between Berwind Land Company ("Berwind"), as lessor, and Federal Development Corporation, as lessee. Federal Development Corporation changed its name to New River Energy Corporation effective September 29, 2000. (This Agreement of Lease is referred to herein as the "Berwind Lease");

**WHEREAS**, by Conditional Consent to Partial Assignment of Lease and Assumption Agreement REDACTED dated \_\_\_\_\_, 2005 between Berwind, Assignor and Assignee, Berwind consented to this Partial Assignment;

**WHEREAS**, subject to the terms and conditions of this Partial Assignment, Assignor desires to sell and assign to Assignee and Assignee desires to accept all of Assignor's right, title and interest to REDACTED covered by the Berwind Lease which is shown on the map attached hereto as Exhibit A (referred to hereinafter as the "Assigned Reserves"), together with the non-exclusive right to use the surface overlying the Assigned Reserves, and to accept and assume the obligations under the Berwind Lease relating thereto;

**WHEREAS**, it is understood that the REDACTED may be known by different names, and thus, for purposes of this Partial Assignment, REDACTED shall be deemed to be that seam of coal at REDACTED regardless of any other names for the seam; and

**WHEREAS**, Assignor is retaining all other coal reserves, property and rights covered by the Berwind Lease not assigned hereby (the "Retained Premises").

**Agreements**

NOW THEREFORE, in consideration of the mutual covenants contained herein, Assignor and Assignee agree as follows:

1. **Interest Assigned.** Subject to the terms of this Partial Assignment, Assignor hereby grants, assigns, sells and transfers to Assignee all of Assignor's right, title and interest to the Assigned Reserves, together with all related rights and privileges under the Berwind Lease to mine and remove the Assigned Reserves except for the right of recoupment of any previously paid Minimum Annual Rental and other royalties and/or payments to which it is or hereafter will be entitled under the Berwind Lease, without proration or allocation to the Assigned Reserves.

2. **Assumption.** Assignee hereby accepts the assignment of the Assigned Reserves made herein and hereby expressly assumes and agrees to abide by all the terms, covenants, conditions, and obligations of the Berwind Lease pertaining to the Assigned Reserves that are allocable to the period on and after the date hereof.

Assignee does not assume liability for acts or events occurring prior to the date hereof.

Assignor is not assigning and Assignee does not assume any of Assignor's obligation to pay Minimum Annual Rental due under the current terms of the Berwind Lease and Assignor shall be solely responsible therefor.

3. **Indemnity.** Assignee agrees to indemnify and hold harmless Assignor, its successors, assigns, parent and affiliated companies, from and against any all claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or related to Assignee's, its employees', agents' or contractors' negligence in the conduct of operations on the Assigned Reserves, failure to comply with any provision of the Berwind Lease (except for those provisions

pertaining to payment of minimum royalties) or the terms of this Partial Assignment, or failure to comply with any applicable federal or state law or regulation allocable to the period on and after the date hereof; provided that Assignee shall not be required to indemnify and hold Assignor harmless from those portions of any claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or caused or contributed to by the negligence of Assignor, its successors, assigns, parent and affiliated companies, employees, agents and/or contractors. The provisions of this paragraph shall survive the surrender, cancellation or termination of this Partial Assignment.

Assignor agrees to indemnify and hold harmless Assignee, its successors, assigns, parent and affiliated companies, from and against any and all claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or related to Assignors', its employees', agents' or contractors' negligence in the conduct of operations on the Retained Premises, failure to comply with any provision of the Berwind Lease or the terms of this Partial Assignment, or failure to comply with any applicable federal or state law or regulation; provided that Assignor shall not be required to indemnify and hold Assignee harmless from those portions of any claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or caused or contributed to by the negligence of Assignee, its successors, assigns, parent and affiliated companies, employees, agents and/or contractors. The provision of this paragraph shall survive the surrender, cancellation or termination of this Partial Assignment.

4. **Retained Premises and Rights.** In making this Partial Assignment, Assignor expressly retains the Retained Premises together with the right to exercise all rights under the Berwind Lease, including but not limited to: (i) rights for the mining and removal of the coal underlying or within the Retained Premises, and (ii) rights for the use of the Retained Premises, other surface and other property covered by the Berwind Lease for the mining and removal of the coal contained in the Retained Premises and use thereof for construction of plants, facilities, impoundments, refuse areas and any other improvements and operations authorized by the Berwind Lease on the Retained Premises.

Assignor and Assignee each waive and release Berwind from any claims, liabilities or actions arising from or relating to their respective operations in and use of the Assigned Reserves or the operations in and use of the Assigned Reserves by their respective contractors, sublessees and assignees, and neither Assignor or Assignee shall assert any such claim, liability or action against Berwind with regard to their operations in and use of the Assigned Reserves or the operations in and use of the Assigned Reserves by their respective contractors, sublessees and assigns.

5. **Representations and Warranties.** This Partial Assignment is expressly made subject to the terms and conditions of the Berwind Lease (except those pertaining to payment of minimum annual royalties) and as to the Assigned Reserves; Assignor assigns and conveys only those interests and rights it owns as the lessee under the Berwind Lease. This Partial Assignment is further made subject to any and all rights of way, easements, reservations, exceptions, covenants, restrictions, or out conveyances as may have been previously made or as could be ascertained from a physical inspection or current survey of the premises covered by the Berwind Lease.

**ASSIGNOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXCEPT THOSE SPECIFICALLY STATED HEREIN, INCLUDING ANY WARRANTY AS TO (I) THE MINEABILITY AND MERCHANTABILITY OF THE ASSIGNED RESERVES; (II) THE CONDITION, QUALITY AND QUANTITY OF THE ASSIGNED RESERVES; (III) THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE ASSIGNED RESERVES AND PREMISES COVERED BY THE BERWIND LEASE; AND (IV) FITNESS FOR ANY PARTICULAR PURPOSE; HOWEVER, ASSIGNOR REPRESENTS AND WARRANTS THAT IT HAS NOT CONDUCTED ANY MINING OPERATIONS OR MINED ANY COAL IN THE ASSIGNED RESERVES. ASSIGNEE REPRESENTS AND WARRANTS UNTO ASSIGNOR THAT ASSIGNEE HAS HAD AMPLE OPPORTUNITY TO INSPECT THE ASSIGNED RESERVES AND ACCEPTS THE SAME AS IS, WHERE IS, IN THEIR PRESENT CONDITION, AND WITH ALL FAULTS AND DEFECTS, IF ANY.**

6. **Arbitration.** Any dispute, claim or need for interpretation arising out of or relating to this Partial Assignment, or the breach thereof, including, but not limited to, a claim based on or arising out of an alleged tort, shall be settled by binding arbitration conducted by three neutral arbitrators. In the event the parties are unable to agree on the panel of arbitrators within 15 days after a demand, either party may seek administration by the American Arbitration Association in accordance with its Commercial Arbitration Rules, including any emergency, expedited and interim relief procedures. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted at a neutral site in Charleston, West Virginia.

Consistent with the expedited nature of arbitration, each party will, upon written request to the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators. All discovery shall be completed within deadlines set by the arbitrators.

At the request of a party, the arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the arbitrators deem such additional discovery relevant and appropriate. The arbitrators shall limit the number and duration of depositions and shall provide for a schedule.

Each party shall bear its own costs and expenses and an equal share of the arbitrators' fees and the administrative expenses of arbitration. The award of the arbitrators shall be made within a reasonable time after submission of all evidence and the arbitrators shall agree to this in advance. The award shall be in writing in a form sufficient to have a court enter it as a judgment, shall be final and binding and judgment may be entered by a court having jurisdiction.

7. **Further Action.** Assignor agrees duly to execute and deliver such further instruments or documents or take such further action as Assignee may reasonably request in writing in order to obtain full benefit of this Partial Assignment and the rights and powers herein granted.

8. **Governing Law.** This Partial Assignment shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties have each caused this Partial Assignment and Assumption Agreement to be executed by their respective officers thereunder duly authorized as of the date first above written.

NEW RIVER ENERGY CORPORATION

By \_\_\_\_\_  
Its \_\_\_\_\_

EASTERN ROYALTY CORP.

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_ of NEW RIVER ENERGY CORPORATION, a West Virginia corporation, on behalf of the corporation.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_ of EASTERN ROYALTY CORP., a Delaware limited liability company, on behalf of the company.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

This instrument prepared by:  
J. Thomas Lane  
BowlesRiceMcDavidGraff&Love  
600 Quarrier St.  
Charleston, West Virginia 25301



**EXHIBIT B**

**PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT**  
REDACTED

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT** ("Partial Assignment"), dated this \_\_\_ day of \_\_\_\_\_ 2005, by and between **PERFORMANCE COAL COMPANY**, a West Virginia corporation ("Assignor"); and **EASTERN ROYALTY CORP.**, a Delaware corporation ("Assignee"):

RECITALS:

**WHEREAS**, Assignor is the owner of a portion of the leasehold estate in certain lands in REDACTED under a Supplemental Agreement of Lease dated March 10, 1978, between Berwind Land Company ("Berwind"), as lessor, and Armco Steel Corporation, as lessee. This coal lease has been amended, supplemented, subleased and assigned in the following instruments: (a) Consent to Assignment of Lease and Conditional Amendment of Lease dated October 24, 1983, among Berwind, Armco Inc. and Peabody Coal Company, (b) Lease Assignment and Assumption dated February 13, 1984, between Armco Inc. and Peabody Coal Company, (c) Consent to Assignment of Lease dated February 16, 1984, between Berwind and Peabody Coal Company, (d) Agreement dated July 22, 1985, among Berwind, Bethlehem Steel Corporation and Peabody Coal Company, (e) Sublease dated July 1, 1987, between Peabody Coal Company and Eastern Associated Coal Corp., (f) Agreement of Lease dated September 6, 1991, between Berwind and Peabody Coal Company, (g) Berwind Lease Assignment and Assumption Agreement dated October 15, 1994, between Peabody Coal Company and Performance Coal Company, (h) Conditional Consent to Assignment of Berwind Lease and Agreement dated September 29, 1994, among Berwind, Peabody Coal Company and Performance Coal Company, (i) Letter Agreement dated September 24, 1994, between Berwind and Performance Coal Company, (j) Amendment to Berwind Lease dated June 26, 1995, between Berwind and Performance Coal Company, (k) Partial Surrender and Amendment of Lease dated August 15, 1995 between Berwind and Performance Coal Company, (l) Amendment to Berwind Lease dated January 26, 2000, between Berwind and Performance Coal Company, and (m) Amendment to Berwind Lease dated November 13, 2000, among Berwind, Pine Ridge Coal Company and Performance Coal Company. (This

Supplemental Agreement of Lease as so amended, supplemented, partially subleased and assigned, is referred to herein as the "Berwind Lease");

**WHEREAS**, by Conditional Consent to Partial Assignment of Lease and Assumption Agreement (Berwind No. 2 Gas Reserves) dated \_\_\_\_\_, 2005 between Berwind, Assignor and Assignee, Berwind consented to this Partial Assignment;

**WHEREAS**, subject to the terms and conditions of this Partial Assignment, Assignor desires to sell and assign to Assignee and Assignee desires to accept all of Assignor's right, title and interest to that portion of the REDACTED coal covered by the Berwind Lease which is shown on the Map attached hereto as Exhibit A (referred to hereinafter as the "Assigned Reserves"), together with the non-exclusive right to use the surface overlying the Assigned Reserves, and to accept and assume the obligations under the Berwind Lease relating thereto;

**WHEREAS**, it is understood that the REDACTED may be known by different names, and thus, for purposes of the Partial Assignment, REDACTED shall be deemed to be that REDACTED regardless of any other names for the seam; and

**WHEREAS**, Assignor is retaining all other coal reserves, property and rights covered by the Berwind Lease not assigned hereby (the "Retained Premises").

### Agreements

NOW THEREFORE, in consideration of the mutual covenants contained herein, Assignor and Assignee agree as follows:

1. **Interest Assigned.** Subject to the terms of this Partial Assignment, Assignor hereby grants, assigns, sells and transfers to Assignee all of Assignor's right, title and interest to the Assigned Reserves, together with all related rights and privileges under the Berwind Lease to mine and remove the Assigned Reserves.

2. **Assumption.** Assignee hereby accepts the assignment of the Assigned Reserves made herein and hereby expressly assumes and agrees to abide by all the terms,

covenants, conditions, and obligations of the Berwind Lease pertaining to the Assigned Reserves that are allocable to the period on and after the date hereof.

Assignee does not assume liability for acts or events occurring prior to the date hereof.

Assignor is not assigning and Assignee does not assume any of Assignor's obligation to pay minimum rent due under the current terms of the Berwind Lease and Assignor shall be solely responsible therefor.

3. **Indemnity.** Assignee agrees to indemnify and hold harmless Assignor, its successors, assigns, parent and affiliated companies, from and against any all claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or related to Assignee's, its employees', agents' or contractors' negligence in the conduct of operations on the Assigned Reserves, failure to comply with any provision of the Berwind Lease (except for those provisions pertaining to payment of minimum royalties) or the terms of this Partial Assignment, or failure to comply with any applicable federal or state law or regulation allocable to the period on and after the date hereof; provided that Assignee shall not be required to indemnify and hold Assignor harmless from those portions of any claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or caused or contributed to by the negligence of Assignor, its successors, assigns, parent and affiliated companies, employees, agents and/or contractors. The provisions of this paragraph shall survive the surrender, cancellation or termination of this Partial Assignment.

Assignor agrees to indemnify and hold harmless Assignee, its successors, assigns, parent and affiliated companies, from and against any and all claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or related to Assignors', its employees', agents' or contractors' negligence in the conduct of operations on the Retained Premises, failure to comply with any provision of the Berwind Lease or the terms of this Partial Assignment, or failure to comply with any applicable federal or state law or regulation; provided that Assignor shall not be required to indemnify and hold Assignee harmless from those portions of any claims,

losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or caused or contributed to by the negligence of Assignee, its successors, assigns, parent and affiliated companies, employees, agents and/or contractors. The provision of this paragraph shall survive the surrender, cancellation or termination of this Partial Assignment.

4. **Retained Premises and Rights.** In making this Partial Assignment, Assignor expressly retains the Retained Premises together with the right to exercise all rights under the Berwind Lease, including but not limited to: (i) rights for the mining and removal of the coal underlying or within the Retained Premises, and (ii) rights for the use of the Retained Premises, other surface and other property covered by the Berwind Lease for the mining and removal of the coal contained in the Retained Premises and use thereof for construction of plants, facilities, impoundments, refuse areas and any other improvements and operations authorized by the Berwind Lease on the Retained Premises.

Assignor and Assignee each waive and release Berwind from any claims, liabilities or actions arising from or relating to their respective operations in and use of the Assigned Reserves or the operations in and use of the Assigned Reserves by their respective contractors, sublessees and assignees, and neither Assignor or Assignee shall assert any such claim, liability or action against Berwind with regard to their operations in and use of the Assigned Reserves or the operations in and use of the Assigned Reserves by their respective contractors, sublessees and assigns.

5. **Representations and Warranties.** This Partial Assignment is expressly made subject to the terms and conditions of the Berwind Lease (except those pertaining to payment of minimum royalties) and as to the Assigned Reserves Assignor assigns and conveys only those interests and rights it owns as the lessee under the Berwind Lease. This Partial Assignment is further made subject to any and all rights of way, easements, reservations, exceptions, covenants, restrictions, or out conveyances as may have been previously made or as could be ascertained from a physical inspection or current survey of the premises covered by the Berwind Lease.

**ASSIGNOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXCEPT THOSE SPECIFICALLY STATED HEREIN, INCLUDING ANY WARRANTY AS TO (I) THE MINEABILITY AND MERCHANTABILITY OF THE ASSIGNED RESERVES; (II) THE CONDITION, QUALITY AND QUANTITY OF THE ASSIGNED RESERVES; (III) THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE ASSIGNED RESERVES AND PREMISES COVERED BY THE BERWIND LEASE; AND (IV) FITNESS FOR ANY PARTICULAR PURPOSE; HOWEVER, ASSIGNOR REPRESENTS AND WARRANTS THAT IT HAS NOT CONDUCTED ANY MINING OPERATIONS OR MINED ANY COAL IN THE ASSIGNED RESERVES. ASSIGNEE REPRESENTS AND WARRANTS UNTO ASSIGNOR THAT ASSIGNEE HAS HAD AMPLE OPPORTUNITY TO INSPECT THE ASSIGNED RESERVES AND ACCEPTS THE SAME AS IS, WHERE IS, IN THEIR PRESENT CONDITION, AND WITH ALL FAULTS AND DEFECTS, IF ANY.**

6. **Arbitration.** Any dispute, claim or need for interpretation arising out of or relating to this Partial Assignment, or the breach thereof, including, but not limited to, a claim based on or arising out of an alleged tort, shall be settled by binding arbitration conducted by three neutral arbitrators. In the event the parties are unable to agree on the panel of arbitrators within 15 days after a demand, either party may seek administration by the American Arbitration Association in accordance with its Commercial Arbitration Rules, including any emergency, expedited and interim relief procedures. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted at a neutral site in Charleston, West Virginia.

Consistent with the expedited nature of arbitration, each party will, upon written request to the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators. All discovery shall be completed within deadlines set by the arbitrators.

At the request of a party, the arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the arbitrators deem such additional discovery relevant and appropriate. The arbitrators shall limit the number and duration of depositions and shall provide for a schedule.

Each party shall bear its own costs and expenses and an equal share of the arbitrators' fees and the administrative expenses of arbitration. The award of the arbitrators shall be made within a reasonable time after submission of all evidence and the arbitrators shall agree to this in advance. The award shall be in writing in a form sufficient to have a court enter it as a judgment, shall be final and binding and judgment may be entered by a court having jurisdiction.

7. **Further Action**. Assignor agrees duly to execute and deliver such further instruments or documents or take such further action as Assignee may reasonably request in writing in order to obtain full benefit of this Partial Assignment and the rights and powers herein granted.

8. **Governing Law**. This Partial Assignment shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties have each caused this Partial Assignment and Assumption Agreement to be executed by their respective officers thereunder duly authorized as of the date first above written.

PERFORMANCE COAL COMPANY

By Bill Potts  
Its President

EASTERN ROYALTY CORP.

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_ of PERFORMANCE COAL COMPANY, a West Virginia corporation, on behalf of the corporation.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_ of EASTERN ROYALTY CORP., a Delaware limited liability company, on behalf of the company.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

This instrument prepared by:  
J. Thomas Lane  
BowlesRiceMcDavidGraff&Love  
600 Quarrier St.  
Charleston, West Virginia 25301



**EXHIBIT C**

**PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT**  
REDACTED

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT**  
("Partial Assignment"), dated this \_\_\_ day of \_\_\_\_\_ 2005, by and between  
**PERFORMANCE COAL COMPANY**, a West Virginia corporation ("Assignor"); and  
**EASTERN ROYALTY CORP.**, a Delaware corporation ("Assignee"):

RECITALS:

**WHEREAS**, Assignor is the owner of a leasehold estate in certain lands in REDACTED  
REDACTED Coal Mining Lease dated October 15, 1994, between  
Western Pocahontas Properties Limited Partnership, as lessor, and Performance Coal Company,  
as lessee ; and

**WHEREAS**, by Conveyance dated October 14, 2002, Western Pocahontas  
Properties Limited Partnership conveyed to WPP LLC ("WPP") certain mineral interests which  
in part included the lands subject to the Coal Mining Lease cited above; and

**WHEREAS**, this Coal Mining Lease is referred to herein as the "WPP Lease";  
and

**WHEREAS**, by Conditional Consent to Partial Assignment dated  
\_\_\_\_\_, 2005 between WPP, Assignor and Assignee, WPP consented to this Partial  
Assignment;

**WHEREAS**, subject to the terms and conditions of this Partial Assignment,  
Assignor desires to sell and assign to Assignee and Assignee desires to accept all of Assignor's  
right, title and interest to REDACTED  
seam of coal covered by the WPP Lease which is shown on the map attached hereto as Exhibit A  
(referred to hereinafter as the "Assigned Reserves"), together with the non-exclusive right to use  
the surface overlying the Assigned Reserves, and to accept and assume the obligations under the  
WPP Lease relating thereto;

**WHEREAS**, it is understood that the REDACTED  
REDACTED may be known by different names, and thus, for purposes of this Partial Assignment,  
the REDACTED shall be deemed to be that REDACTED  
REDACTED regardless of any other  
names for the seam;

**WHEREAS**, Assignor is retaining all other coal reserves, property and rights covered by the WPP Lease not assigned hereby (the "Retained Premises").

**Agreements**

NOW THEREFORE, in consideration of the mutual covenants contained herein, Assignor and Assignee agree as follows:

1. **Interest Assigned.** Subject to the terms of this Partial Assignment, Assignor hereby grants, assigns, sells and transfers to Assignee all of Assignor's right, title and interest to the Assigned Reserves, together with all related rights and privileges under the WPP Lease to mine and remove the Assigned Reserves.

2. **Assumption.** Assignee hereby accepts the assignment of the Assigned Reserves made herein and hereby expressly assumes and agrees to abide by all the terms, covenants, conditions, and obligations of the WPP Lease pertaining to the Assigned Reserves that are allocable to the period on and after the date hereof.

Assignee does not assume liability for acts or events occurring prior to the date hereof.

Assignor is not assigning and Assignee does not assume any of Assignor's obligation to pay minimum rent due under the current terms of the WPP Lease and Assignor shall be solely responsible therefor.

3. **Indemnity.** Assignee agrees to indemnify and hold harmless Assignor, its successors, assigns, parent and affiliated companies, from and against any all claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs

and expenses, including reasonable attorney fees, arising out of or related to Assignee's, its employees', agents' or contractors' negligence in the conduct of operations on the Assigned Reserves, failure to comply with any provision of the WPP Lease (except for those provisions pertaining to payment of minimum royalties) or the terms of this Partial Assignment, or failure to comply with any applicable federal or state law or regulation allocable to the period on and after the date hereof; provided that Assignee shall not be required to indemnify and hold Assignor harmless from those portions of any claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or caused or contributed to by the negligence of Assignor, its successors, assigns, parent and affiliated companies, employees, agents and/or contractors. The provisions of this paragraph shall survive the surrender, cancellation or termination of this Partial Assignment.

Assignor agrees to indemnify and hold harmless Assignee, its successors, assigns, parent and affiliated companies, from and against any and all claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or related to Assignors', its employees', agents' or contractors' negligence in the conduct of operations on the Retained Premises, failure to comply with any provision of the WPP Lease or the terms of this Partial Assignment, or failure to comply with any applicable federal or state law or regulation; Provided that Assignor shall not be required to indemnify and hold Assignee harmless from those portions of any claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or caused or contributed to by the negligence of Assignee, its successors, assigns, parent and affiliated companies, employees, agents and/or contractors. The provision of this paragraph shall survive the surrender, cancellation or termination of this Partial Assignment.

4. **Retained Premises and Rights.** In making this Partial Assignment, Assignor expressly retains the Retained Premises together with the right to exercise all rights under the WPP Lease, including but not limited to: (i) rights for the mining and removal of the coal underlying or within the Retained Premises, and (ii) rights for the use of the Retained Premises, other surface and other property covered by the WPP Lease for the mining and

removal of the coal contained in the Retained Premises and use thereof for construction of plants, facilities, impoundments, refuse areas and any other improvements and operations authorized by the WPP Lease on the Retained Premises.

Assignor and Assignee each waive and release WPP from any claims, liabilities or actions arising from or relating to their respective operations in and use of the Assigned Reserves or the operations in and use of the Assigned Reserves by their respective contractors, sublessees and assignees, and neither Assignor or Assignee shall assert any such claim, liability or action against WPP with regard to their operations in and use of the Assigned Reserves or the operations in and use of the Assigned Reserves by their respective contractors, sublessees and assigns.

5. **Representations and Warranties.** This Partial Assignment is expressly made subject to the terms and conditions of the WPP Lease (except those pertaining to payment of minimum royalties) and as to the Assigned Reserves, Assignor assigns and conveys only those interests and rights it owns as the lessee under the WPP Lease. This Partial Assignment is further made subject to any and all rights of way, easements, reservations, exceptions, covenants, restrictions, or out conveyances as may have been previously made or as could be ascertained from a physical inspection or current survey of the premises covered by the WPP Lease.

**ASSIGNOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXCEPT THOSE SPECIFICALLY STATED HEREIN, INCLUDING ANY WARRANTY AS TO (I) THE MINEABILITY AND MERCHANTABILITY OF THE ASSIGNED RESERVES; (II) THE CONDITION, QUALITY AND QUANTITY OF THE ASSIGNED RESERVES; (III) THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE ASSIGNED RESERVES AND PREMISES COVERED BY THE WPP LEASE; AND (IV) FITNESS FOR ANY PARTICULAR PURPOSE; HOWEVER, ASSIGNOR REPRESENTS AND WARRANTS THAT IT HAS NOT CONDUCTED ANY MINING OPERATIONS OR MINED ANY COAL IN THE ASSIGNED RESERVES. ASSIGNEE REPRESENTS AND WARRANTS UNTO ASSIGNOR THAT ASSIGNEE HAS HAD AMPLE OPPORTUNITY TO INSPECT THE ASSIGNED RESERVES AND ACCEPTS THE**

**SAME AS IS, WHERE IS, IN THEIR PRESENT CONDITION, AND WITH ALL FAULTS AND DEFECTS, IF ANY.**

6. **Arbitration**. Any dispute, claim or need for interpretation arising out of or relating to this Partial Assignment, or the breach thereof, including, but not limited to, a claim based on or arising out of an alleged tort, shall be settled by binding arbitration conducted by three neutral arbitrators. In the event the parties are unable to agree on the panel of arbitrators within 15 days after a demand, either party may seek administration by the American Arbitration Association in accordance with its Commercial Arbitration Rules, including any emergency, expedited and interim relief procedures. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted at a neutral site in Charleston, West Virginia.

Consistent with the expedited nature of arbitration, each party will, upon written request to the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators. All discovery shall be completed within deadlines set by the arbitrators.

At the request of a party, the arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the arbitrators deem such additional discovery relevant and appropriate. The arbitrators shall limit the number and duration of depositions and shall provide for a schedule.

Each party shall bear its own costs and expenses and an equal share of the arbitrators' fees and the administrative expenses of arbitration. The award of the arbitrators shall be made within a reasonable time after submission of all evidence and the arbitrators shall agree to this in advance. The award shall be in writing in a form sufficient to have a court enter it as a judgment, shall be final and binding and judgment may be entered by a court having jurisdiction.

7. **Further Action**. Assignor agrees duly to execute and deliver such further instruments or documents or take such further action as Assignee may reasonably request in

writing in order to obtain full benefit of this Partial Assignment and the rights and powers herein granted.

8. **Governing Law.** This Partial Assignment shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties have each caused this Partial Assignment and Assumption Agreement to be executed by their respective officers thereunder duly authorized as of the date first above written.

PERFORMANCE COAL COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

EASTERN ROYALTY CORP.

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_ of PERFORMANCE COAL COMPANY, a West Virginia corporation, on behalf of the corporation.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_ of EASTERN ROYALTY CORP., a Delaware limited liability company, on behalf of the company.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

This instrument prepared by:  
J. Thomas Lane  
BowlesRiceMcDavidGraff&Love  
600 Quarrier St.  
Charleston, West Virginia 25301







**EXHIBIT D**

**PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT**  
REDACTED

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT** (“Partial Assignment”), dated this \_\_\_ day of \_\_\_\_\_, 2005, by and between **BOONE EAST DEVELOPMENT CO.**, a West Virginia corporation (“Assignor”); and **EASTERN ROYALTY CORP.**, a Delaware corporation (“Assignee”):

RECITALS:

**WHEREAS**, Assignor is the owner of a portion of the leasehold estate in certain lands in REDACTED under a Coal Mining Lease dated January 1, 1956, between Western Pocahontas Corporation, as lessor, and Traux-Traer Coal Company, as lessee. This coal lease has been amended, supplemented, subleased and assigned as described in Exhibit A attached hereto; and

**WHEREAS**, this Coal Mining Lease as so amended, supplemented, partially subleased and assigned, is referred to herein as the “WPP Lease”; and

**WHEREAS**, by Conditional Consent to Partial Assignment dated \_\_\_\_\_, 2005 between WPP LLC, Assignor and Assignee, WPP LLC consented to this Partial Assignment;

**WHEREAS**, subject to the terms and conditions of this Partial Assignment, Assignor desires to sell and assign to Assignee and Assignee desires to accept all of Assignor’s right, title and interest to that portion of (i) the REDACTED which is shown on the map attached hereto as Exhibit B, (ii) the REDACTED which is shown on the map attached hereto as Exhibit C and (iii) REDACTED which is shown on the map attached hereto as Exhibit D, all of which are covered by the WPP Lease (collectively referred to hereinafter as the “Assigned Reserves”), together with the non-exclusive right to use the surface overlying the Assigned Reserves, and to accept and assume the obligations under the WPP Lease relating thereto;

**WHEREAS**, it is understood that REDACTED may be known by different names, and thus, for purposes of the Partial Assignment, REDACTED shall be deemed to be that REDACTED regardless of any other names for the seam;

**WHEREAS**, it is understood that REDACTED may be known by different names, and thus, for purposes of the Partial Assignment, REDACTED shall be deemed to be that REDACTED regardless of any other names for the seam;

**WHEREAS**, it is understood that the REDACTED may be known by different names, and thus, for purposes of the Partial Assignment, REDACTED shall be deemed to be that REDACTED regardless of any other names for the seam;

**WHEREAS**, Assignor is retaining all other coal reserves, property and rights covered by the WPP Lease not assigned hereby, including rights to the lands overlying the Assigned Reserves (the "Retained Premises"); and

**WHEREAS**, the parties hereto will hereafter own the lease rights to overlapping seams of coal and as to these areas the parties intend by this Partial Assignment to provide for their respective development of the coal and also to provide for the common use of the surface and all subsurface strata, except coal seams, in the area above and adjacent to the Assigned Reserves as necessary for their respective operations. The surface and subsurface strata, except coal seams, in the area above and adjacent to the Assigned Reserves shall be referred to herein as the "Overlap Area."

#### Agreements

NOW THEREFORE, in consideration of the mutual covenants contained herein, Assignor and Assignee agree as follows:

1. **Interest Assigned.** Subject to the terms of this Partial Assignment, Assignor hereby grants, assigns, sells and transfers to Assignee all of Assignor's right, title and interest to (i) the Assigned Reserves, together with all related rights and privileges under the

WPP Lease to mine and remove the Assigned Reserves; and (ii) the non-exclusive right to use the Overlap Area in connection with operations in the Assigned Reserves.

2. **Assumption.** Assignee hereby accepts the assignment of the Assigned Reserves made herein and hereby expressly assumes and agrees to abide by all the terms, covenants, conditions, and obligations of the WPP Lease pertaining to the Assigned Reserves that are allocable to the period on and after the date hereof.

Assignee does not assume liability for acts or events occurring prior to the date hereof.

Assignor is not assigning and Assignee does not assume any of Assignor's obligation to pay minimum rent due or right to recoup any minimum rent due under the current terms of the WPP Lease and Assignor shall be solely responsible therefor.

3. **Indemnity.** Assignee agrees to indemnify and hold harmless Assignor, its successors, assigns, parent and affiliated companies, from and against any all claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or related to Assignee's, its employees', agents' or contractors' negligence in the conduct of operations on the Assigned Reserves and Overlap Area, failure to comply with any provision of the WPP Lease (except for those provisions pertaining to payment of minimum royalties) or the terms of this Partial Assignment, or failure to comply with any applicable federal or state law or regulation allocable to the period on and after the date hereof; provided that Assignee shall not be required to indemnify and hold Assignor harmless from those portions of any claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or caused or contributed to by the negligence of Assignor, its successors, assigns, parent and affiliated companies, employees, agents and/or contractors. The provisions of this paragraph shall survive the surrender, cancellation or termination of this Partial Assignment.

Assignor agrees to indemnify and hold harmless Assignee, its successors, assigns, parent and affiliated companies, from and against any and all claims, losses, damages (including

personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or related to Assignors', its employees', agents' or contractors' negligence in the conduct of operations on the Retained Premises and Overlap Area, failure to comply with any provision of the WPP Lease or the terms of this Partial Assignment, or failure to comply with any applicable federal or state law or regulation; Provided that Assignor shall not be required to indemnify and hold Assignee harmless from those portions of any claims, losses, damages (including personal injury or death), causes of actions, fines, penalties, violations, costs and expenses, including reasonable attorney fees, arising out of or caused or contributed to by the negligence of Assignee, its successors, assigns, parent and affiliated companies, employees, agents and/or contractors. The provision of this paragraph shall survive the surrender, cancellation or termination of this Partial Assignment.

4. **Representations and Warranties.** This Partial Assignment is expressly made subject to the terms and conditions of the WPP Lease (except those pertaining to payment of minimum royalties) and as to the Assigned Reserves Assignor assigns and conveys only those interests and rights it owns as the lessee under the WPP Lease. This Partial Assignment is further made subject to any and all rights of way, easements, reservations, exceptions, covenants, restrictions, or out conveyances as may have been previously made or as could be ascertained from a physical inspection or current survey of the premises covered by the WPP Lease.

**ASSIGNOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXCEPT THOSE SPECIFICALLY STATED HEREIN, INCLUDING ANY WARRANTY AS TO (I) THE MINEABILITY AND MERCHANTABILITY OF THE ASSIGNED RESERVES; (II) THE CONDITION, QUALITY AND QUANTITY OF THE ASSIGNED RESERVES; (III) THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE ASSIGNED RESERVES AND PREMISES COVERED BY THE WPP LEASE; AND (IV) FITNESS FOR ANY PARTICULAR PURPOSE; HOWEVER, ASSIGNOR REPRESENTS AND WARRANTS THAT IT HAS NOT CONDUCTED ANY MINING OPERATIONS OR MINED ANY COAL IN THE ASSIGNED RESERVES. ASSIGNEE REPRESENTS AND WARRANTS UNTO ASSIGNOR THAT ASSIGNEE HAS HAD AMPLE OPPORTUNITY TO INSPECT THE ASSIGNED RESERVES AND ACCEPTS THE SAME AS IS, WHERE IS, IN THEIR PRESENT CONDITION, AND WITH ALL FAULTS AND DEFECTS, IF ANY.**

5. **Arbitration.** Any dispute, claim or need for interpretation arising out of or relating to this Partial Assignment, or the breach thereof, including, but not limited to, a claim based on or arising out of an alleged tort, shall be settled by binding arbitration conducted by three neutral arbitrators. In the event the parties are unable to agree on the panel of arbitrators within 15 days after a demand, either party may seek administration by the American Arbitration Association in accordance with its Commercial Arbitration Rules, including any emergency, expedited and interim relief procedures. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted at a neutral site in Charleston, West Virginia.

Consistent with the expedited nature of arbitration, each party will, upon written request to the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators. All discovery shall be completed within deadlines set by the arbitrators.

At the request of a party, the arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the arbitrators deem such additional discovery relevant and appropriate. The arbitrators shall limit the number and duration of depositions and shall provide for a schedule.

Each party shall bear its own costs and expenses and an equal share of the arbitrators' fees and the administrative expenses of arbitration. The award of the arbitrators shall be made within a reasonable time after submission of all evidence and the arbitrators shall agree to this in advance. The award shall be in writing in a form sufficient to have a court enter it as a judgment, shall be final and binding and judgment may be entered by a court having jurisdiction.

6. **Further Action.** Assignor agrees duly to execute and deliver such further instruments or documents or take such further action as Assignee may reasonably request in writing in order to obtain full benefit of this Partial Assignment and the rights and powers herein granted.

7. **Governing Law.** This Partial Assignment shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties have each caused this Partial Assignment and Assumption Agreement to be executed by their respective officers thereunder duly authorized as of the date first above written.

BOONE EAST DEVELOPMENT CO.

By \_\_\_\_\_  
Its \_\_\_\_\_

EASTERN ROYALTY CORP.

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_ of BOONE EAST DEVELOPMENT CO., a West Virginia corporation, on behalf of the corporation.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, the \_\_\_\_\_ of EASTERN ROYALTY CORP., a Delaware limited liability company, on behalf of the company.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

This instrument prepared by:  
J. Thomas Lane  
BowlesRiceMcDavidGraff&Love  
600 Quarrier St.  
Charleston, West Virginia 25301

EXHIBIT A

LEASE NO. 9063 – BOONE EAST DEVELOPMENT CO. REDACTED  
- REDACTED

Coal Mining Lease dated January 1, 1956, wherein Western Pocahontas Corporation was Lessor and Truax-Traer Coal Company was Lessee, REDACTED

REDA as amended by:

- Amendment dated 12/1/58.
- Unrecorded Amendment dated 8/25/61.
- Unrecorded Amendment dated 8/26/63.
- Unrecorded Amendment dated 12/31/64.
- Unrecorded Amendment dated 12/31/65.
- Agreement dated July 1, 1966, whereas Western Pocahontas Corporation leased lands to the Youghioghney and Ohio Coal Company to build a preparation plant.
- Unrecorded Amendment dated 12/31/67.
- Amendment dated 1/1/68.
- Amendment dated 10/1/68.
- Unrecorded Amendment dated 1/1/69.
- Letter of Agreement dated 8/15/69.
- Deed of Easement between Western Pocahontas Corporation, The Chesapeake and Ohio Railway Company and Bethlehem dated 5/23/75, the lease was further amended.
- Unrecorded Amendment dated 1/1/79.
- Unrecorded Amendment dated 3/1/85.
- Amendment to Agreement and Lease dated 3/1/85.
- Agreement dated 5/29/87, wherein the lease was further amended and assigned to Primeacre Land Corporation.
- Amendment of leases dated 5/29/87.
- Amendment dated 12/15/95, wherein REDACTED was deleted from the lease.
- Renewal Letter dated 6/10/99.
- Partial Surrender of Lease dated 2/1/2000.
- Lease Amendment dated October 12, 2000.
- Consent to Sublease and Agreement dated October 21, 2002
- Sublease dated November 25, 2002
- Partial Surrender of lease dated and effective February 1, 2004.

Being the same Coal Mining Lease, wherein, WPP is currently the Lessor by succession to Western Pocahontas Corporation and Boone East Development Co. is the Lessee by virtue of the following mergers and assignments:

As to Lessor:

- By Articles of Merger effective September 2, 1981, Western Pocahontas Corporation changed its name to CSX Minerals, Inc.
- Under Deed dated December 31, 1986, CSX Minerals, Inc. conveyed to Western Pocahontas Properties Limited Partnership all of the lands that are subject to the Boone East Development Co., Y&O Lease.
- By Conveyance dated October 14, 2002, Western Pocahontas Properties Limited Partnership conveyed to WPP LLC all of the lands that are subject to the Boone East Development Co., Y&O Lease.

As to Lessee:

- The Lease was assigned by Truax Traer Coal Company to Oglebay Norton Company by document dated 10/1/59.
- Unrecorded Assignment dated July 1, 1967; Oglebay Norton Company assigned the lease to Bethlehem Steel Corporation.
- Conveyance and Consent dated 8/25/67, The Youghiogeny and Ohio Coal Company assigned the Y&O 7/1/66 Agreement to Bethlehem with the consent of Western Pocahontas Corporation, dated 1/31/68, but effective 8/25/67.
- Agreement dated 5/29/87, wherein part of the lease was assigned to Primeacre and subleased to BethEnergy Mines.
- Consent to Assignment dated 8/29/96, wherein WPP agreed to accept Boone East Development Co. in the place and stead of Primeacre Land Corporation as Lessee and to release Primeacre Land Corporation and its predecessor Bethlehem Steel Corporation and its subsidiaries from any liabilities or obligations.
- Assignment of Y&O Leases dated 8/30/96

Boone9063-exh



**EXHIBIT E**

**COAL LEASE**

**Between**

**BOONE EAST DEVELOPMENT CO.**

**And**

**EASTERN ROYALTY CORP.**

**Effective**

**August 1, 2005**

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## COAL LEASE

THIS **COAL LEASE** ("Lease"), made and entered effective the 1st day of August, 2005, by and between **BOONE EAST DEVELOPMENT CO.**, a West Virginia corporation, with a mailing address of Post Office Box 1867, Charleston, West Virginia 25327, Lessor, and **EASTERN ROYALTY CORP.**, a Delaware corporation duly authorized to conduct business in the State of West Virginia, with a mailing address of Post Office Box 1233, Charleston, West Virginia 25324, Lessee;

### W I T N E S S E T H:

That for and in consideration of the mutual benefits derived and to be derived herefrom, the parties do hereby agree and contract each with the other as follows:

#### Section 1. Definitions

For all purposes of this Lease, the following definitions shall apply:

"Black lung benefits" means any and all benefits payable pursuant to the black lung laws.

"Black lung laws" means the Black Lung Benefits Act, Title IV of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 901 et seq., and the Internal Revenue Code, 26 U.S.C. 1 et seq., Black Lung Benefits Reform Act of 1977 (P.L. 95-239), Black Lung Benefits Revenue Act of 1977 (P.L. 75-227), Black Lung Benefits Revenue Act of 1981 (P.L. 97-119), and the Black

Lung Benefits Amendments Act of 1981 (P.L. 97-119), as now or hereafter amended, and all rules and regulations adopted pursuant thereto.

"Coal" means coal and all products and by-products of coal and shall include, without limitation, any merchantable product containing coal that is sometimes sold under various trade names such as bone, coal, fuel or middlings, and any other substances contained within or produced from coal.

"Deep Mining" means mining with excavations penetrating coal seams or strata with the use of shafts, slopes, drifts, or inclines through the use of conventional, continuous miner, or longwall mining equipment or other commercially available methods.

"Foreign coal" means any coal produced from lands other than the Leased coal.

"Foreign Shipping Point" is defined as being any shipping point other than the Wells preparation plant and facilities.

"Gross sales price" means the total gross amount (without any deductions for selling costs, selling commissions, advertising, credit losses, transportation or processing costs, discounts or any other deductions whatsoever) received for coal upon sale thereof to the first arm's length purchaser f.o.b. railroad cars, barge facilities, trucks or other means of transportation after all crushing, sizing, washing, preparation, tipping and any other processing has been completed, regardless of who owns or operates any such processing facilities; provided, however, a deduction shall be allowed for (a) all freight and delivery charges on coal mined and shipped

from the Leased premises which are paid by the Lessee on behalf of the ultimate customer for hauling the coal from the Wells preparation plant to a Foreign Shipping Point as hereafter defined, (b) all loading and unloading charges paid by Lessee at such Foreign Shipping Point; and (c) all costs of treatment of the coal produced from the Leased premises against the effects of freezing which are paid by Lessee. Where such costs and charges are not arm's length, such costs and charges shall be limited to the lesser of (i) the actual cost to Lessee or the charges made to Lessee, or (ii) the ordinary and reasonable costs and charges made by others for similar services.

"Lease year" means the twelve month period beginning on the effective date of this Lease or any annual anniversary of the effective date of this Lease and ending the date preceding the next succeeding annual anniversary of the effective date of this Lease.

"Leased coal" means the coal contained in the No. 2 Gas and Eagle seams and all splits thereof contained in the Leased premises, to the extent only that such seam exists in, on or within the boundaries shown on Exhibits C and D. For purposes of this Lease, REDACTED  
REDACTED

REDACTED as shown on Exhibit C and REDACTED  
REDACTED

"Leased premises" means the tract or tracts of land from which the Leased coal is to be mined pursuant to this Lease, which tract or tracts are described and/or more particularly

defined on Exhibit B, which is attached hereto and incorporated herein by reference.

"Lessee et al." means Lessee and any and all of its successors, assigns, sublessees, contractors, subcontractors, licensees, invitees, employees, officers, directors, engineers, agents or any other persons or entities acting by direct or indirect authority of Lessee or pursuant to Lessee's rights granted in this Lease.

"Lessor et al." means Lessor and any and all of its successors, assigns, sublessees, contractors, subcontractors, licensees, invitees, employees, officers, directors, engineers, agents, or any other persons or entities acting by direct or indirect authority of Lessor.

By the term "mineable and merchantable coal," wherever used in this Lease, it is meant coal which, when reached in the prosecution of Lessee's operations hereunder could be mined and sold at a reasonable profit in the prevailing coal market by the use of such modern mining methods and such modern mining and cleaning machinery and equipment as are reasonably adapted to practical, efficient, and economical mining under the conditions found. In determining whether coal could be mined and sold at a reasonable profit, as aforesaid, due consideration shall be given to the profits or losses of Lessee on coal theretofore mined hereunder.

"Minimum royalty" means the amount specified in Exhibit A, which Lessee has agreed to pay Lessor each lease year, or portion thereof, so long as this Lease remains in effect, subject to the amount of coal actually mined and sold during

such lease year.

"Payment date(s)" means the date or dates of each month during the time period the Lease remains in effect on which payments of tonnage royalties and minimum royalties are to be made by Lessee to Lessor. The applicable payment date or dates are set forth in Exhibit A.

"Roads" means, collectively, roads, culverts, bridges and appurtenant structures.

"Surface mining" means any and all excavation on the surface of land for the purposes of obtaining coal, including, but not limited to, such common methods as contour, strip, auger, mountaintop removal, boxcut, openpit, highwall and area mining.

"Termination" means cessation of this Lease by whatever means, including, without limitation, forfeiture, cancellation and end of the term.

"Ton" means two thousand pounds (2,000 lbs.).

## Section 2. Rights Granted

### 2.1 Granting Clause

Lessor, to the extent of its right, title and interest therein, if any, and without warranty, does hereby lease, demise and let unto Lessee for the uses and purposes hereinafter set forth and in Exhibit A for the term specified in Exhibit A, subject to all exceptions, reservations, terms and conditions hereinafter set forth or referred to, the right and privilege of prospecting and/or exploring for and mining and removing by those mining methods only which are specified

in Exhibit A, and excluding all other mining methods, all of the Leased coal in, on and under the Leased premises, together with the appurtenant and necessary mining rights and privileges which Lessor owns and has the right to lease including the right to cause subsidence to any overlying or underlying coal seams; provided, however, that Lessee shall exercise such rights granted it hereunder with due regard for the operations of Lessor, et al., and in such manner as not unreasonably to interfere with or affect both the mining operations of Lessor, et al. and the rights reserved by Lessor under Section 3 hereof. Upon expiration of the term specified in Exhibit A, all of Lessee's rights in the Leased coal and the Leased premises shall terminate pursuant to this Lease.

## 2.2 Limitation of Rights Granted; Acquisition of Additional Rights

Lessor grants to Lessee, to be exercised by Lessee solely for coal mining purposes as aforesaid, only such rights in the Leased coal as are vested in Lessor. If any surface right or other right or privilege not owned by Lessor is necessary or desirable for the mining and removal of the Leased coal, Lessor shall be under no obligation whatsoever to acquire the same, but Lessee may acquire the same at its own expense. Lessee shall notify Lessor of such acquisition before or within 30 days after such acquisition. Lessor shall have the right and option within one year after the termination hereof, to purchase from Lessee at the higher of its then current fair market value or the cost to Lessee of acquiring any such surface right or other right or privilege acquired by Lessee as

aforsaid. If the parties cannot agree as to the fair market value of any such right or privilege within 30 days after Lessor shall have notified Lessee of its desire to purchase the same, such fair market value shall be determined by final and binding arbitration under the provisions of Section 21 hereof. If Lessor purchases such right or privilege prior to the termination of this Lease, the same shall thereafter be deemed part of the Leased premises and subject to all provisions of this Lease and without payment of consideration other than as herein specified.

Section 3. Exceptions, Reservations and Third Party Rights

3.1 Exceptions and Reservations

Subject only to those rights and privileges herein granted to Lessee, Lessor hereby EXCEPTS AND RESERVES, to the extent of its ownership, the entire ownership and control of all the Leased premises, all coal not herein leased, the stone, sand, earth, water, timber, oil, gas and other substances therein and thereon, for all purposes, including without limitation the following rights and privileges, subject in each case to the mining rights and privileges of Lessee hereunder: (a) using, selling, or otherwise disposing of, any of the surface or subsurface thereof (but the sale of surface or subsurface shall be subject to the mining rights and privileges of Lessee hereunder), and letting leases to tenants for the purpose of occupying and using said surface; (b) searching for, mining and removing all coal (other than Leased coal) from any and all mines or seams, or portion or portions thereof, making coke and

other products of coal, and preparing for market, stockpiling, using, transporting, shipping, loading, cleaning and selling coal and coke and other products of coal; (c) growing timber and cutting, preparing, using, or removing said timber; (d) searching for oil, gas (including methane gas in coal) or any other minerals or products and removing the same when and wherever found; (e) draining water, transmitting electrical energy, and transporting timber, oil, gas or other minerals, products, materials and goods of all other kinds, from the Leased premises, or any other lands, over, across, or through the Leased premises; (f) using the stone, sand, earth, water and other substances in and on the Leased premises making excavations, and sinking or boring slopes, shafts, drifts, tunnels, and wells; (g) constructing, erecting, maintaining, demolishing and using buildings, structures, machinery, improvements, ditches, transmission lines, telephone and telegraph lines, power lines, railroads or other roads, tramways, tubing, pipelines, or other means of drainage, transmission or transportation through, over, upon or beneath the surface of the Leased premises, and selecting and granting rights of way therefor, together with full and free rights of ingress, egress and regress, as may be necessary or convenient in the proper development of the Leased premises or other lands or in the proper exercise of the rights and privileges hereby excepted and reserved; (h) storing and/or depositing any substances or materials of any kind in, on or under the Leased premises; (i) granting and conveying from time to time to any railroad, railway company or other transportation entity so

much of the Leased premises as may be required by said railroad, railway company or transportation entity for rights of way or other purposes; and (j) making grants, conveyances, leases and licenses to others for the purposes aforesaid and for other purposes. The rights and privileges hereinabove enumerated as excepted and reserved are not intended to be exclusive of any and all other rights and privileges which inhere because of or flow from the ownership and control of the Leased premises by Lessor.

### 3.2 Manner of Exercising Rights Excepted and Reserved; Benefit

The rights and privileges hereinabove excepted and reserved to Lessor shall be exercised with due regard for and without unreasonable interference to the operations of Lessee hereunder, provided, however, that Lessor excepts and reserves the right to mine and remove all seams not herein leased, the right to mine by all mining methods, and the specific right to remove all of the coal in such reserved coal, but shall have the obligation to provide subjacent or sublateral support to the Leased coal. Any and all such rights and privileges hereby excepted and reserved shall inure to the benefit of and may be exercised by Lessor et al.

### 3.3 Third Party Rights; Compliance with Title Documents

This Lease is made expressly subject to all of the terms, provisions and conditions of: all existing deeds and other muniments of title under which Lessor holds the Leased premises; outstanding rights covering electric power, gas, telephone, and other utility lines over, across and under the Leased premises; public highways, railroad rights of way,

whether in fee simple or by way of easement; outstanding estates and rights in and with respect to timber and the marketing thereof all existing deeds or agreements by which surface ownership, easements or other rights of way have been heretofore conveyed to others; and presently existing coal, oil, gas and other leases, if any.

Section 4. No Warranties; Superior Title; Defense of Title

This Lease is made without any express or implied warranty of Lessor's title to the Leased premises or any part thereof, without express or implied warranty of the quantity, quality, minability or merchantability of the Leased coal (if any) contained in the Leased premises without express or implied covenants of right to lease, quiet enjoyment or peaceful possession; and, without express or implied warranty of the condition of the Leased premises, any mine entries, working places, structures or surface or subsurface conditions. Lessee acknowledges that mining operations have been conducted in coal seams overlying and underlying the Leased coal. However, if any part of the Leased coal underlying the Leased premises shall be lost to the holder of any outstanding title which Lessor shall recognize as superior to its title or which shall be held superior to its title by final adjudication (in a judicial proceeding to which Lessor is a party) with respect thereto by the highest court which will accept jurisdiction to determine the controversy, and if Lessee has mined and removed all or some portion of the coal so lost and has paid Lessor therefor on the percentage or tonnage royalty basis hereinafter

described, and shall in addition pay the holders of such outstanding title for such coal pursuant to final adjudication as aforesaid, then and in such event Lessor shall repay to Lessee the amount of royalty, without interest, so paid to the holders of such outstanding title, and Lessor shall not otherwise be liable to Lessee on account of the mining and removing of such coal by Lessee or for the failure of Lessor's title to any part of the Leased coal underlying the Leased premises so lost. In the event Lessor shall hereafter, while this Lease remains in effect, acquire any outstanding title to any portion of the Leased coal underlying the Leased premises that is superior to the title of Lessor, such portion shall immediately become a part of the Leased coal and shall become subject to the provisions of this Lease. Although it is hereby agreed that neither Lessor nor Lessee shall have the duty to defend any litigation involving title to the Leased coal, both parties agree to cooperate fully with whoever undertakes such defense. The designation of any coal seam by name shall not constitute a warranty as to the existence of such seam on, in or under the Leased premises, it being further understood that the use of any such name is employed for general reference purposes only and may or may not be geologically correct.

Section 5. Purpose of Lease

The purpose of the term commencing as of the effective date is for the mining, by only the mining method or methods set forth in Exhibit A, of all the Leased coal that is mineable and merchantable. Accordingly, during the term of this Lease,

Lessee shall have the exclusive right and privilege of mining all of the Leased coal which is mineable and merchantable, subject always to the limitation that Lessor does not grant to Lessee any rights that it does not own and/or do not have the right to lease. Lessee shall not be required to mine any of the Leased coal that is not mineable and merchantable; however, at Lessee's option, it may mine such coal provided that it pays tonnage royalties required in Section 7 hereof.

Section 6. Prospecting; Use of Surface and Subsurface;  
Timber

6.1 Prospecting

Copies of all prospecting and exploratory information and data (including, without limitation, driller's logs, geophysical logs, cores, coal laboratory analyses and geological maps) respecting the Leased coal and/or Leased premises shall be made available to Lessor, free of charge, at any time promptly upon request.

6.2 Use of Surface and Subsurface

With respect to the surface of the Leased premises and any portion of the subsurface which is owned by Lessor, Lessee shall use in a safe, reasonable, proper and legal manner only so much of such surface and subsurface as may be necessary for Lessee's mining operations hereunder and in a manner required by subsection 2.1, including the right to discharge water from mining operations, build ponds, and construct water treatment facilities, provided that Lessee shall obtain prior written approval from Lessor for the location of any ponds, or other

facilities and such approval shall not be unreasonably withheld. If Lessee desires to discharge water on the Leased premises, it shall first furnish Lessor, for its approval, maps and plans showing in detail any such proposed disposal on the Leased premises, which plans shall provide that any ponds so constructed will be maintained in a manner consistent with applicable state and federal laws, rules and regulations so that Lessor will incur no liability as a result of Lessee situating ponds on the Leased premises.

### 6.3 Roads and Facilities

All roads which Lessee constructs or erects, or uses, on the Leased premises ("Roads") shall be maintained and kept during the term hereof at Lessee's sole cost and expense. Lessor shall have the right to use jointly and in common with Lessee any and all of the Roads and Lessor shall have the right to authorize others to use such Roads, provided that such use by Lessor, or others, does not unreasonably interfere with Lessee's operations hereunder or cause the violation of or create a situation which could result in the violation of any regulatory permits of Lessee. If Lessor authorizes other persons or entities to use the Roads, Lessor shall enter into an agreement with such persons or entities, which agreement shall make provision for an allocation of maintenance costs according to use and for a usage agreement which shall ensure that no unreasonable interference with Lessee's use of such Roads shall occur, that such persons or entities will avoid actions or omissions that would result in violations of Lessee's regulatory permits and that if such violations occur,

such persons or entities will remedy the same or bear the reasonable expense of Lessee doing so, and will indemnify Lessee for third party claims related to such other person' or entities' use of the Roads. Upon termination of this Lease, Lessee shall reclaim all the Roads, ponds and portal openings (ponds and portal openings hereafter referred to as "Facilities") in accordance with provisions in regulatory permits obtained by Lessee and shall have an easement on the Leased premises solely for these purposes. Should Lessor request that any or all of such Roads and/or Facilities be left in place, Lessee, to the extent it is authorized to do so by laws then in effect and the permits covering the Roads or Facilities and to the extent it can obtain a final release of its permits and bonds, shall leave in place all Roads and/or Facilities which, in Lessor's judgment, may be useful in the future. In obtaining regulatory approval for the construction of Roads and ponds, Lessee agrees, to the extent requested to do so by Lessor, to present the post-mining land use plan approved by Lessor and attempt to secure regulatory exemptions from any requirement that the Roads be reclaimed after completion of mining.

#### 6.4 Timber

In the event there is merchantable timber growing on the parts of the Leased premises where Lessor owns the surface in any area to be affected by Lessee's operations, Lessee shall give Lessor notice of the area to be affected by its operations, together with notice of Lessee's plan of operations. Within sixty (60) days after such notice, Lessor, if it elects

to remove such timber, shall commence the removal of such timber pursuant to a harvesting plan which shall (a) allow Lessee to commence its operations on the Leased premises in the area covered by such notice within ninety (90) days after Lessor receives such notice, (b) require Lessor to harvest such timber in a manner so as to always have such an area cleared of timber thirty (30) days in advance of the time Lessee's operations will reach such area (subject to the time periods previously set forth in this sentence), and (c) not unreasonably interfere with Lessee's operations. In the event Lessor does not so cut and remove such timber, Lessee shall have the right to proceed with its coal mining operations without regard to such timber and Lessor's rights to such timber shall cease and Lessee shall have the right, anything contained in this Lease to the contrary notwithstanding, to dispose of such timber in any manner as it so desires. Lessee shall not be required, however, to comply with this Section 6.4 for timber it necessarily cuts and destroys in the process of constructing Roads and trails for coal exploration and placement of small facilities ancillary to mining (e.g., placement of water tanks, storage buildings, etc.), and it is agreed by the parties that such timber may be cut and destroyed by Lessee without notice to Lessor. The provisions of this Section 6.4 are subject to the rights of timber leases, licenses or agreements existing as of the date of this Lease.

## Section 7. Tonnage Royalties

### 7.1 Tonnage Royalties - Generally

As rental for the term commencing on the effective date hereof, Lessee hereby covenants and agrees to pay to Lessor, without necessity of previous demand, to be received by Lessor on the applicable payment date or dates of each month, for each and every ton of coal mined and sold, whether on a clean or raw basis, from the Leased premises, tonnage royalties, at the rate or rates specified in Exhibit A.

7.2 Gross Sales Price - Coal Not Sold at Arm's Length or Sold for Less than Prevailing Market Value

In the event any Leased coal shall be sold by Lessee at other than arm's length sale or used or consumed on or off the Leased premises without sale by Lessee, the selling price for the purpose of computing tonnage royalty shall be, REDACTED  
REDACTED

7.3 Arbitration of Tonnage Royalty Disputes

A bona fide dispute as to the correct amount of tonnage royalty owed may be referred by Lessor or Lessee to arbitration as provided in Section 21, but the existence of a dispute as to the amount of royalty shall not relieve Lessee of the duty of paying, when due, the amounts not reasonably in dispute.

Section 8. Minimum Royalties

As rental for the term commencing on the effective date hereof, Lessee hereby covenants and agrees to pay to Lessor, without necessity of previous demand, the minimum royalty at

the time and in the amount specified in Exhibit A, which shall be paid each year so long as this Lease remains in effect, and regardless of whether or not the Leased coal has all been mined and removed. The minimum royalty payment shall be in lieu of any obligation of Lessee to diligently conduct mining operations hereunder.

Section 9. Taxes

Lessee shall pay promptly when due all taxes, levies or assessments (collectively "taxes") including, but not limited to, excise, license, sales, gross sales, privilege or severance taxes, that may be legally assessed, imposed or levied by any governmental authority upon or with respect to (a) Lessee's interest in this Lease or the leasehold estate hereby created; (b) all personal property placed upon the Leased premises by Lessee; (c) all coal produced hereunder and all products produced therefrom; (d) the production, severance, processing, cleaning, loading, storing, preparation, transportation or use of coal from or on the Leased premises; or (e) the exercise of any right or privilege in connection with Lessee's operations hereunder, and if any such taxes be paid by Lessor, in its discretion, then Lessee shall promptly repay to Lessor, with interest, the amount thereof promptly upon demand. In addition, Lessee shall reimburse Lessor promptly upon request for payment by Lessor of all ad valorem or property taxes that may be legally assessed, imposed or levied by any governmental authority upon or with respect to the Leased coal or any of Lessee's improvements located on the Leased premises. If Lessee

fails to promptly pay to the collecting authority or authorities any taxes which Lessee is required to pay, or fails to promptly reimburse Lessor for any of the aforesaid taxes paid by it, all such taxes, plus interest, for which Lessor may be responsible may be regarded and treated by Lessor as rent reserved, and shall be collectible as rent under the laws of West Virginia, or in any manner herein provided or otherwise provided under applicable law for the collection of royalties and rentals. Notwithstanding the foregoing, Lessee shall have the right, at its expense, to challenge in good faith, by legal and proper means, in the name, place and stead of Lessor (if necessary), the amount, validity, and equality of any such taxes; provided, however, in the case of such challenge, Lessee shall at all times protect Lessor's title to the Leased coal and surface upon which Lessee's improvements are located from tax liens, tax sales or any other encumbrances or impairments resulting directly or indirectly from any such challenge, and Lessee shall be responsible for any interest, penalty or similar charges incurred as a result of any such challenge.

Section 10. Determination of Quantity of Coal Mined

10.1 Determination of Quantity - Generally

For all Leased coal not mixed with foreign coal which is shipped by rail, the weight sheets furnished to Lessee by railroad companies over whose tracks such coal is shipped shall be accepted as conclusive of the quantity of coal so weighed and shipped. For all coal used by Lessee or sold locally or transported by some means other than railroad, Lessee agrees to

use such method or methods for determining the quantity of the coal so used, sold or transported as shall be approved in advance in writing by Lessor, such approval not to be unreasonably withheld.

#### 10.2 Determination of Quantity - Mixed Coal

Coal mined from the Leased premises may be commingled, before weighing, with coal from other properties. If the coal is sold raw, then tonnage royalty shall be paid on the basis of raw coal. If the coal is sold after cleaning, then tonnage royalty shall be paid on the basis of clean coal. If Lessee does engage in mining, handling or shipping coal from premises other than the Leased premises, whereby coal mined and removed from other lands is commingled in railroad cars or otherwise with coal from Lessor's lands, Lessee agrees to identify and account for Lessor's coal through ascertainment by engineering survey and measurement, at Lessee's expense, of the number of cubic feet of such coal, with due allowance for impurities, which are mined from the Leased premises. If Lessee shall, in the course of commingling Lessor's coal with coal of others, subsequently adopt any other method of identifying and accounting for such coal other than the above-described method, Lessee shall do so only with the written approval of Lessor's engineers or designated agent.

#### 10.3 Preservation of Records re Quantity and Price

Lessee shall keep and preserve for a period of not less than five (5) years all records used in preparing monthly statements to Lessor as required by Section 11, accurate books of account, railroad and/or truck and/or barge weight sheets,

and any other records necessary to show accurately and completely the weights of Leased coal, the gross selling price of Leased coal, and also all records of sampling, testing, processing, use, transportation and consumption of Leased coal. Lessee shall also keep and preserve all correspondence with and notices from governmental agencies or authorities relating directly or indirectly to the Leased premises or Leased coal.

Section 11. Access to Records; Monthly Statements

11.1 Access to Records; Right to Obtain Information

Lessor, through a nationally recognized auditor, shall have access at all reasonable business hours to the books and records of Lessee showing the information required to be kept and preserved under this Lease. To the extent Lessee has the right to do so, it hereby grants to such auditor, the right to obtain from any railroad, trucker, trucking company, barge line or other transportation entity by which coal mined hereunder shall be shipped or transported, information as to the quantity of coal produced hereunder and so shipped or transported at such time, or times, as Lessor may desire such information, and this provision shall constitute full authority in the absence of any further express authority to such railroad, trucker, trucking company, barge line or transportation entity to give such information to such auditor.

11.2 Monthly Statements

Lessee agrees to furnish Lessor on or before each payment date of each calendar month a statement specifying in detail the quantities of coal produced and sold, as well as any

transportation costs claimed deductible by Lessee as allowed in the definition of "gross sales price," during the time period to which the statement applies. Such statement shall set forth separately: (a) the quantities of Leased coal sold, whether such coal is sold separately or commingled with other coals, and the gross sales price of such sales; (b) the quantities of coal, if any, used or consumed by Lessee and the fair market value thereof; and (c) the quantities of Foreign coal and Other coal transported into, over, through or under the Leased premises.

Section 12. Security Interest and Lien for Royalties,  
Rentals and Other Payments; Other Liens

All royalties, rentals, taxes and other amounts due hereunder from Lessee to Lessor shall be and always remain and constitute, until paid to Lessor, a first lien upon, and Lessee does hereby grant to Lessor a security interest in the leasehold estate hereby created, all owned property of Lessee upon the Leased premises, including, without limitation, all improvements, buildings, structures, equipment, machinery, mining records, and property receivable upon release of reclamation bonds, regardless of whether or not such past due royalty or other payments shall amount to more than one (1) year's rental, or shall have been due more than one year. Without Lessor's written consent, no mortgage, deed of trust, security interest (excluding any purchase money security interest), or other lien on the leasehold estate hereby created, or on any property placed on the Leased premises, or

both, shall have the effect of a lien superior or precedent to Lessor's lien thereon and security interest therein for the royalties, rentals, and other payments provided and agreed to be paid by Lessee to Lessor. Lessor shall not unreasonably withhold its consent to Lessee granting superior liens to Lessee's creditors to the extent such superiority is reasonably required for the proper development of the Leased premises. In determining whether or not to consent to any proposed superior lien, Lessor may take into account, among other things, the then current financial condition of Lessee. Lessor shall not be required to subordinate its lien if there is any reasonable doubt as to the continuing ability of Lessee to fully discharge Lessee's obligations hereunder. Any superior lien on the leasehold estate shall specifically provide that the Lessee's interest in this Lease may not be transferred et al. (defined in Section 20) pursuant to such superior lien or otherwise except in compliance with the provisions of Section 20.

Section 13. Lessee's Mining Operations

13.1 Commencement of Mining; Compliance with Laws

Lessee shall: (a) during the term of this Lease, pay royalty on all of the coal mined and sold from the Leased premises; (b) conduct its mining operations hereunder in the most energetic, skillful, careful, efficient, workmanlike and prudent manner, according to generally recognized, modern, safe, approved and appropriate methods of mining, having due regard for the safety and preservation of the Leased premises as a mining property and, except as provided in Section 13.3,

the preservation of other seams lying above and below the Leased coal; (c) with regard to all of its activities on the Leased premises, substantially comply with the laws of the state of West Virginia and the political subdivisions thereof and of the United States of America, which may now or hereafter be in effect, and with all valid and applicable rules, regulations, or orders thereunder, regulating extraction, transportation and processing of coal, operation of mines, grading, filling, restoration and reclamation of surface, drainage and treatment of water, all related activities, and any other activities upon or with respect to the Leased premises; (d) commit no waste on, in or to the Leased premises or any part thereof; (e) refrain from violating the rights of Lessor reserved in Section 3; and (f) provide Lessor, upon written request, with copies of all applicable permits, bonds, bond releases, licenses and governmental approvals applicable to mining, water pollution, operation and maintenance of permanent structures and Roads and any other activities on the Leased premises. Without limiting the generality of the foregoing, if Lessee or its employees or contractors do or omit to do any act on the Leased premises which creates or contributes to the creation of any condition which (aa) constitutes a common-law nuisance or an environmental hazard or (bb) causes a violation of laws applicable to water, streams or air quality or (cc) fails to substantially comply with any applicable law, rule, regulation or order, or (dd) requires continuing expenditures to comply therewith after termination of mining, Lessee shall in any such case, within a reasonable

time, remove, in accordance with applicable laws and regulations, from the Leased premises or otherwise abate such conditions or challenge through appropriate legal proceedings the validity or existence of such conditions. However, nothing contained in this Lease shall be construed to obligate Lessor to inspect, oversee or assume any responsibility for Lessee's operations, acts or omissions on or with respect to the Leased premises, all of which shall be and remain the sole and absolute responsibility of Lessee. Lessee's obligations herein contained, except to commence or prosecute mining, are in addition to its separate obligation to pay minimum royalties, payment of which shall in no event be construed to obviate the necessity of complying with this Section 13.

#### 13.2 Mining Plans and Operations

In every case in which Lessee opens and develops a new mine or makes any substantial additions or modifications to the development of any existing mines, it will submit to Lessor in advance of mining, the plans of such proposed new openings, additions or modifications, which plans, and any amendments thereto, shall be consistent with all provisions of this Lease and shall be reasonable and proper in all respects and in accord with generally recognized, modern, safe and appropriate methods of mining, having due regard for (a) the safety and preservation of the Leased premises as a mining property; (b) the preservation of other seams lying above and below the seam in which Lessee is mining; and (c) maximizing recovery of coal from all portions of the Leased premises, and such plans shall show, with respect to conventional mining (i.e. other than

longwall mining), among other things, the method and system of mining, the entries and air courses, and the location and widths thereof, barrier pillars, and the location and widths thereof, rooms or panels, and the location and dimensions thereof, and, with respect to all forms of mining, such other data as Lessor may reasonably request, and such plans shall be adhered to by Lessee and shall not be deviated from thereafter (except in the case of emergencies) without prior written notice to Lessor (which notice shall specify the proposed deviation from the original plans and the proposed amendment of such plans). In the event Lessor reasonably believes that any mining plan or amended plan proposed by Lessee does not comply with the requirements of this Lease, Lessor may so notify Lessee in writing within thirty (30) days (fifteen {15} days in the case of amended plans) after Lessor receives such plans. If Lessor gives such notification, Lessee shall not implement such plan, or if already implemented, shall discontinue mining pursuant to such plan, until the matter is resolved by arbitration as provided in this Lease. Lessor's right to notify Lessee that proposed mining plans do not comply with this Lease is a right reserved for Lessor's protection and a right which Lessor may or may not exercise, as it may deem appropriate. Lessor does not reserve the right, or undertake the obligation, to approve mining plans or mining operations, which are entirely within the control of Lessee. This Lease shall not be construed so as to impose any obligations or liability on Lessor for mining plans or operations or to relieve Lessee of its sole obligation and liability with respect to the

preparation and implementation of mining plans and operations.

13.3 Lateral and Subjacent Support.

Lessee shall have the right to conduct its operations without providing for lateral or subjacent support for any overlying strata or estate, except only to the extent where material damage would be caused to an overlying seam of mineable and merchantable coal, in which case Lessor shall advise Lessee of the area or areas of such overlying seam, and upon the identification by Lessor of such overlying seam of mineable and merchantable coal, Lessee shall, as provided in Section 13.2, submit mine plans acceptable to Lessor, which provide for the support of such overlying seams or areas which are so identified.

13.4 Determining Limits of Mineable and Merchantable Coal

Lessee shall, in the course of its mining operations, fully and adequately test around such portion or portions of the Leased coal being mined where such seam appears to consist of coal that is not mineable and merchantable (and record on its maps, and give notice to Lessor of its findings) and based on the results of such testing shall reasonably and properly establish the extent and limits of such portion or portions of said seam of coal. If Lessee shall reasonably and properly determine that an area of Leased coal is not mineable and merchantable, and if Lessee shall promptly notify Lessor in writing thereof and allow Lessor a reasonable opportunity to examine such area of Leased coal (with the understanding that Lessor shall make such examination as promptly as reasonably possible but in no event later than thirty (30) days after

receiving such notice), then, subject to Lessor's right to dispute Lessee's aforesaid determination by arbitration, such coal need not be mined or paid for. Lessee shall not abandon any area of Leased coal for any reason without prior written notice to Lessor as aforesaid. Lessee shall be under no obligation to pay royalty on any mineable and merchantable coal left in place because of requirements of law, or for the reasonable protection of gas wells, oil wells, power lines, telephone or telegraph lines, or structures or improvements on the surface.

#### 13.5 Loss of Recoverable Coal; Damages

If at any time Lessee shall (a) not fully comply with all provisions of this Lease and loss of or damage to any of the mineable and merchantable Leased coal or other mineable and merchantable coal shall thereby result, or (b) abandon or bypass any leased mineable and merchantable coal, or (c) render any of the leased mineable and merchantable coal unmineable or less profitable to mine, Lessee shall in any such event pay to Lessor the full amount of royalty on the estimated tonnage of mineable and merchantable coal so lost, abandoned, bypassed, or rendered unmineable or less profitable to mine (collectively "lost coal"), provided, however, that no such payment shall be due nor shall lost coal be deemed to exist when Lessee has conducted its operations in accordance with mining plans implemented and conducted by Lessee without objection by Lessor under Section 13.2. Royalty for lost coal shall be recovered in default of prompt payment in the same manner as other royalties. The royalty on such lost coal shall be payable at

the next royalty payment date following the loss thereof. The value of lost coal for the purpose of determining the royalty thereon based upon selling price, shall be the market value of such lost coal if the same had been mined at the time of such loss. If Lessee shall pay royalty on any coal claimed to have been lost, it shall thereafter during the life of this Lease, but only during the life of this Lease, have the right to mine any such lost coal free from the payment of any additional royalty thereon, unless such lost coal is released by Lessee pursuant to Section 17 below.

#### 13.6 Encroachment of Boundaries

Lessee shall not at any time knowingly drive any drift tunnel, slope, shaft, room, entry, or air course within five (5) feet of the boundary line of owners of adjoining premises unless the written consent of Lessor shall be first had and obtained. Lessor's consent shall not be required if Lessee owns, leases or controls the adjoining premises, and in such event, Lessee shall have the right to mine across such boundary. This lease shall not be subject to forfeiture for inadvertent violations of this Section 13.6.

#### 13.7 Mine Maps and Other Data Regarding Leased premises

Lessee shall employ an experienced and competent registered professional mining engineer, whose duty it shall be to prepare the plans, projections, and maps provided for in this Lease to be made by Lessee, and to prepare and keep up a map (on a scale of four hundred feet to the inch) of the Leased coal in digital format, which map shall be posted monthly and shall show accurately and completely the boundaries of all of

the Leased premises, all mine workings, the thickness of the Leased coal at various points, all railroad tracks, rights of way, streams, Roads, buildings, underground roadways, entries, passages, old and existing workings, location and identification number of each drill hole on the Leased premises, all oil and gas wells, and all other customary and necessary information. Two paper copies and one digital copy of each map, complete and accurate, certified as correct by a registered professional mining engineer, shall be delivered to Lessor on or before the first payment date of the month following the end of January and July of each lease year, properly posted in accordance herewith covering all mining operations conducted prior to the first day of the month during which such maps are required to be furnished, which maps may be retained as the property of Lessor. If Lessee shall fail to furnish the map, or maps, provided for in this paragraph for ten (10) days after notice from Lessor that any such map has not been furnished as required, Lessor may, at its option, employ a competent engineer to make surveys and to make such map, or maps, and Lessee shall pay to Lessor the full amount of expense so incurred, such amount to be recovered, in the absence of prompt payment in the manner herein provided with respect to other payments due by Lessee to Lessor. Lessee agrees to make available to Lessor upon request and reasonable notice, after coal-mining operations have begun on the Leased premises, copies of all maps and other technical data within Lessee's possession regarding the Leased premises.

Section 14. Lessor's Inspection of Mine

Lessor, and its designated agents, shall have the right, after reasonable notice to Lessee, at reasonable times to enter Lessee's mines on the Leased premises and the mines of Lessee on other lands operated in conjunction with the Leased premises from time to time in order to inspect, examine, survey or measure the mining operations of Lessee, or any part thereof, as well as mined out areas, to verify or correct reports made by Lessee as to quantities of coal mined from the Leased premises, or for any other lawful purpose, and for such purposes may freely use the means of access to the mining operations of Lessee without hindrance or molestation on the part of Lessee.

Section 15. Indemnity; Worker's Compensation; Insurance

15.1 Indemnity

Lessee covenants and agrees to indemnify and save harmless Lessor et al. from and against any and all claims, demands, actions, causes of action, by or on behalf of any person, firm, corporation, or governmental body for damages, injuries, death, penalties, fines, assessments, or otherwise, caused by, arising out of, resulting from, or as a consequence of the acts or omissions of Lessee et al. or in any manner pertaining to the use and enjoyment of the Leased premises pursuant to this Lease by Lessee et al., and from and against any and all reasonable costs, counsel fees, expenses, and liabilities incurred in or about any such claim or action brought thereon, all of which reasonable costs, counsel fees, expenses and liabilities shall

be reimbursed to Lessor et al. by Lessee immediately upon notification from Lessor et al. to Lessee that the same have been incurred. Notwithstanding anything contained herein to the contrary, Lessee does not hereby assume responsibility for the sole negligence of Lessor.

#### 15.2 Workers' Compensation

Lessee further covenants and agrees that all employees of Lessee and/or any and all other persons performing work on the Leased premises pursuant to the rights granted in this Lease will be fully covered by or insured at all times by Workers' Compensation, and to that end Lessee shall comply with all applicable Workers' Compensation laws, rules and regulations and shall make all necessary contributions and/or premium or other payments. Lessee shall obtain and maintain any other coverage for employee claims that may be specified in Exhibit A.

#### 15.3 Insurance

Lessee further covenants and agrees to obtain and maintain the following insurance:

(a) Comprehensive general public liability insurance with coverage in the amounts specified in Exhibit A. Such liability insurance shall provide coverage against losses arising out of the legal liability of the Lessee due to coal mining operations or any other uses of, operation on or acts or omissions on or with respect to the Leased premises pursuant to this Lease, including, without limitation, those coverages commonly referred to as: (i) premises and operations; (ii) contractual; (iii) contingent; (iv) products; (v) hired cars;

(vi) non-ownership; (vii) pollution, contamination of water, gob pile or refuse area slides, and movement of overburden.

(b) Fire, property damage, and extended coverage on all structures located on the Leased premises for the full replacement value thereof against all perils included in an "all risk" policy or "broad form" if "all risk" is not available. In the event Lessee receives insurance proceeds in consequence of the destruction of any of the structures located on the Leased premises, it shall utilize such proceeds in its entirety to repair or replace such structures.

All insurance required in this Section 15.3 shall name Lessor as an additional insured with regard to the obligations of this Lease, with loss payable as its respective interests may appear, and all such insurance shall contain a provision for notice from the insurance company to Lessor of any overdue or unpaid premiums and thirty (30) days advanced notice from the insurance company to Lessor of any proposed cancellation. Each policy of insurance shall be written on an "occurrence" basis unless the policy is available only on a "claims made" basis, in which case such "claims made" insurance coverage shall be maintained in effect for a period of at least five (5) years after the termination of this Lease, or until final release of Lessee's environmental reclamation bonds required by any regulatory authority, whichever shall last occur. Lessee will cause its insurers to waive their rights of subrogation against Lessor, et al.

Section 16. Black Lung Obligation

16.1 Compliance With Law

Not in limitation of the foregoing, Lessee agrees that it shall comply with all of the terms and provisions of the black lung laws.

16.2 Lessee to be Operator

Lessee acknowledges that, as between itself and Lessor, it is, and shall be deemed to be, the operator of any coal mine or coal preparation facility or facility used for the extraction, preparation or transportation of coal produced from the Leased premises and of all related activities, including, but not limited to, coal mine construction or maintenance, engaged in by Lessee pursuant to the terms of this Lease with respect to any claim for black lung benefits filed by or on account of any of its employees or former employees. Lessee shall secure and shall require any other person or entity who operates, controls, or supervises a coal mine or coal preparation facility on the Leased premises or performs services of construction, maintenance, transportation, or other activities related to coal mining or preparation under the terms of this Lease, or who otherwise may be liable for the payment of black lung benefits, to secure the payment of such black lung benefits to or on account of employees or former employees in accordance with the black lung laws and shall provide Lessor, upon request, with the appropriate certification that each of them has provided security in compliance with all black lung laws for the payment of such black lung benefits.

16.3 Security for Black Lung Benefits

Without limiting the generality of Lessee's obligations to

comply with all other provisions of this Lease, Lessee agrees that it will secure and guarantee the payment of all black lung benefits required to be paid under the black lung laws by reason of mining, construction, transportation, and related activities under this Lease, and Lessee does hereby agree that it will indemnify and hold Lessor harmless from any liability or expenses, including reasonable attorney fees and expenses, which Lessor may suffer directly or indirectly, as a result of or with respect to any claim for black lung benefits filed by or on account of any of Lessee's employees or former employees, or employees or former employees of others who may be required to secure the payment of black lung benefits under Section 16.2 above.

#### 16.4 Decisions Concerning Mining

Notwithstanding anything in this Lease to the contrary, this Lease does not empower Lessor to make any decisions and Lessor hereby expressly waives and disclaims any right to make any decisions with respect to the terms and conditions under which the Leased coal is extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of Leased coal to be produced at any particular time, all within the meaning of the black lung laws. The parties hereto do acknowledge, however, that Lessor has reserved certain rights and has imposed certain requirements under the terms of this Lease solely for the purpose of preventing waste and protecting the reserved rights of Lessor.

#### Section 17. Termination of Lease After Exhaustion of Coal

If at any time while this Lease remains in effect, Lessee shall have completed its mining operations and shall have mined, removed and paid royalty on all of the Leased coal which is mineable and merchantable and if Lessee shall have then complied with all other covenants, agreements, conditions and obligations required to have been performed by it, Lessee shall have the right to terminate this Lease. In the event this Lease is terminated by Lessee under the terms of this Section, for the purpose of evidencing upon the public records the termination of this Lease, Lessee shall execute, acknowledge, and deliver to Lessor a proper written deed of surrender or release.

Section 18. Use and Removal of Equipment and Improvements

Upon the termination of this Lease, if all rents, royalties, and taxes required to be paid hereunder shall have been fully paid, and all covenants on Lessee's part fully kept and performed, Lessee may, within six (6) months after the date of such termination, but not thereafter, remove from the Leased premises all movable personal property of every sort and any improvement required to be removed for Lessee to comply with any of its permits which has been placed upon the Leased premises by Lessee. Any property not so removed within six (6) months after termination and all other improvements of a permanent nature shall, at Lessor's option, be and become the property of Lessor. If Lessor does not exercise this option to take title to some or all of such property, or any portion thereof, Lessor shall so notify Lessee in writing and Lessee

shall remove any such property (which Lessor does not desire to retain) from the Leased premises within thirty (30) days after receiving such notice.

Section 19. Defaults; Remedies

19.1 Defaults - Forfeiture; Generally

If at any time

(a) Lessee shall fail to pay as and when due any of the rentals, or royalties (including without limitation tonnage and minimum royalties) required to be paid under the terms of this Lease and any such failure continues for a period of fifteen (15) days or more after written notice of such failure shall have been given by Lessor to Lessee or

(b) Lessee shall fail to pay as and when due any sums of money required to be paid for taxes or on account of lost coal or any other sums of money due Lessor pursuant to this Lease and any such failure continues for a period of twenty (20) days or more after written notice of such failure shall have been given by Lessor to Lessee or

(c) Lessee shall fail to perform or be guilty of a breach of any one or more of any of the other terms, conditions, covenants, stipulations and agreements of this Lease relating to matters other than the payment of money, including without limitation any of the following failures or breaches: (i) failure to make available or provide copies of prospecting information or data, or any other breach or violation of Section 6.1; (ii) improper use of surface or subsurface including transportation or deposit of substances from other

lands, or any other breach or violation of Section 6.2; (iii) failure to properly maintain, repair or reclaim Roads, or other breach or violation of Section 6.3; (iv) failure to use methods approved by Lessor for determining quantities of coal or any other breach or violation of Sections 10.1 and 10.2; (v) failure to keep and preserve required records or any other breach or violation of Section 10.3; (vi) failure to allow Lessor or its agents access to books and records, or any other breach or violation of Section 11.1; (vii) failure to provide monthly statements or any other breach or violation of Section 11.2; (viii) failure to obtain written consent of Lessor or other breach or violation of Section 12; (ix) failure to conduct mining operations as required by this Lease or failure to substantially comply with all applicable laws, rules, regulations, and orders, where such failure could result in or impose liability upon Lessor, or any other breach or violation of Section 13.1; (x) failure to submit in advance reasonable and proper mining plans, or failure to adhere to those plans, or failure to give Lessor prior notice of changes in those plans, or failure to submit reasonable and proper amended mining plans, or any other breach or violation of Section 13.2; (xi) failure to provide subjacent or lateral support and to submit plans, acceptable to Lessor as required by Section 13.3; (xii) failure to reasonably and properly determine the limits of mineable and merchantable coal or failure to notify Lessor and allow Lessor reasonable opportunity to examine any area determined by Lessee to be not mineable and merchantable, or any other breach or violation of Section 13.4; (xiii) failure

to mine or pay Lessor for lost coal, or any other breach or violation of Section 13.5; (xiv) failure to employ an experienced and competent registered professional mining engineer, or failure to prepare and keep up the required mine maps, or failure to provide Lessor copies thereof every six months, or any other breach or violation of Section 13.7; (xv) failure to allow Lessor, its agents, etc. to enter and inspect Lessee's mines on the Leased premises, or any other breach or violation of Section 14; (xvi) failure to indemnify and save harmless Lessor, or any other breach or violation of Section 15.1; (xvii) failure to obtain and maintain Worker's Compensation coverage or other coverage or any other breach or violation of Section 15.2; (xviii) failure to obtain and maintain insurance or any other breach or violation of Section 15.3; (xix) failure to secure black lung benefits, or any other breach or violation of Section 16; (xx) assignment, subletting or transfer of this Lease or rights hereunder without written consent of Lessor, or any other breach or violation of Section 20; and if any of the aforesaid failures or breaches shall continue for a period of at least forty-five (45) days or more after written notice of such failure or breach shall have been given by Lessor to Lessee without being wholly cured, if cure is possible within such 45-day period, or, if not, without Lessee commencing to cure within such 45-day period and thereafter diligently pursuing cure of any such failure or breach; then in the case of (a), (b) or (c) Lessor shall have the right to elect to forfeit and terminate this Lease and all of the rights of Lessee hereunder, whereupon all of Lessee's

rights hereunder and the leasehold estate hereby created shall immediately be forfeited and terminated, and Lessor shall have the right at any time thereafter, with or without further notice or demand, to re-enter into and upon the Leased premises and hold and possess the same, free and acquit from any claims of the Lessee thereto. No action, suit, demand or actual re-entry shall be required to accomplish any forfeiture, and the declaration of forfeiture by Lessor shall be sufficient without more. A forfeiture shall not excuse Lessee from its obligations to Lessor accrued up to the time of forfeiture or from liability to Lessor for damages for breach of the Lease by Lessee.

Notwithstanding the foregoing, it is understood that all sums of money required to be paid by Lessee to Lessor under the terms of this Lease, including e.g. rentals, royalties and reimbursement of taxes, shall bear interest from the date when such sums are due until actually paid at the prime rate of interest being charged by Citibank, N.A., New York, New York, from time to time, REDACTED and in addition Lessee shall reimburse Lessor for all of its reasonable expenses incurred in collecting any such sums from Lessee including, without limitation, reasonable compensation for Lessor's time (including the time of experts, agents and employees).

Notwithstanding any of the foregoing, it is understood that any failure of Lessee to perform an act as of a particular date or time shall be deemed to have been cured if the act is fully performed within the applicable cure period (i.e.,

fifteen {15} or twenty {20} days for payments of money or forty-five {45} days for other violations susceptible of cure within forty-five {45} days or the actual time reasonably required for cure in the case of violations which require more than forty-five {45} days to cure). Any violation of the Lease by Lessee which results in damage to Lessor and which can be fully remedied by the payment of money damages from Lessee to Lessor shall be deemed to have been "cured" when such payment has been made to Lessor, together with interest at the rate hereinabove provided and reimbursement of all of Lessor's expenses (including, without limitation, reasonable legal fees) incurred as a result of such violation or as a result of Lessor's good faith efforts to remedy such violation or to compel Lessee to remedy such violation, including (if Lessor prevails in arbitration), without limitation, reasonable legal fees incurred in any arbitration proceeding initiated by either party to determine whether any such violation exists and/or whether any such violation has resulted in damage to Lessor and/or whether any such violation can be fully remedied by the payment of money damages and/or to determine the amount of such money damages. The cure periods set forth above (i.e., fifteen {15} days, twenty {20} days, or forty-five {45} days or over forty-five {45} days, as the case may be) shall, in each case, be deemed to have been tolled as of the notice of arbitration proceedings as provided in Section 21.2 to determine whether a violation exists and/or to determine whether any such violation can be fully remedied by the payment of money damages, and in the event that a violation exists,

Lessee may cure such violation within a period of days after the arbitrator's award equal to the number of days in the applicable cure period. The initiation of arbitration proceedings shall not toll the running of interest which may be payable by Lessee to Lessor as aforesaid.

19.2 Bankruptcy, Insolvency, Etc.

If Lessee, or any of the parties constituting Lessee if Lessee consists of more than one person or entity, shall (a) discontinue business or (b) make a general assignment for the benefit of its creditors or (c) apply for or consent to the appointment of a receiver, trustee or liquidator for all or a substantial part of its assets, or (d) be adjudicated a bankrupt or insolvent, or (e) file a voluntary petition in bankruptcy or (f) file a petition or an answer seeking reorganization or an arrangement with creditors or seeking to take advantage of any other law (whether federal or state) relating to relief for debtors, or (g) admit (by answer, default or otherwise) the material allegations of any petition filed against it in any bankruptcy, reorganization, insolvency or other proceedings (whether federal or state) relating to relief for debtors or (h) suffer or permit to continue unstayed and in effect for thirty (30) consecutive days any judgment, decree or order entered by a court or governmental agency of competent jurisdiction, which (i) assumes control of Lessee, (ii) approves a petition seeking reorganization of Lessee or any other judicial modification of the rights of any of its creditors, or (iii) appoints a receiver, trustee or liquidator for Lessee or for all or a substantial part of any of its

business or assets; then and in any one or more of such events Lessee shall be in default and Lessor shall be entitled to exercise the remedies provided in Section 19.1. To the extent that any portion of this Section 19.2 is held to be unenforceable, such holding shall not render the remaining portions of this Section 19.2 or any other portions of this Lease unenforceable.

19.3 No Waiver

A waiver by Lessor of any particular default upon the part of Lessee which would entitle Lessor to forfeit and terminate this Lease and re-enter and take possession, shall not prevent Lessor from forfeiting this Lease for any other cause, or for the same cause occurring at any other time. The receipt by Lessor from Lessee of payment of rentals, royalties, or other sums after the occurrence of any default that would authorize Lessor to declare a forfeiture of this Lease, or the continued recognition by Lessor of Lessee as its tenant after the occurrence of any default entitling Lessor to declare a forfeiture shall not be deemed a waiver of Lessor's right of forfeiture, so long as the cause of forfeiture continues to exist. No action taken by Lessor to terminate or forfeit this Lease shall waive the right of Lessor to collect and receive any rentals, royalties, or other sums of money that may be or become due and owing to it by Lessee. Receipt and acceptance by Lessor of any amounts tendered by Lessee shall not constitute an agreement by Lessor that such amounts are the proper amounts due or a waiver of Lessor's claims for greater amounts. All payments by Lessee to Lessor shall apply on the items longest

past due, and the receipt of any such payments shall not be a waiver either of the right or remedy of forfeiture or any other right or remedy available to Lessor with respect to items which remain undischarged after crediting such payments.

#### 19.4 Other Remedies

All the royalties, rentals, and other payments herein agreed to be paid by Lessee to Lessor shall be paid by Lessee to Lessor at such places as Lessor shall from time to time in writing specify, without demand by Lessor and shall be deemed and treated as rents reserved under contract by Lessor, who reserves unto itself all rights and remedies of landlords under all present and future laws of the state in which the Leased premises is located for the collection of the same, as well as all rights and remedies provided for in the Uniform Commercial Code (as adopted in the state in which the Leased premises is located) with respect to the enforcement of security interests; and if any of the said royalties, rentals, or other payments shall not be paid when the same become due and payable, as hereinabove provided, Lessor shall have the right to enforce the payment of same by remedies given by law to landlords against delinquent tenants for nonpayment of rent, as well as all of the aforesaid Uniform Commercial Code rights and remedies, and Lessor may enter upon the leasehold and sell the leasehold interest of Lessee to enforce and collect the payments of royalties, rentals, and other payments as aforesaid, and Lessor shall have such rights of distress or distraint as may be available under applicable state laws for all rentals, royalties, and other payments which may be due and

payable regardless of whether they amount to more than one year's rent or not, and regardless of whether there are any liens, encumbrances, mortgages, or deeds of trust thereon or security interests therein. At any such sale of property under this Section, Lessor shall have the right to become the purchaser thereof free from any and all rights of Lessee and of others claiming by or through Lessee. All rights, remedies and provisions herein contained for the lien for, or collection of, royalties, rentals, or other payments, shall be deemed cumulative, and are nonexclusive, and shall not deprive Lessor of any other legal, equitable or contractual rights or remedies which they may otherwise have.

Section 20. Assignment or Subletting

Except as otherwise herein provided, Lessee covenants and agrees that it will not sell, assign, sublease, mortgage, pledge or otherwise transfer or encumber (collectively "transfer et al.") this Lease or any rights, interests or estates created by this Lease or all or any portion of the Leased premises, either voluntarily or by operation of law, without having first obtained the written consent of Lessor, which shall not be unreasonably withheld, and in the case of any assignment, without first obtaining and presenting to Lessor a covenant of assumption by the assignee, wherein such assignee expressly agrees to and with Lessor to assume and be bound by all of the covenants, terms, conditions and provisions hereof to the same extent as if said assignee had been named as the original Lessee. Any such transfer et al. shall not relieve

Lessee from its obligations to comply with all the covenants, terms, conditions and provisions of this Lease, unless otherwise agreed in writing by Lessor. If Lessor consents to any transfer et al., such consent shall not relieve Lessee and/or any transferee, assignee, sublessee, etc., from securing Lessor's written consent to any further transfer et al., nor shall any consent be construed as a consent to any further transfer et al. or as a waiver of any portion of this Section or of Lessor's rights hereunder. Notwithstanding anything contained herein to the contrary, Lessee may employ contract miners to mine the Leased Coal and may assign, sublease or transfer this lease, or any portion thereof without Lessor's consent (but subject to all other provisions of this Section 20), to any wholly-owned subsidiary or affiliated company or parent of Lessee, which assignment shall become effective upon delivery to Lessor of a covenant of assumption executed by the proposed assignee, as aforesaid, but any such assignment shall remain in effect only so long as such assignee remains a wholly-owned subsidiary or affiliated company or parent of Lessee.

Section 21. Arbitration

21.1 Arbitrable Disputes

If any dispute should arise between the parties hereto as to (a) whether any of the terms or provisions of this Lease have been breached or violated in any respect, (b) the amount of tonnage royalties due for the coal mined or the amount of any minimum royalties due, (c) whether any coal or area of coal

is mineable and merchantable, (d) whether or not Lessee has left unmined coal which is mineable and merchantable and the amount thereof, (e) the reasonableness or propriety of any plans, decisions, determinations or actions made or taken or proposed to be taken by Lessee under the terms of this Lease, or (f) any other disputes between the parties hereto arising under the terms of this Lease, then such dispute shall be submitted to final and binding arbitration as set forth in this Section. Arbitration shall be a condition precedent to filing suit in any judicial forum with respect to any matters subject to arbitration.

#### 21.2 Arbitration

The party desiring to submit such controversy to arbitration shall give to the other party fifteen (15) days' notice in writing by certified mail, return receipt requested, specifying definitely the matter upon which an award is desired. The controversy shall then be resolved by arbitration before a single arbitrator in Charleston, West Virginia, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as in effect on the date notice is given. If the parties do not agree upon an arbitrator within fifteen (15) days, either party may petition the United States District Court for the Southern District of West Virginia for the appointment of an arbitrator in accordance with the Federal Arbitration Act. Any decision of the arbitrator appointed and acting pursuant to this section shall be final and binding upon the parties and judgment may be entered thereon, upon the application of any party, by any court having competent

jurisdiction. The arbitrator may also award reasonable attorney's fees and the costs of the arbitration to the prevailing party.

Section 22. Notices and Payments

Any notice or document which Lessor may desire to serve upon or deliver to Lessee and any payment which Lessor may be required to make to Lessee pursuant to the terms of this Lease may be served, delivered or made by mailing such notice, document or payment by United States registered or certified mail, postage prepaid, addressed to Lessee at the address set forth in Exhibit A, or such other address or addresses as may be designated from time to time in writing from Lessee to Lessor and the mailing of such notice shall constitute the giving of notice.

Any notice or document which Lessee may desire to serve upon or deliver to Lessor and any payment which Lessee is required to make to Lessor pursuant to the terms of this Lease may be served, delivered or made by mailing such notice, document or payment by United States registered or certified mail, postage prepaid, addressed to Lessor at the address set forth in Exhibit A or such other address or addresses as may be designated from time to time in writing from Lessor to Lessee, and the mailing of any such notice shall constitute the giving of notice.

Section 23. Miscellaneous

23.1 Headings

The headings of the Sections and sub-sections of this Lease are for convenience of reference only, and do not form a part hereof and in no way modify, interpret or construe the meanings of the parties.

#### 23.2 Binding Effect

Subject to the premises of Section 20, all of the terms, conditions, covenants, stipulations and agreements to be performed and observed by the respective parties hereto shall be binding upon its successors and assigns, and shall inure to the benefit of the other parties and its successors or assigns, and said other parties, its successors or assigns, may enforce any and all of said terms, conditions, covenants, stipulations and agreements.

#### 23.3 Memorandum

The parties agree to execute upon request of any party a memorandum of this Lease suitable for recordation.

#### 23.4 Lessee's Permits and Reclamation Bonds

Upon termination of this Lease prior to completion of mining all of the Leased coal, Lessee agrees to cooperate with Lessor to ensure a smooth, expeditious transition of the Leased premises to a new operator. Lessee's cooperation shall include (without limitation) (a) to the extent permitted by law assigning or otherwise transferring (at Lessor's election) any permits then in effect with respect only to the Leased premises to Lessor or any new operator of Lessor's choice, in which case the transferee shall assume responsibility for any such transferred permits and shall replace and cause the release of all of Lessee's related performance bonds and/or (b) waiving

any right Lessee may have under applicable laws, rules or regulations to object to the issuance of any new permit(s) with respect to the Leased premises prior to release of Lessee's permit(s). Lessee shall have the right and, to the extent permits are not assigned, the obligation to satisfy the requirements of any permits held by Lessee with respect to the Leased premises after termination of this Lease, as well as the right and obligation to comply with duties or obligations imposed on Lessee by any local, state or federal law, rule, statute, ordinance or regulation with respect to the Leased premises after termination of this Lease. Regardless of the time required to locate a new operator for the Leased premises, Lessee shall not be required to hold any permits for a time greater than either that allowed by law and/or the permitting authority or one (1) year after termination of this Lease. If no new operator has been found by the end of said one (1) year time period, Lessee may dispose of the permits as permitted by law. Lessor agrees to cooperate with Lessee in securing the release of Lessee's reclamation bonds, but only if the release of such bonds will not adversely affect the Leased premises and will not increase Lessor's exposure to potential liability.

#### 23.5 Survival

All of Lessee's obligations under this Lease shall be construed to survive the termination of this Lease to the extent reasonably necessary to protect Lessor et al. and the Leased premises. Any provision of this Lease which by its terms has or may have any application after the termination or forfeiture of this Lease shall be deemed, to the extent of any

such application, to survive termination or forfeiture. Without limiting the generality of the foregoing, Lessee's obligations contained in Sections 10.3, 11, 13.1, 15, 16 and 23.4 shall survive the termination of this Lease, and with respect to Section 13.5, for a period of one (1) year.

#### 23.6 Condemnation

If the Leased coal, or any portion thereof, shall be taken in, or in any manner affected by, condemnation for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase, in lieu of condemnation, by a public body vested with the power of eminent domain, then, and in each and every such event, Lessor shall be free to conduct all negotiations for compensation or damages, including without limitation, participation in viewers proceedings and the institution of litigation concerning such taking, with the understanding that in the case of each and every condemnation or taking Lessor shall notify Lessee of same, and Lessor and Lessee shall be paid out of any such award or compensation in damages as follows:

(a) If the award for the Leased coal in any such condemnation or taking shall exceed the amount of royalty that would have been due Lessor (based upon recent sales by Lessee or, if no such sales exist, based upon recent sales by others of coal of comparable quality) had the coal been mined when it ordinarily would have been mined, after said amount of royalty has been appropriately discounted using interest rates reflecting current financial markets ("Discounted Royalty"), all of such award which is in excess of said Discounted Royalty amount

shall be the property of and be paid to Lessee and the balance of the award shall be the property of and be retained by Lessor; or,

(b) If such award for the coal shall be equal to or less than said Discounted Royalty amount, then all of such award shall be the property of and be retained by Lessor.

(c) Lessee shall receive all sums attributable to any improvements of any kind (i.e., permanent improvements as well as trade fixtures) placed on the Leased premises by or for Lessee, et al., including, without limitation, tipples, processing facilities, roads, slopes, shafts and other improvements.

Lessee shall cooperate with Lessor in all matters hereunder, including joining in any litigation or settlement if Lessor determines such to be necessary; provided, that any such condemnation or taking shall not otherwise affect Lessee's duties and obligations under this Lease, except as provided herein. The parties agree that after any taking or purchase described herein, that, in Lessor and Lessee's respective reasonable opinions, has a major impact on the quantity or quality of the leasehold, the parties will immediately enter into good faith negotiations to appropriately reduce the economic terms of this Lease commensurate with whatever adverse impact the said taking or sale has on the quantity or quality of the leasehold or on Lessee's operations hereunder.

#### 23.7 Entire Agreement

This Lease constitutes the sole and entire existing agreement between the parties and expresses all the obligations

of and restrictions imposed upon the parties. All prior agreements and commitments, whether oral or written, between the parties are either superseded by specific sections of this Lease, or in the absence of such coverage, specifically withdrawn.

23.8 Amendments

This Lease is subject to amendment, alteration or addition only by mutual agreement in writing between the parties.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed by their proper officers or representatives thereunto duly authorized, all as of the day and year first above written.

**BOONE EAST DEVELOPMENT CO.,**  
a corporation,

By \_\_\_\_\_

Its \_\_\_\_\_

**EASTERN ROYALTY CORP.,**  
a corporation,

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF: WEST VIRGINIA,

COUNTY OF: KANAWHA, TO-WIT:

The forgoing instrument was acknowledged before me this \_\_\_\_  
day of \_\_\_\_\_ 2005, by R. Freal Mize, President of BOONE EAST  
DEVELOPMENT CO., a West Virginia corporation, for and on behalf  
of said corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC

STATE OF: \_\_\_\_\_,

COUNTY OF: \_\_\_\_\_, TO-WIT:

The forgoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_,  
\_\_\_\_\_ of EASTERN ROYALTY CORP., a Delaware corporation  
authorized to conduct business in the State of West Virginia,  
for and on behalf of said corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC

EXHIBIT A

TO

COAL LEASE EFFECTIVE August 1, 2005

BETWEEN

BOONE EAST DEVELOPMENT CO.

AND

Eastern Royalty Corp.

Term:

The initial term of this Lease is for a period commencing on August 1, 2005 and ending on the fifth anniversary of such Closing Date, and thereafter shall automatically be renewed, upon the same terms and conditions hereof, for successive five-year terms unless sixty (60) days prior to the end of the initial term or any extended term hereof, Lessee shall give to Lessor written notice of its intent to terminate this Lease, in which case all rights and obligations of Lessee shall terminate except as otherwise herein provided. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease at any time during the initial term or any extended term when it has mined all of the mineable and merchantable leased coal and performed the other terms and conditions required of it herein; provided, however, that Lessee may extend this Lease beyond the then current initial or extended term from year to year after all the mineable and merchantable leased

coal has been mined and removed (but not otherwise) for the mining or transporting or processing or handling of Foreign coal and/or Other coal by paying an annual rental (hereafter "annual rental") REDACTED

REDACTED which annual rental is to be paid at the same times and in the same manner as the minimum royalty was previously paid.

Mining Methods:

The Leased coal shall be mined and removed by the Deep Mining method.

Tonnage Royalty Rates:

REDACTED

Payment Date:

The 20th day of each month for coal mined and sold during the immediately prior month.

Minimum Royalty - Payable in Arrears - Recoupment:

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

and in

case of disagreement between the parties as to the accuracy of any such determination, the burden shall be upon the Lessee to prove the total tonnage of remaining mineable and merchantable Leased coal.

Insurance Coverage:

The comprehensive general public liability insurance required by Section 15.3(a) of the Lease shall have coverage REDACTED

Lessor's Address:

For all purposes of the Lease, the Lessor's address, unless and until otherwise designated, shall be:

Name and Address

Boone East Development Co.  
Attn: President  
Post Office Box 1867  
Charleston, WV 25327

with a copy to:

Boone East Development Co.  
Attn: ATM Corporate Counsel  
Post Office Box 26765  
Richmond, VA 23261

Lessee's Address:

For all purposes of this Lease, the Lessee's address,  
unless and until otherwise designated, shall be:

Name and Address

Eastern Royalty Corp.  
Attn: Vice President  
Post Office Box 1233  
Charleston, WV 25324

Transportation of Foreign Coal:

Lessee shall have the right (to the extent of Lessor's  
ownership rights) free of charge to transport Foreign coal  
into and through the Leased premises.

EXHIBIT B

TO

COAL LEASE EFFECTIVE July 1, 2005

BETWEEN

BOONE EAST DEVELOPMENT CO.

AND

Eastern Royalty Corp.

Description of Lease Coal

REDACTED



