

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

Hearing Date: February 25, 2014

Hearing Time: 10:00 a.m. Central

Location: Courtroom 7-N, St. Louis

**REORGANIZED DEBTORS' OBJECTION TO CLAIM
OF WESTERN LEASING, INC.**

Patriot Coal Corporation and its affiliates (the "Debtors" or the "Reorganized Debtors"), pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007, respectfully file this Objection to Claim of Western Leasing, Inc. (the "Objection"). In support of the Objection, the Debtors show the Court as follows:

Relief Requested

1. By this Objection, the Reorganized Debtors object to a claim, numbered 646-1 on the Court's register (GCG Claim No. 1574) (the "Claim"), because Reorganized Debtor Central States Coal Reserves of Kentucky, LLC ("Central States") is not liable to claimant Western Leasing, Inc. ("Western Leasing") on account of the facts and allegations underlying the Claim or applicable law. The Reorganized Debtors request entry of an order, pursuant to Section 502 of the Bankruptcy Code and Fed. R. Bankr. P. 3007, disallowing the Claim.

2. Any response to this Objection should include, among other things, (i) an appropriate caption, including the title and date of this Objection; (ii) the name of the claimant, both the EDMO and GCG claim numbers of the Claim that the Reorganized Debtors are seeking

to disallow, and a description of the basis for the amount claimed; (iii) a concise statement setting forth the reasons why the Court should not sustain this Objection, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing this Objection; (iv) copies of any documentation and other evidence which the claimant will rely upon in opposing this Objection at a hearing; and (v) the name, address, telephone number and facsimile number of a person authorized to reconcile, settle or otherwise resolve the claim on the claimant's behalf. A claimant that cannot timely provide such documentation and other evidence should provide a detailed explanation as to why it is not possible to timely provide such documentation and other evidence.

Jurisdiction

3. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

Background

5. Ninety-nine of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on July 9, 2012 (the "Petition Date") in the United States Bankruptcy Court for the Southern District of New York.

6. On December 19, 2012, these Debtors' cases were transferred to the United States Bankruptcy Court for the Eastern District of Missouri [Dkt. No. 1789].

7. The bar date for filing proofs of claim against these Debtors was December 14, 2012 [Dkt. No. 1388].

8. On March 1, 2013, the Court entered its Order Establishing Procedures for Claims Objections [Dkt. No. 3021].

9. Debtors Brody Mining, LLC and Patriot Ventures LLC filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on September 23, 2013 in this Court. The bar date for filing proofs of claim against these Debtors was October 24, 2013.

10. On December 17, 2013, the Court confirmed the Debtors' Fourth Amended Plan of Reorganization (the "Plan") [Dkt. No. 5169]. The Effective Date occurred on December 18, 2013.

Objection and Argument

11. The Claim arises from two agreements entered into between Central States and Western Land Company, LLC ("Western Land"). In particular, Western Leasing alleges that certain interests in oil and gas should have been conveyed by Central States to Western Land in connection with the sale of related real estate.¹ Because the nature of Western Leasing's allegations under each of the agreements is distinct, they are discussed separately below.

¹ Western Land conveyed certain real estate related to the Claim to Western Leasing by a Quitclaim Deed dated January 25, 2010. The Debtors reserve all of their rights as to the following issues: (a) whether the Quitclaim Deed also assigned the causes of action constituting the Claim to Western Leasing, such that Western Leasing has standing to assert the Claim; and (b) if so, whether the assignment of those causes of action was champertous or otherwise unenforceable under Kentucky law.

Contract I

12. Central States, Western Land, and Beaver Dam Coal Company (a non-debtor) are parties to a certain Contract to Sell Real Property Interests I dated as of November 20, 2006 (“Contract I”). A copy of Contract I is attached to Western Leasing’s proof of claim.

13. Under Contract I, Central States and Beaver Dam agreed to sell to Western Land all of their right, title, and interest in certain real estate in Ohio County and Muhlenberg County, Kentucky. With respect to the Ohio County property, the sale was to include “all oil and gas interests, *if any*, underlying the above referenced surface and coal tracts.” Contract I at 1 (emphasis added). With respect to the Muhlenberg County land, the sale was to include “all coal and gas interest, *if any*, underlying the surface and Kentucky #9 seam coal tracts referenced above.” *Id.* (emphasis added).

14. Contract I included several other disclaimers regarding oil and gas rights. It stated that “Sellers do specially warrant title as to all of the coal *and quit claim as to the oil and gas*” *Id.* ¶ 3 (emphasis added). Contract I also stated in bold that “**The Property is sold ‘AS IS’**” *Id.*

15. Central States never owned any oil or gas interests underlying that portion of the real estate that had been the subject of Contract I and was subsequently conveyed to Western Land. *See* Declaration of Mark R. Williams, attached hereto as Exhibit A. Accordingly, any claim by Western Leasing that it has an entitlement to oil or gas interests relating to Contract I, or the monetary equivalent, is unsupported by the facts.

Contract II

16. Central States, Western Land, and Beaver Dam Coal Company also are parties to a certain Contract to Sell Real Property Interests II dated as of November 20, 2006 (as initially executed, "Contract II"). A copy of Contract II is attached to Western Leasing's proof of claim.

17. Under the original version of Contract II, Central States and Beaver Dam agreed to sell to Western Land all of their right, title, and interest in a number of parcels of real estate in Ohio County and Muhlenberg County, Kentucky. With respect to the parcel referred to as the Gibraltar Surface Area, Contract II originally stated that the conveyance would include "all rights to oil and gas." Contract II at 2.

18. The same parties entered into an Amended and Restated Contract to Sell Real Property Interest on April 17, 2007 (as amended and restated, "Restated Contract II"). A copy of Restated Contract II is attached to Western Leasing's proof of claim. Among other modifications from the original Contract II, Restated Contract II eliminated the reference to "all rights to oil and gas" relating to the Gibraltar Surface Area. Restated Contract II at 3.

19. Western Leasing claims that Western Land was unaware of the deletion of the reference to the Gibraltar oil and gas rights in Restated Contract II, which Western Leasing characterizes as an "omission and/or fraud." Western Leasing claims in particular that Central States' attorney, M. Kirby Gordon, II, inaccurately represented to Western Land's attorney, Mason L. Miller, on April 6, 2007, that a proposed final version of Amended Contract II "contains all of the changes and revisions that you have approved and all of the content of all of the documents that you have seen heretofore," with certain exceptions that are not material to this dispute.

20. In fact, Gordon's statement was accurate, because Miller was fully aware of the deletion of the Gibraltar oil and gas rights from Restated Contract II. On March 2, 2007, Miller sent Gordon an email message and a redlined draft of Amended Contract II. *See* Declaration of M. Kirby Gordon, II, attached hereto as Exhibit B. In his message, Miller stated that "I understand that Mark [Williams] has already talked to Sam [Francis] about the oil and gas issue" Samuel S. Francis, who signed Western Leasing's proof of claim, was the principal of Western Land at the time. Miller's attached redline was based on an earlier version drafted by Gordon and circulated by Williams, which had eliminated numerous references to oil and gas rights that had been in Contract II. Miller's draft added the phrase "including all oil and gas and other minerals" with reference to six parcels of real estate, but not with respect to the Gibraltar Surface Area or several other parcels.

21. Miller thus was aware that Central States was not going to convey oil and gas interests relating to the Gibraltar Surface Area, and he did not request that Central States do so. Gordon's statement that the proposed final draft of Restated Contract II contained all of the changes that Miller had previously seen and approved was accurate.

22. In both Kentucky and Missouri, the knowledge of an attorney, gained in the course of employment by a client, is imputed to the client. *See Drinkard v. George*, 36 S.W.2d 56, 57 (Ky. 1930); *Bayne v. Jenkins*, 593 S.W.2d 519, 533 (Mo. banc 1980). Western Land was, therefore, charged with Miller's knowledge that Central States' conveyance of the Gibraltar Surface Area under Restated Contract II would not include interests in oil or gas. Accordingly, neither Western Land nor its purported successor in interest, Western Leasing, has a viable claim for fraud, mutual mistake, or any other theory that would permit Western Leasing to recover from Central States.

WHEREFORE, the Reorganized Debtors respectfully request that this Court:

- (a) disallow the Claim; and
- (b) grant such other and further relief as is just and proper.

Dated: January 28, 2014
St. Louis, Missouri

Respectfully submitted,
BRYAN CAVE LLP

/s/ Brian C. Walsh
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-and-

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Counsel to the Reorganized Debtors

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

**DECLARATION OF MARK R. WILLIAMS IN SUPPORT OF
REORGANIZED DEBTORS' OBJECTION TO CLAIM OF WESTERN LEASING, INC.**

Mark R. Williams declares, pursuant to 28 U.S.C. § 1746, to the best of his knowledge and based upon the documents available to him, as follows:

1. I am currently the Director – Land for Patriot Coal Services LLC. My office is located in Henderson, Kentucky.
2. Capitalized terms not defined in this Declaration have the meanings given to them in the Reorganized Debtors' Objection to Claim of Western Leasing, Inc., which is being filed with the Court herewith.
3. In 2006 and 2007, I was the Director – Land for the Midwest for Peabody Energy Corporation, which was at the time the parent company of Central States Coal Reserves of Kentucky, LLC (“Central States”). I have personal knowledge of the current and historical real-estate holdings of Central States in the Illinois Basin, which includes Ohio County and Muhlenberg County, Kentucky. In the course of my employment, I was involved in the transactions between Central States and Western Land in 2006 and 2007, including Contract I, Contract II, and Restated Contract II.

4. To my knowledge, Central States did not own any oil or gas interests underlying any portion of the real estate that had been the subject of Contract I, but which was subsequently conveyed by Western Land to Western Leasing.

5. In connection with the negotiation of Restated Contract II, I informed Samuel S. Francis, who was the principal of Western Land, by my email of March 1, 2007 (6:55 p.m.) with attached draft of Restated Contract II, that all oil and gas interests related to the Gibraltar Surface Area of Muhlenberg County, Kentucky, would be deleted from Restated Contract II. I was later advised by Western Land's attorney, Mason L. Miller, by his email of March 2, 2007 (5:11 p.m. EST) that oil and gas rights should be replaced in Restated Contract II from where they had been deleted except for the Gibraltar Surface Area of Muhlenberg County.

6. I declare under penalty of perjury that the foregoing is true and correct. Executed on January 27, 2014.

/s/ Mark R. Williams
Mark R. Williams

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

**DECLARATION OF M. KIRBY GORDON, II IN SUPPORT OF
REORGANIZED DEBTORS' OBJECTION TO CLAIM OF WESTERN LEASING, INC.**

M. Kirby Gordon, II declares, pursuant to 28 U.S.C. § 1746, to the best of his knowledge and based upon the documents available to him, as follows:

1. I am an attorney with the firm of Gordon & Gordon P.S.C. My office is located in Owensboro, Kentucky.
2. Capitalized terms not defined in this Declaration have the meanings given to them in the Reorganized Debtors' Objection to Claim of Western Leasing, Inc., which is being filed with the Court herewith.
3. My firm has represented Central States and its predecessors in title and their affiliates in connection with real-estate transactions in Kentucky for more than 30 years. In my capacity as an attorney for Central States, I was involved in the transactions between Central States and Western Land in 2006 and 2007, including Contract I, Contract II, and Restated Contract II.
4. In connection with those transactions, I interacted frequently with Mason L. Miller, an attorney with the firm of Miller & Wells, PLLC in Lexington, Kentucky. Mr. Miller

held himself out as an attorney for Western Land. Written communications between Mr. Miller and myself often were copied to Mark R. Williams, my principal client contact, and Samuel S. Francis, whom I understood to be the principal of Western Land.

5. During the negotiation of the terms of Restated Contract II, I prepared a draft of the contract for Mark R. Williams to review and approve and to forward to Attorney Mason Miller which, relative to the original version of Contract II, eliminated all references to the conveyance of oil and gas rights with respect to a number of parcels of real estate, including the Gibraltar Surface Area.

6. On March 2, 2007, Mr. Miller sent a redline of the draft of Restated Contract II to Mr. Williams and myself by electronic mail. A true and correct copy of Mr. Miller's message and the attachment thereto, together with a short response by Mr. Williams and my highlighting and handwritten notations, is attached hereto as Attachment 1.

7. In his message, Mr. Miller stated that he understood "that Mark has already talked to Sam about the oil and gas issue." Mr. Miller's redline of the draft of Restated Contract II inserted the phrase "including all oil and gas and other minerals" in connection with six parcels of real estate, but not with respect to the Gibraltar Surface Area in Muhlenberg County.

8. Following additional negotiations, I sent a proposed final version of Restated Contract II to Mr. Miller by electronic mail on April 6, 2007. That final version, like the redline circulated by Mr. Miller on March 2, 2007, did not contemplate the conveyance of oil and gas rights relating to the Gibraltar Surface Area. My representation to Mr. Miller that "this document contains all of the changes and revisions that you have approved and all of the content of all of the documents that you have seen heretofore," with the exception of several minor changes on unrelated matters that I explained in my message, was an accurate statement.

9. I declare under penalty of perjury that the foregoing is true and correct. Executed
on January 27, 2014.

/s/ M. Kirby Gordon, II
M. Kirby Gordon, II

ATTACHMENT 1

Message from Mason L. Miller

M. Kirby Gordon II

From: "Mark Williams" <MWilliams@peabodyenergy.com>
To: "Mason Miller" <mmiller@millerrwells.com>; "James Sevem" <JSevem@PeabodyEnergy.com>; "Gordon" <mkgordon2@adelphia.net>
Sent: Saturday, March 03, 2007 11:21 AM
Subject: Re: Amended and Restated Contract II

Mason
I will reply to your questions on Monday.
Mark Williams

----- Original Message -----

From: "Mason Miller" [mmiller@millerrwells.com]
Sent: 03/02/2007 05:11 PM EST
To: Mark Williams; James Sevem; <mkgordon2@adelphia.net>
Subject: RE: Amended and Restated Contract II

Attached is a redlined version of the contract; I may have additional changes once David Cobb reviews the permit section and I review the documents/issues below. I understand that Mark has already talked to Sam about the oil and gas issue and the reservation of access rights issue. Separately, I need someone to send me the following information and/or documents:

1. I need a copy of the BDCC/Ohio County Balefill, Inc. right of way agreement; *copy attatched*
2. The 498 acres of surface deleted from the Game Preserve area - - is that a portion of the surface that we determined you don't own (approx. 800-1000 acres total)? *In Site Surf. Not part of 800+ acres.*
3. The Partial Lease Assignment - - what lease is being partially assigned and can you send me a copy of the underlying documents?
Martin Heins lease to Peabody Coal
4. Coal Tract B-038 - - what tract is this? How large is it?
157.75

1940-127-00

1/2 Int 1,376 Acres Surf
1/2 Int 2,785 Acres Coal

(Now held by C.E. Martin Heins, LLC)
as per old Central Station
as CEE

Thanks,
Mason

From: Mark Williams [mailto:MWilliams@peabodyenergy.com]
Sent: March 01, 2007 6:55 PM
To: mmiller@millerrwells.com; samuelsfrancis@aol.com
Cc: James Sevem; mkgordon2@adelphia.net
Subject: Amended and Restated Contract II

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confidential and/or legally privileged information. The information is intended only for use by the designated recipient. If you are not the intended recipient (or responsible for the delivery of the message to the intended recipient), you are hereby notified that any dissemination, distribution, copying, or other use of, or taking of any action in reliance on this e-mail is strictly prohibited. If you have received this email communication in error, please notify the sender immediately and delete the message from your system.

**AMENDED AND RESTATED
CONTRACT TO SELL REAL PROPERTY INTEREST II
("CONTRACT")**

This AMENDED AND RESTATED CONTRACT TO SELL REAL PROPERTY INTEREST II is made and entered into on this the _____ day of _____, 2007, but effective as of November 20, 2006, ("Contract Date") by and among **CENTRAL STATES COAL RESERVES OF KENTUCKY, LLC**, ("Central States"), a Delaware limited liability company, and **BEAVER DAM COAL COMPANY**, a Delaware corporation ("BDCC"), **OHIO COUNTY COAL COMPANY, LLC**, a Delaware limited liability company ("OCCC"), and **GRAND EAGLE MINING, INC.**, a Kentucky corporation ("GEMI") (individually and collectively referred to herein as "Seller" or "Sellers") all with an address of 701 Market Street, Suite 765, St. Louis, Missouri 63101, and **WESTERN LAND COMPANY, LLC**, a Kentucky limited liability company ("Buyer"), with an address of 774 Mays Blvd. #10-484, Incline Village, Nevada 89451.

WITNESSETH:

WHEREAS, on November 20, 2006, Central States and BDCC as Sellers and Western Land Company, LLC as Buyer entered into a Contract to Sell Real Property Interest II (the "Contract"), pursuant to which Buyer agreed to buy all of Seller's right, title and interest in and to all of Sellers' real property rights and interests, including leaseholds, in certain real property located in Muhlenberg and Ohio Counties, Kentucky depicted on the map attached hereto as Exhibit A; and,

WHEREAS, all of the parties hereto desire to enter into this Amended and Restated Contract to Sell Real Property Interest II (the "Amended and Restated Contract") to supersede and amend the Contract so as to add additional parties necessary to the provisions of the Contract and to amend and restate the provisions of the Contract to clarify the intent and agreement of the Parties with respect to certain matters referred to in the Contract which subsequently have become known to the Parties upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, the Sellers agree to sell, and the Buyer agrees to buy all of Sellers' right, title and interest, in and to all of Sellers' real property rights and interests, including leaseholds, in the property depicted on the map attached hereto and marked as "Exhibit A Properties Conveyed" in Ohio County, and Muhlenberg County, Kentucky, ~~reserving and excepting all oil and gas and other minerals which are not to be conveyed herein~~ and the mining and mineral rights and privileges related thereto, ~~including all oil and gas and other minerals~~ (the "Property"):

(a) Ohio County:

- (i) West Fork Surface Area and Midway Surface Area of approximately 5,022 acres of owned surface and approximately 21 acres of 95% interest owned surface and all of the coal above the Kentucky #9 seam of coal underlying approximately 6,572 acres and approximately 413 partial interest acres, and coal mining rights and privileges in, on, and underlying the surface and coal tracts referenced above including all coal mining rights related thereto, ~~including all oil and gas and other minerals~~;

- (ii) Ben's Lick and Central Grove Church Area of approximately 691 acres of surface and all of the coal underlying approximately 865 acres and coal mining rights and privileges in, on, and underlying the surface and coal tracts referenced above including all coal mining rights related thereto, including all oil and gas and other minerals;
 - (iii) Area South of Kentucky Highway 62, North of the Western Kentucky Parkway, and West of U. S. Highway 231 of approximately 2,041 acres of surface and approximately 116 acres of 2/3 interest owned surface and all of coal underlying approximately 4,347 acres and approximately 116 acres of 2/3 interest owned coal, coal mining rights and privileges in, on, and underlying the surface and coal tracts referenced above including all coal mining rights related thereto, including all oil and gas and other minerals;
 - (iv) Ken Wye Surface Area of approximately 512 acres of surface;
 - (v) A Non-Exclusive Haulroad Easement Agreement over a portion of the Ohio County haulroad network known as the "Walton Creek Haulroad" running from the West Fork Surface Mine to the Matanzas-Equality County Road;
 - (vi) An Exclusive Easement to the surface of the Truck Wash Facility Site and the Water Withdrawal Line and Pump Site attendant to the Truck Wash Facility on the Walton Creek Haulroad east of its intersection with Kentucky Highway 85; and,
 - (vii) An Assignment of an unrecorded non-exclusive right-of-way Agreement between Seller BDCC and Ohio County Balefill, Inc., dated October 9, 1992, over 21.3123 acres.
- (b) Muhlenberg County:
- (i) Vogue - Pond River Levee and Earles Areas of approximately 1,732 acres of owned surface and approximately 1,376 acres of 50% owned surface and all of Sellers' interest in the Kentucky #9 seam of coal and all seams of coal above the Kentucky #9 seam of coal underlying approximately 2,854 acres and leases of 50% partial interest in approximately 1,376 acres of leased surface and Sellers' interest in 50% partial interest in the Kentucky #9 seam of leased coal and all seams of leased coal above the Kentucky #9 seam of coal underlying approximately 2,785 partial interest leased coal acres, coal mining rights and privileges in, on, and underlying the surface and coal tracts referenced above including all coal mining rights related thereto, including all oil and gas and other minerals;
 - (ii) Game Preserve B & C Area of Sellers' interest in the Kentucky #9 seam of coal and all coal above the Kentucky #9 seam of coal underlying approximately 548 acres, coal mining rights and privileges in, on, and underlying the coal tracts referenced above including all coal mining rights related thereto, including all oil and gas and other minerals;

- (iii) Paradise #9 Underground Area of approximately 50 acres of surface mining operations access rights and all of the Kentucky #9 seam of coal only underlying approximately 803 acres, coal mining rights and privileges in, on, and underlying the surface rights acreage and the coal tracts referenced above including all coal mining rights related thereto, **including all oil and gas and other minerals;**
- (iv) Gibraltar Surface Area lying south of Western Kentucky Parkway of approximately 4,782 surface acres; and,
- (v) Concurrent with the Closing (and using the definitions in paragraph 4 below), (a) Sellers shall grant to Buyer a Non-Exclusive Haulroad Easement over that portion of the Gibraltar Haulroad which is subject to KDNR - DMP Permit No. 889-0007 from the point it intersects with U. S. Highway 62, but only that portion of the Gibraltar Haulroad lying South of the northern boundary of the Access Road intersection; (b) Buyer shall grant to Seller Central States, its successors and assigns, a Transmission Line Right-of-Way and Easement of six hundred (600) feet in width over those Gibraltar Surface area surface tracts comprising the Thoroughbred Generating Transmission Line to the Tennessee Valley Authority Paradise Steam Plant;

all as depicted generally on the location map attached hereto as Exhibit A. The acreages shall be further depicted on the exhibit maps attached to the conveyancing documents, easements, and partial lease assignments which shall govern in the event of conflict with Exhibit A attached hereto. All of the foregoing are subject to the exceptions and reservations and footnotes set forth in the exhibits to the conveying documents and partial lease assignment and shall also be subject to the following terms and conditions:

1. PURCHASE PRICE. Buyer shall pay to Sellers a total purchase price of Sixty Five Million Two Hundred Ten Thousand Dollars (\$65,210,000.00) ("Purchase Price") for the surface, coal and other real property rights and interests, including the leaseholds, described above (the "Property") consisting of the following:

- (a) Fourteen Million Three Hundred Thousand Dollars (\$14,300,000.00) cash ("Cash Payment") payable at the Closing Date (defined below); plus
- (b) Fifty Million Nine Hundred Ten Thousand Dollars (\$50,910,000.00) as evidenced by a **Non-Interest Bearing** Negotiable Promissory Note and Rider substantially in the form of Exhibits F-1 and F-2 attached hereto to be executed and delivered by Buyer to Sellers at the Closing Date (as defined below).

The Cash Payment shall be made by wire or interbank transfer, to such account as Sellers may designate, in immediately available funds.

2. EXCEPTIONS AND RESERVATIONS.

- (a) In a series of conveyances of surface property to the Kentucky Department of Fish and Wildlife, the Sellers reserved the mineral estate underlying such property and extensive rights to use the surface in conjunction with the exploration and development of the mineral estate and the extraction of the

minerals contained therein; provided, however, that the Sellers agreed to limit the surface property which they could disturb and use in surface coal mining operations to no more than 7,000 acres. In the transaction contemplated under this Amended and Restated Contract, the Sellers will provide a Deed of Easement to Buyer for the use of approximately 50 acres of such rights necessary and convenient to support Buyer's mining activities on the Paradise #9 Underground Area in Muhlenberg County only of the Property; and,

- (b) Sellers shall reserve non-exclusive access to the Property so conveyed to ~~allow access to the coal seam reserves lying beneath the seams so conveyed, surface rights to construct power lines and easements for use of existing haulroads, and, upon all Property except the Gibraltar Surface Area, preparation plant refuse, raw and clean coal inventory storage, rail or truck tipples, and warehouse, office and portal sites; and,~~
- (c) The recoupable royalty previously paid by Sellers or their affiliates under the assigned leases ~~as set forth on Schedule 2(c)~~ will be repaid to Sellers by Buyer as coal, subject to such royalty, is mined and sold by Buyer from the respective leased areas of the Property; and,
- (d) At the Closing, Buyer shall grant to Central States, its successors and assigns, a six hundred foot (600') wide Transmission Line Right-of-Way and Easement over certain of the surface tracts within the Gibraltar Surface Area, substantially in the form of Exhibit N attached hereto.

The deeds conveying the Property to Buyer shall contain reservation language necessary to accomplish the exceptions and reservations contained in this Amended and Restated Contract and to provide for necessary access to coal seams not conveyed herein and to provide all mineral rights and privileges necessary and convenient for Sellers to mine such seams not conveyed herein including the right to subside the surface without liability to Buyer for damages thereto. Sellers reserve the oil and gas and other minerals and the coal bed methane ("CBM") and coal mine methane ("CMM") within the coal seams not conveyed or assigned.

3. TITLE. Sellers do not warrant their title to the Property generally. Sellers do specially warrant title as provided in its two (2) Corporation Special Warranty Deeds and Deed of Easement, substantially in the form of Exhibits B-1, B-2 and C, respectively, attached hereto and made a part hereof. Other than as provided in Sellers' Corporation Special Warranty Deeds and Deed of Easement, Sellers shall have no liability to Buyer for any impairment of or interference with Buyer's rights by persons claiming title interests in derogation to that of Sellers. Buyer acknowledges that Sellers have furnished to Buyer copies of all title information in their possession and readily available to them, including copies of abstracts of title, commitments for title insurance and title insurance policies. Abstracts of title, if existing, shall not be brought down to current date by Sellers. Sellers shall not bear any third party expenses whatsoever relating to the production of any such title information.

Sellers shall convey title to the Property to Buyer by two (2) Corporation Special Warranty Deeds and Deed of Easement in a form substantially similar to Exhibits B-1, B-2, and C, respectively. Sellers will not subdivide the Property for Buyer.

The instruments of conveyance shall contain the following provision(s):

This conveyance is subject to all rights-of-way, easements, leases, (other than any granted by Sellers) deed and plat restrictions, partitions, severances, encumbrances, licenses, reservations and exceptions which are of record as of the date first above written, and to all rights of persons in possession, and to physical conditions, encroachments and possessory rights which would be evident from an inspection of the Property.

The Property is sold "AS IS," and Sellers makes no warranty that either the Coal seams or the surface above or below such seams are safe or suitable for underground and/or surface mining, or suitable for any other purpose or use. The ability to mine such coal seams is not warranted by Sellers and Buyer recognizes and accepts that the coal seams may be unsuitable for either surface and/or underground mining for reasons, including, but not limited to, rough, unnatural and unstable surfaces, inadequate subjacent or lateral support, circumstances relating to the environmental quality of the Property, or other conditions arising out of the prior use of the Property.

The Sellers make no warranty as to ownership of the oil and gas conveyed hereunder.

Sellers shall work to obtain the consents and approvals, where necessary, of the lessors to the Partial Lease Assignment and in the event all necessary consents cannot be obtained, Sellers shall deliver a sublease or subleases of the Property referred to above.

Three (3) segments of the Ohio County haulroad network known as the Walton Creek Haulroad have been conveyed to the Ohio County Fiscal Court with the right to obtain three (3) such reconveyances to Sellers. Sellers shall meet with County officials and shall work to obtain the three (3) reconveyances to Sellers in order to perfect the title to the Non-Exclusive Haulroad Easement to be granted to Buyer or Buyer's designee, substantially in the form of Exhibit D attached hereto.

With regard to coal tract B-038 in the Midway Reserves in Ohio County, Sellers shall work to obtain the outstanding forty percent (40%) undivided interest therein by obtaining conveyances or leases thereof. The parties by agreement have removed this tract from the map attached as Exhibit A hereto and from the Corporation Special Warranty Deed for Ohio County with the understanding and agreement that Sellers shall diligently pursue all proper and legal courses of action to obtain the outstanding interest in all of the coal underlying such tract and, when that is accomplished, to convey and/or to assign the entire interest or interests of Sellers in all of the #8 coal and all coal above the #8 seam of coal in coal tract B-038 to Buyer.

4. PERMIT TRANSFER AND CHANGES OF OWNERSHIP. Portions of the Property in Ohio County, Kentucky are subject to a certain Surface Coal Mining and Reclamation Operations Permit No. 892-0099 (the "Ohio County Permit"). Portions of the Property in Muhlenberg County, Kentucky are subject to certain Surface and Coal Mining and Reclamation Operations Permit No. 889-0032 (the "Muhlenberg County Permit"). Portions of the Property in Ohio County are subject to certain Surface Coal Mining and Reclamation Operations permit increments including, but not limited to, Increment 2 of 44 acres, Increment 3 of 47.4 acres, and a 14 acre portion of Increment 4 of 28 acres of Permit No. 892-5001; and, Increment 7 of 9.2 acres and Increment 9 of 18.6 acres of Permit No. 892-5003 (the "Ohio

County Permit Increments"). Portions of the Property in Muhlenberg County, Kentucky are subject to certain Surface Coal Mining and Reclamation Operations permit increments including, but not limited to, a 30 acre portion of Increment 1 of Permit No. 889-0007 of 149 acres and Increment 4 of Permit No. 889-0011 of 35 acres (the "Muhlenberg County Permit Increments"). The foregoing are collectively hereinafter called the "Permits". Sellers shall transfer and cause their affiliates holding the permit to transfer to Buyer or Buyer's designee the Ohio County Permit and the Muhlenberg County Permit and relinquish to Buyer or Buyer's designee the Ohio County Permit and the Muhlenberg County Permit and the rights and entitlements thereunder affecting the Property. Buyer, or Buyer's designee, shall within ~~thirty-ninety~~ (3090) days following the Closing Date, submit an application to the Kentucky Department of Natural Resources - Division of Mine Permits ("KDNR - DMP") to transfer the Ohio County Permit and the Muhlenberg County Permit to the Buyer or Buyer's designee, at which time Buyer will submit a successor operator permit bond covering the entire Permits being transferred. The Buyer shall submit permit applications to KDNR - DMP to "over-permit" an approximately thirty (30) acre portion of Increment 1 of Permit 889-0007 being only so much of the Gibraltar Haulroad as lies south of the northern boundary of the intersection of the one hundred foot (100') wide Access Road to U. S. Highway 62 ("Access Road Intersection"); to "over-permit" all of Increment 4 of Permit No. 889-0011; to "over-permit" an approximately 14 acre portion of Increment 4 of Permit No. 892-5001 being only so much as lies north of the Center Prep Intersection; and, to "over-permit" all of the remaining above-referenced Ohio County Permit Increments. "Over-permit" bonds will be submitted by Buyer when requested by the KDNR - DMP prior to issuance of the Permits to Buyer. Sellers shall cause its affiliates holding permits to not object to Buyer or Buyer's designees' "overpermitting" of increments of these permits.

Sellers shall remain responsible, at Seller's sole cost and expense, for the performance of all reclamation upon Increment No. 1 of Permit 889-0032 of 70 acres and to supply to Buyer or its designee all productivity reports to enable them to obtain full Phase III bond release of that increment. Seller shall reimburse Buyer or its designee the entire costs of water monitoring and reporting for all wells and streams attendant to Permit No. 889-0032; that is, 11 ground water monitoring wells and six (6) stream points as well as the two (2) discharge points in KPDES Permit KYG 044269 attendant to KDNP Permit No. 889-0032 until final Phase III bond release is obtained by Buyer or its designee upon Increment No.1 of Permit 889-0032 of 70 acres. Buyer agrees for itself and its designee that they shall timely submit and promptly and diligently pursue in good faith the processing and obtaining of the bond release application upon Increment 1 of Permit No. 889-0032.

Sellers shall indemnify and hold Buyer harmless from all damages, direct and indirect, whether or not foreseeable resulting from Seller's failure of or delay in Seller's performance of the reclamation and Buyer or its designee obtaining full Phase III bond release of Increment 1 of Permit 889-0032 of 70 acres.

Buyer, upon receipt of notice of permit transfers being issued to Buyer by KDMP of any one or more of the Permits, shall promptly thereafter submit change of ownership applications upon the following additional Permits:

- a. KPDES Permit No. KYG 045342 attendant to the West Fork Surface Mine Permit No. 892-0099;
- b. KDAQ Permit No. S-06-228 attendant to the West Fork Surface Mine Permit No. 892-0099;
- c. KPDES Permit No. KYG 044336 attendant to the Walton Creek Haulroad Permit No. 892-5001 for the Truck Wash Facility; and,

- d. KDOW Water Withdrawal Permit No. GACT 1-1534 which supports the truck wash facility on the Walton Creek Haulroad.

Buyer shall have the responsibility for accomplishing the transfer to it or the "overbonding" of permit increments, of all governmental permits, permit increments, licenses and other permissions issued to Sellers as of the Closing Date which are necessary to the lawful ownership and operation by Buyer or its designee of the aforesaid permits and increments of all Sellers' permit bonds. Sellers will execute all assignments, transfers, and consents and shall cooperate as may be reasonably required (i) to aid in the transfer to Buyer of those permits and licenses which are being transferred to Buyer or its designees on increments to be overbonded by Buyer or its designee(s) and (ii) to allow Buyer to operate under Sellers' permits pending such transfer. All permit bonds for the permits relating to the aforesaid permits and licenses provided by Sellers shall be replaced by Buyer or its designee's permit bonds or other security. Buyers shall obtain the releases by the permitting authority of Sellers' permit bonds or other security. Buyer shall not, before or after Closing, undertake any activity on the Property under any of Sellers' aforesaid permits and licenses, unless Buyer has obtained Sellers' advance written consent or pre-approval of the permitting authority for the transfer of any of such permits and licenses or "overbonding" of such permit increments.

5. CLOSING. This Amended and Restated Contract shall be fulfilled as to the sale of the Property, and the sale closed and possession of the Property given on a date, to be selected by the Parties, but, in no event later than March 31, 2007 (the "Closing" or "Closing Date"), at a place to be mutually agreed upon between the parties; provided, however, that the delivery by Sellers of the (i) Partial Assignment of Lease (defined below) and (ii) the required lessors' Consent to the Partial Assignment of Lease may occur after the Closing. Each party shall initiate and timely perform all of such party's obligations hereunder so as to ensure Closing within the period herein specified.

At the Closing of this Amended and Restated Contract, Buyer shall deliver to Sellers (i) the Cash Payment, or evidence of its payment, as specified in Paragraph 1(a) above, (ii) a Non-Exclusive Haulroad Easement Agreement of a portion of DNR Permit No. 889-007 (to be "overpermitted") substantially in the form of Exhibit D attached hereto; (iii) a Negotiable Promissory Note and Rider, substantially in the form of Exhibits E-1 and E-2 attached hereto; (iv) one or more Coal Mining Lease(s) between Buyer and Armstrong Coal Reserves, Inc., a Delaware corporation, which will collectively contain annual minimum royalty payment provision of \$9.5 million per year commencing December 1, ~~2004~~2011, substantially in the form of Exhibits F-1 and F-2 attached hereto; (v) a Partial Assignment of Coal Lease substantially in the form of Exhibit G attached hereto; (vi) a Non-Exclusive Haulroad Easement Agreement over a portion of the Walton Creek Haulroad and an Exclusive Easement to the truck wash facility site and water withdrawal line and pump site on the Walton Creek Haulroad, substantially in the form of Exhibits H-1 and H-2 attached hereto; (vii) Mortgages and Leasehold Mortgages, substantially in the form of Exhibits I-1 through I-5 attached hereto; (viii) Financing Statements substantially in the form of Exhibits J-1 through J-5 attached hereto; (ix) a Subordination, Non-disturbance and Attornment Agreement substantially in the form of Exhibit K attached hereto; (x) an Advance Royalty Recoupment Agreement substantially in the form of Exhibit L attached hereto; (xi) a Reciprocal Mining Agreement substantially in the form of Exhibit M attached hereto; (xii) a Transmission Line Right-of-Way and Easement substantially in the form of Exhibit N attached hereto; and, (xiii) an Assignment of an unrecorded non-exclusive right-of-way Agreement substantially in the form of Exhibit O attached hereto. Sellers shall then execute the two (2) Corporation Special Warranty Deeds and the Deed of Easement to the Property substantially in the form of Exhibits B-1, B-2, and C and deliver said deeds to Buyer. The parties agree to execute any other documents as required by law relative to this transfer.

Sellers also agrees upon the Closing of this Amended and Restated Contract to furnish to Buyer all of their title records, exploration and mining records, and permitting records related to the Property and to cooperate with Buyer for the provision of the same.

Upon the Closing of this Amended and Restated Contract each party shall have been deemed to have waived any and all defects of performance hereunder by the other party, as it relates to the Property, other than the payment of good funds, but including defects of title, except to the extent warranted in Sellers' Corporation Special Warranty Deeds, Deed of Easement, and Partial Assignments and as otherwise provided for herein.

6. CLOSING COSTS. Sellers shall pay, if and to the extent due, state title or conveyance taxes, including stamp taxes. Buyer shall pay, if and to the extent due: (a) deed of conveyance recording and registration fees and costs; (b) title insurance premiums, if Buyer wants the title insured; (c) bank transfer fees required to enable Buyer to make all payments hereunder; (d) the commissions, fees, charges, costs and claims of all of Buyer's real estate broker(s), agent(s) or finder(s), if any; and (e) the cost of performing any survey of the Property required for the recording of Sellers' Corporation Special Warranty Deeds and/or Deed of Easement desired by Buyer.

As to the Property, the following amounts, if and to the extent applicable, shall be prorated to the Closing Date and thereafter paid in full by Buyer: real and personal property taxes and assessments for the tax year in which the Closing Date occurs. Sellers will pay all unmined coal taxes for 2007. In no event shall Sellers be liable for any costs or expenses related to the recording of the deeds of this transaction, including, but not limited to, the costs or expenses of any survey of the Property which may be required prior to recording of the of the Corporation Special Warranty Deeds and Deed of Easement.

7. INDEMNIFICATION.

(a) Notwithstanding any provision to the contrary, Sellers hereby jointly and severally agree to defend and hold Buyer and its members, directors, officers, employees and agents and each of their respective successors and assigns harmless from and against any and all claims, demands, actions, suits, proceedings, judgments, liabilities, damages, costs and expenses of every kind and nature, including, but not limited to, reasonable attorney's fees and disbursements, and any and all related litigation costs and expenses (collectively, "Damages"), directly or indirectly arising out of, resulting from or in connection with any liability or cause of action which first arose or accrued prior to the Closing Date in connection with the ownership, use or operation of the Property, or arising from any breach by Sellers of any of their representations, warranties, covenants or obligations under this Amended and Restated Contract or any related instrument or agreement.

(b) Notwithstanding any provision to the contrary, Buyer hereby agrees to defend and hold Sellers and their members, directors, officers, employees and agents and each of their respective successors and assigns harmless from and against any and all claims, demands, actions, suits, proceedings, judgments, liabilities, damages, costs and expenses of every kind and nature, including, but not limited to, reasonable attorney's fees and disbursements, and any and all related litigation costs and expenses (collectively, "Damages"), directly or indirectly arising out of, resulting from or in connection with any liability or cause of action with respect to which first arose or accrued on and after to the Closing Date in connection with the ownership, use or operation of the Property, or arising from any breach by Buyer of any of its

representations, warranties, covenants or obligations under this Amended and Restated Contract or any related instrument or agreement.

8. ANCILLARY PROVISIONS OF THIS AMENDED AND RESTATED CONTRACT.

(a) This Amended and Restated Contract and the attached Exhibits hereto (made a part hereof), constitute the entire agreement between the parties, supersede all representations, notices, advertisements, bids, agreements, memoranda and correspondence between, by or for the parties relating to the Property and shall be construed in accordance with the laws of the Commonwealth of Kentucky.

(b) Except as herein set forth, Buyer's obligations under this Amended and Restated Contract are not subject to any condition prior or subsequent to the Contract Date, including Buyer's securing of financing.

(c) No amendment or modification of this Amended and Restated Contract shall be binding unless made by a written instrument signed by the parties.

(d) Waiver by any party of performance by the any party of any of the provisions of this Amended and Restated Contract shall not be construed as a waiver of any further right to insist upon full performance of the terms of this Amended and Restated Contract.

(e) No adjustment in the Purchase Price shall be made for any variances in acreage from that represented herein; and the Purchase Price shall be construed as a lump sum amount paid for the Property as described herein.

(f) Each party shall be entitled to insist strictly upon the timeliness of performance by the other party of the other party's obligations.

(g) Each party hereby indemnifies and holds harmless the other party from all claims for commissions, fees, expenses and liability of any broker, agent or finder, or person claiming to be such, by or through such indemnifying party.

(h) Neither party shall record this Amended and Restated Contract.

(i) Neither party shall assign this Amended and Restated Contract, or any rights hereunder, without the prior written consent of the other party. Any such assignment or attempted or purported assignment (except for permitted assignments as allowed for herein) shall be void as to the other party and, moreover, shall constitute a material breach of this Amended and Restated Contract.

(j) Any information or materials furnished by Sellers to Buyer from their files, whether or not relating to title, are furnished for convenience only and are not represented to be complete or accurate, and any reliance thereon by Buyer shall be at the sole risk of Buyer. In the event that this Amended and Restated Contract is terminated for any reason prior to the Closing Date, Buyer shall return such information or materials immediately to Sellers, along with any and all copies of such information or materials.

(k) All notices required shall be in writing and shall be served on the parties as follows:

For Notices to Buyer:

Western Land Company, LLC
774 Mays Blvd., #10-484
Incline Village, NV 89451
Attn: Manager

With copy to:
Mason L. Miller
Miller & Wells, PLLC
300 East Main Street, Ste. 360
Lexington, KY 40507

For Notices to Sellers:

Central States Coal Reserves of Kentucky, LLC
Beaver Dam Coal Company
Ohio County Coal Company, LLC
Grand Eagle Mining, Inc.
701 Market Street Suite 765
St. Louis, MO 63101
Attn: President

With a copy to:
M. Kirby Gordon II
Gordon & Gordon, P.S.C.
P.O. Box 398
Owensboro, KY 42302-0398

(l) The parties agree to execute and deliver to the other parties all documents necessary to carry out the intent of the parties to convey the Property and transfer the Permits to Buyer and obtain Sellers full Permit and bond release.

(m) Notice sent by postage prepaid registered or certified mail, return receipt requested, by overnight mail or by courier delivery shall be sufficient service. Mailed notice shall be deemed delivered on the date of the postmark. Any of the above addresses may be changed by proper notice at any time.

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Contract to Sell Real Property Interest II in duplicate as of the date first above written, by their duly authorized representatives.

Sellers:

**CENTRAL STATES COAL RESERVES OF
KENTUCKY, LLC**

By: _____
James C. Sevem, Vice President

Buyer:

WESTERN LAND COMPANY, LLC

By: _____
Title: _____

BEAVER DAM COAL COMPANY

By: _____

Title: _____

OHIO COUNTY COAL COMPANY, LLC

By: _____

Title: _____

GRAND EAGLE MINING, INC.

By: _____

Title: _____