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Hearing Date To Be Determined

Counsel to Macquarie Corporate & Asset Funding, Inc.

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

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In re:

Chapter 11

PATRIOT COAL CORPORATION, *et al.*,

Case No. 12-12900 (SCC)

Debtors

(Jointly Administered)

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**OBJECTION OF MACQUARIE CORPORATE & ASSET FUNDING, INC.
TO DEBTORS' SECOND NOTICE OF REJECTION OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES
AND THE ABANDONMENT OF EXPENDABLE PROPERTY**

Macquarie Corporate & Asset Funding, Inc. ("Macquarie"), as and for its objection to the above-captioned debtors and debtors-in-possession's (collectively, the "Debtors") *Second Notice of Rejection of Certain Executory Contracts and Unexpired Leases and the Abandonment of Expendable Property as Listed on Schedule "A" Attached Hereto* (the "Lease Rejection Notice") [Docket No. 503], respectfully sets forth and represents as follows:

OBJECTION

1. The Debtors and Macquarie are parties to that certain Master Lease Agreement, dated July 29, 2011 and related Schedules (as amended, modified, and supplemented from time to time, the "Equipment Leases"), pursuant to which Macquarie leases mining equipment to the

Debtors.¹ While each Schedule incorporates the terms and conditions of the Master Lease, the Schedules are separate instruments of lease which list the specific equipment being leased pursuant to each individual Schedule. By their Lease Rejection Notice, the Debtors purport to reject the leases of five pieces of equipment²:

<u>Equipment</u>	<u>Schedule</u>
Cogar Feeder Breaker (Serial No. 11-046)	Schedule Series B No. 002 (1 piece out of 2 in Schedule)
Fletcher Roof Bolter (Serial No. 2010191) Fletcher Roof Bolter (Serial No. 2010192)	Schedule Series B No. 003 (2 out of 2 pieces in Schedule)
Brookville Personnel Carrier (Serial No. 9697)	Schedule Series B No. 004 (1 piece out of 8 in Schedule)
Vacuum Breaker Switch House (Serial No. 35673-911)	Schedule Series B No. 005 (1 piece out of 8 in Schedule)

2. The Debtors' attempt to reject only parts of Schedule Series B No. 002, Schedule Series B No. 004 and Schedule Series B. No. 005 is improper and should be disallowed. It is hornbook law that the Debtors must either assume or reject the entire contract and thereby relinquish both the benefits and the burdens of the contract. Sterling Vision, Inc. v. Sterling Optical Corp. (In re Sterling Optical Corp., 371 B.R. 680, 692, n.13 (Bankr. S.D.N.Y. 2007) (citing In re Comdisco, Inc., 270 B.R. 909, 911 (Bankr. N.D. Ill. 2001)(citing AGV Productions, Inc., v. Metro-Goldwyn-Mayer, Inc., 115 F. Supp. 2d 378, 391 (S.D.N.Y. 2000)); 3 Collier on Bankruptcy ¶ 365.03[3] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010). Simply put,

¹ Because the Master Lease and Schedules contain sensitive and confidential commercial information, copies of the Master Lease and Schedules will be made available to the Debtors and the Court. The Debtors and Macquarie are parties to a total of nine Equipment Leases styled as Schedule Series A 001, Schedule Series A 002, Schedule Series A 003. Schedule Series B 001, Schedule Series B 002, Schedule Series B 003, Schedule Series B 004, Schedule Series B 005 and Schedule Series B 006 (collectively, the "Schedules").

² All of the equipment leased pursuant to Schedule B 003 is listed in the Debtors Notice of Rejection. Accordingly, Macquarie does not object to the rejection of Schedule B 003 but reserves all of its rights to payment of all post-petition rents and rejection damages.

the Debtors are not permitted to cherry pick from the Schedules, choosing to retain certain equipment and jettisoning others, and thereby unilaterally deprive Macquarie of the full benefit of its bargain.

3. The Debtors also cannot credibly argue that within a single schedule the equipment leased can be severed from the other equipment leased under that same Schedules and treated separately. The terms of the relevant Schedules here do not provide the equipment is being leased or otherwise treated as individual units. To the contrary, the equipment in each Schedule is defined as a single unit with one, not multiple, rent charged. As further evidence of the non-severability of the equipment leased under the individual Schedules, each of the Schedules provides, for example, that as of a certain date, the Debtors have the option to purchase “all but not less than all of the Equipment.” (Emphasis provided).

4. Accordingly, the Debtors’ ability to reject or assume its executory contracts is tempered by the fact that the Bankruptcy Code and uniform case law requires that it be an all or nothing proposition with respect to each lease.

RESERVATION OF RIGHTS

5. Macquarie hereby expressly reserves its right to (a) assert any additional objections with respect to any proposed rejection of the Schedules, on any and all grounds, and (b) to seek the payment of post-petition rent due and owing with respect to any of the Schedules as well as any and all damages suffered in the event rejection of any of the Schedules is authorized. Macquarie further reserves its right to payment of rent due in the post-petition period, including but not limited to September rent, under all the various Schedules, including without limitation those not implicated in the Lease Rejection Notice. As of the date of this

Objection, the Debtors have not paid September rent with respect to any of its Equipment Leases with Macquarie and, upon information and belief, continues to use the equipment.

CONCLUSION

For the foregoing reasons, Macquarie respectfully requests that the Court deny the Lease Rejection Notice with respect to the rejection of the equipment in Schedule Series B 002, Schedule Series B 004 and Schedule Series B 005 , and grant it such other and further relief as is proper and just.

Dated: New York, New York
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