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

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:  
**In re:** : Case No. 12-12900 (SCC)  
: Jointly Administered  
: Chapter 11  
: Manhattan Vicinage  
: Hearing Date: To Be Determined  
**Patriot Coal Corporation, et. al<sup>1</sup>,** :  
:  
: Debtors. :  
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**OBJECTION OF SOMERSET CAPITAL GROUP, LTD. TO DEBTOR'S FIFTH  
OMNIBUS NOTICE OF REJECTION OF CERTAIN EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES AND THE ABANDONMENT OF EXPENDABLE PROPERTY**

Somerset Capital Group, Ltd., by and through its attorneys, objects to the Fifth Omnibus Notice of rejection of Certain Executory Contracts and Unexpired Leases and the Abandonment of Expendable Property as listed on Schedule "A" [Doc. No. 1213] (the "Fifth Rejection Notice") filed by the above-captioned Debtors, and in support thereof, states as follows:

**PRELIMINARY STATEMENT**

**BACKGROUND**

**The May 15, 2008 Master Equipment Lease Agreement and Schedules Thereto**

<sup>1</sup> The Debtors are entities listed on Schedule 1 attached to Debtor's Motion for Approval of Procedures for the rejection of Executory Contracts and Unexpired Leases and for the Abandonment of Personal Property.

1. On or about May 15, 2008, The Fifth Third Leasing Company (“Fifth Third”) and Patriot Leasing Company LLC (“Patriot Leasing”) entered into and executed a Master Equipment Lease Agreement (the “Master Lease”) pursuant to which the parties agreed to execute Equipment Schedules to lease the equipment and other property listed in each schedule. A true and accurate copy of the Master Lease is attached hereto as **Exhibit A**.

2. Thereafter, Fifth Third and Patriot Leasing entered into a series of Equipment Schedules, including but not necessarily limited to:

- a. On or about May 16, 2011, the parties entered into and executed the following Equipment Schedules: Equipment Schedule – No. 019 (“Schedule 19”), Equipment Schedule – No. 020 (“Schedule 20”), Equipment Schedule – No. 021 (“Schedule 21”), Equipment Schedule – No. 022 (“Schedule 22”), Equipment Schedule – No. 023 (“Schedule 23”), and Equipment Schedule – No. 024 (“Schedule 24”); and
- b. On or about July 21, 2011, the parties entered into and executed Equipment Schedule – No. 025 (“Schedule 25”); and
- c. On or about November 30, 2011, the parties entered into and executed Equipment Schedule – No. 026 (“Schedule 26”); and
- d. On or about February 21, 2012, the parties entered into and executed Equipment Schedule – No. 027 (“Schedule 27”); and together with all of the above-referenced schedules, the “Schedules”).

3. On or about July 20, 2009, Fifth Third sold to SG Equipment Finance USA Corp. (“SGEF”) all of its right, title, and interest in and to, including but not necessarily limited to the Schedules and the leased equipment, payments and all other rights under the Schedules.

4. On or May 27, 2011 Somerset Capital Group, Ltd. ("Somerset") and SGEF entered into a Sale of Subordinated Residual Interest Agreement pursuant to which SGEF sold to Somerset on a subordinated basis the residual interest in the Schedules and the equipment thereto. A true and accurate copy of the Sale of Subordinated Residual Interest Agreement is attached hereto as **Exhibit B**.

### **The Bankruptcy Filing; Fifth Rejection Notice**

5. On July 9, 2012 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Code (the "Bankruptcy Code"). The cases were consolidated for joint administration. Since the Petition Date, the Debtors have continued to operate their business and manage their property as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. On October 12, 2012, the Debtors filed the Fifth Rejection Notice, pursuant to which they purport to reject only two items of the leased equipment from two schedules, one from each of Schedule 23 and one from Schedule 27. True and accurate copies of Schedules 23 and 27 are attached hereto as Exhibit C and D. Specifically, there are 14 items on Schedule 23 and 13 items on Schedule 27, but the Debtors purport to reject only one of the items on each, to wit: from Schedule 23 a Joy Mining Machinery 10SC32-56ABH-5 Shuttle Car, Serial Number ET17950<sup>2</sup> and from Schedule 27 a CAI Industries 2064-A Shuttle Car Serial No. 2064-0033.

See Fifth Rejection Notice, page 6.<sup>3</sup>

### **LEGAL ARGUMENT**

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<sup>2</sup> Notably, in Schedule 1 to the Fifth Rejection Notice, the Debtors list the shuttle car's model number as 64AAHE-3. As the serial number is the same as that listed on Schedule 23, Somerset presumes the Debtors made a mere clerical error.

<sup>3</sup> Upon information and belief these are the only two pieces of equipment be rejected. However, due to the fact that Schedule 1 of the Fifth Rejection Notice is lacking in clarity, the Debtor's intentions are unclear and it's possible there is additional equipment, Schedules and/or equipment leases in which Somerset has an interest in which the Debtor is seeking to reject/abandon. Therefore, in the event that is the case, Somerset hereby reserves all rights to object to the rejection/abandonment of any other equipment, Schedules and/or lease agreements in which it has an interest, including but not limited to, the rejection/abandonment of that certain Master Equipment Lease Agreement dated May 15, 2009 between Patriot Leasing and Somerset and all schedules and equipment related thereto.

**IT IS IMPROPER TO REJECT ONLY A PORTION OF LEASE**

7. While under 11 U.S.C § 365 a debtor may assume or reject an executory contract or unexpired lease, it may only assume or reject the contract or lease “in its entirety.” In re Adelphia Bus. Solutions, Inc., 322 B.R. 51, 54 (Bankr. S.D.N.Y. 2005). See also In re TSW Stores of Nanuet, Inc., 34 B.R. 299, 304 (Bankr. S.D.N.Y. 1983); NLRB v. Bildisco & Bildisco, 465 U.S. 513, 531 (1983) (“Should the debtor-in-possession elect to assume the executory contract, however, it assumes the contract *cum onere*”); In re Shangra-La, Inc., 167 F.3d 843, 848 (4<sup>th</sup> Cir. 1999) (“When the debtor assumes its unexpired lease, however, it assumes it *cum onere* – the debtor must accept obligations of the executory contract along with benefits.”); Covington v. Covington Landing Limited Partnership, 71 F.3d 1221, 1226 (6<sup>th</sup> Cir. 1995) (“When the debtor assumes the lease or the contract under [section] 365, it must assume both the benefits and the burdens of the contract. Neither the debtor nor the bankruptcy court may excise material obligations owing to the non-debtor contracting party.”).

8. Despite this basic legal tenet, the Debtors are seeking to not only sever two of the Schedules from the Master Lease, they are also seeking to remove individual pieces of equipment from Schedules 23 and 27. As explained above, the Debtors are essentially assuming the majority of the equipment under Schedules 23 and 27 and only rejecting one piece of equipment in each Schedule in a flat-out attempt to modify and restructure the contractual terms. “Neither the debtor nor the bankruptcy court may excise material obligations owing to the non-debtor contracting party.” Covington, supra at 1226. The Debtors do not have the flexibility to ignore portions of the Master Lease and Schedules and choose portions favorable to them.

9. In fact, not only are the Debtors seeking to impermissibly “cherry-pick” Schedules and equipment, they are engaging in a game of deceit. For example, the Fifth Rejection Notice

states that the Debtors are, in addition to rejecting leases in accordance with Section 365(a) of the Bankruptcy Code, also seeking to abandon “Expendable Property”<sup>4</sup> in accordance with Section 554(a) of the Bankruptcy Code. Of course, Section 554(a) of the Bankruptcy Code addresses personal property of the estate. However, Somerset’s equipment is not property of the estate so Section 554(a) has no application here. As such, since both 365(a) and 554(a) are inapplicable, the Debtors have no basis for the relief they are seeking and Somerset objects to the Fifth Rejection Notice and requests that the Court deny the Debtor’s application to modify the Master Lease and Schedules 23 and 27.

10. The disingenuousness of the Debtor’s position is that they first claim that the contracts and leases are being rejected in accordance with Section 365(a) of the Bankruptcy Code. See Doc. No. 1213, pages 1-2. However, in direct contravention of that statement, they conveniently insert – in a single footnote in a 29 page filing – that “The Leases are being rejected pursuant to this Notice only to the extent of the lease of Expendable Property specified in this Schedule A, and any Leases between the Debtors and any Counterparty of Lessor are otherwise unaffected by this Notice.” See Doc. No. 1213, Schedule A, page 3, footnote 1.

11. Moreover, until the Master Lease and the Schedules have been rejected and the equipment thereunder returned in accordance with the contractual terms, the Debtors are required to continue making payments and perform all contractual obligations in accordance with Section 365(d)(5) of the Bankruptcy Code.

12. Therefore, Somerset also objects to the Debtor’s requested modification of the Master lease and Schedules to the extent the Debtor’s are seeking to avoid their statutory obligations to timely perform all their post-petition obligations under the Master Lease and the Schedules, including but not limited to, to make post-petition payments and to return the leased equipment

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<sup>4</sup> The term “Expendable Property” is defined by the Debtors in Doc. No. 136 at page 2 as “personal property associated with rejected Leases.”

in accordance with the terms of the Master Lease and the Schedules if and when it/they are terminated or rejected.

**CONCLUSION**

WHEREFORE, Somerset objects to the Fifth Rejection Notice and requests that the Court deny the Debtor's application to modify the Master Lease and Schedules 23 and 27.

Dated: October 19, 2012

PERETORE & PERETORE P.C.  
*Attorneys for Somerset Capital Group, Ltd.*

By: \_\_\_\_\_  
Frank Peretore, Esq.

**EXHIBIT A**



## MASTER EQUIPMENT LEASE AGREEMENT

This Master Equipment Lease Agreement (this "Master Lease") dated as of May 15, 2008 is made by and between THE FIFTH THIRD LEASING COMPANY, an Ohio corporation ("Lessor"), and PATRIOT LEASING COMPANY LLC, a limited liability company organized under the laws of the State of Delaware and having a principal place of business at 12312 Olive Blvd, Suite 400, St. Louis, MO 63141 ("Lessee").

### TERMS AND CONDITIONS OF LEASE

1. **Lease.** Subject to the terms and conditions set forth herein, Lessor and Lessee shall execute and deliver Equipment Schedules pursuant to this Master Lease (each, an "Equipment Schedule") and pursuant to each Equipment Schedule Lessor shall lease to Lessee the equipment and other property described on such Equipment Schedule (together with all parts, additions and accessories incorporated therein, and software incorporated therein, the "Equipment"). Each Equipment Schedule will incorporate by reference this Master Lease and will specify certain terms relating to the leasing of the Equipment (this Master Lease as incorporated into each Equipment Schedule, a "Lease"). Each Equipment Schedule, together with this Master Lease, shall constitute a separate and enforceable Lease. In the event that any term of any Equipment Schedule conflicts with or is inconsistent with any term of this Master Lease, the terms of the Equipment Schedule shall govern. As used herein, the term "Item of Equipment", as it relates to any Equipment, shall have the meaning specified in the Equipment Schedule relating to such Equipment and if no such meaning is specified therein, "Item of Equipment" shall mean the Equipment as a whole.

2. **Term.** With respect to any Item of Equipment, unless otherwise specified on an Equipment Schedule, the initial term of lease shall commence on the earlier of (a) the date an Acceptance Certificate (as defined in Section 5) is executed with respect to such Item of Equipment, and (b) unless the Lessee rejects such Item of Equipment in a written notice to Lessor, ten (10) days after delivery of such Item of Equipment (the "Delivery and Acceptance Date") and, unless earlier terminated as provided herein, shall expire on the Expiration Date (as defined in the Equipment Schedule relating to such Item of Equipment); *provided, however*, that the Base Lease Term or the then applicable Renewal Term shall be automatically extended for successive one month periods until either (a) the end of the Notice Period (as defined below) or (b) Lessor demanding return of the Equipment. As used herein, "Notice Period" shall mean the period ending on the latest of (i) the Expiration Date, (ii) one hundred eighty (180) days after the delivery by Lessee of its final written notice of its election to purchase or return the Equipment or to determine the Fair Market Value or Fair Market Rental Value, as applicable, in accordance with the options set forth in the Equipment Schedule and (iii) one hundred eighty (180) days after the delivery by Lessee of its election to return the Equipment. Lessee shall pay Basic Rent at the then current rate for each month during the automatic renewal term. As used herein, "Term" shall mean, collectively, the period from the Delivery and Acceptance Date to the Expiration Date and all Renewal Terms (as defined in the Equipment Schedule relating to such Equipment); *provided, however*, that this Master Lease shall be effective from and after the date of execution hereof. All obligations of Lessee hereunder shall survive the expiration, cancellation or other termination of the Term. Provided that no Default or Event of Default (each as defined in Section 16) has occurred and is continuing, Lessor shall not interfere with Lessee's quiet use and possession of the Equipment.

3. **Rent.** Lessee shall pay Lessor for the leasing of the Equipment hereunder the periodic rental payments ("Basic Rent") on the dates (each a "Rent Payment Date") and in the amounts set forth in the Equipment Schedule. Basic Rent together with all other additional amounts as may from time to time be payable under this Lease and the other Lease Documents (as defined in Section 4) is referred to



herein as "Rent"). Rent shall be due whether or not Lessee has received any notice that such payments are due. All Rent shall be paid to Lessor at its address set forth in the Equipment Schedule, or as otherwise directed by Lessor in writing. If any Rent is not paid when due (or within 10 days thereafter) Lessee shall pay to Lessor a late payment fee equal to five percent (5%) of the amount of such Rent.

4. Net Lease. Each Lease shall constitute a non-cancelable net lease, it being the intention of the parties that all costs, expenses and liability associated with the Equipment or its lease shall be borne by Lessee. Lessee's obligation to pay Rent and otherwise to perform its obligations under this Lease and each other document and agreement executed in connection with this Lease (together with the Lease, collectively, the "Lease Documents") shall be irrevocable, absolute and unconditional and shall not be subject to defense, counterclaim, set-off, diminution, abatement or recoupment for any reason whatsoever, and Lessee waives all rights to terminate or surrender this Lease for any reason except as expressly set forth in this Lease, including, without limitation, defect in the Equipment or non-performance by Lessor. All Rent shall be paid without reduction or deduction whatsoever, including any reduction or deduction for any Tax (as defined in Section 18).

5. Acceptance. Upon delivery of the Equipment, Lessee shall promptly inspect and test such Equipment and, if acceptable to Lessee, accept such Equipment and deliver to Lessor a certificate of acceptance, in form and substance reasonably satisfactory to Lessor ("Acceptance Certificate"). Lessee represents that it has selected both (a) the Equipment, and (b) the manufacturer, vendor or other supplier of the Equipment (the "Supplier") without assistance from Lessor and either is a party to, or has received a copy of, each agreement and document by which Lessor acquired the Equipment or the right to possession and use of the Equipment (including any documents or agreements with the Supplier (collectively, the "Supply Contract")) prior to the Delivery and Acceptance Date. Lessee hereby assumes the risks, burdens, and obligations to any manufacturer or vendor of any Item of Equipment on account of nondelivery, nonacceptance or nonperformance of the Equipment.

6. Disclaimer of Warranties. THE EQUIPMENT IS BEING LEASED TO THE LESSEE BY THE LESSOR "AS IS, WHERE IS". LESSOR DOES NOT MAKE, HAS NOT MADE, SHALL NOT BE DEEMED TO MAKE OR HAVE MADE, AND EXPRESSLY DISCLAIMS TO LESSEE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE EQUIPMENT LEASED HEREUNDER OR ANY COMPONENT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO DESIGN, COMPLIANCE WITH ANY LAW, RULE, SPECIFICATION, OR CONTRACT PERTAINING THERETO, QUALITY OF MATERIALS OR WORKMANSHIP, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, USE OR OPERATION, SAFETY, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, OR TITLE, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE. Lessee's execution and delivery of an Acceptance Certificate shall be conclusive evidence as between Lessor and Lessee that the Items of Equipment referred to therein are acceptable for all purposes hereof.

7. Conditions Precedent. The obligation of Lessor to purchase the Equipment and to lease the same to Lessee shall be subject to satisfaction (or waiver by Lessor) of each of the following conditions, prior to the Delivery and Acceptance Date with respect to such Equipment: (a) Lessor shall have received each of the following documents, in form and substance satisfactory to Lessor: (i) the Equipment Schedule relating to such Equipment duly executed by Lessee; (ii) an Acceptance Certificate for each Item of Equipment duly executed by Lessee; (iii) if requested by Lessor, an assignment of Lessee's rights under the Supply Contract in form and substance acceptable to Lessor and consent executed by Lessee and the Supplier; (iv) the original bills of sale evidencing chain of title from the manufacturer or supplier to the Lessor relating to the Equipment to be leased hereunder; (v) a certificate of a member, managing member or other responsible officer of Lessee dated the date of such Equipment Schedule certifying (A) the incumbency of each of the members, managing members or other officers executing the applicable Lease Documents and, if such member or managing member is a corporation or other entity, the incumbency of the individual officer executing such documents on behalf of the member or managing member, (B) a copy of the articles of organization, operating agreement, and other applicable organizational documents of Lessee and (C) copies of any other documents evidencing the authorization of the members, managing members or other responsible officers on behalf of the Lessee to

execute, deliver and perform this Lease and each other Lease Document; (vi) a certificate dated the date of such Equipment Schedule of a member, managing member or other chief financial officer of Lessee certifying that, to the best of Lessee's knowledge, no Default or Event of Default has occurred and is continuing and no Event of Loss (as defined in Section 11) has occurred with respect to any Equipment identified in such Equipment Schedule; (vii) if requested by Lessor, an opinion of legal counsel to Lessee in form and substance satisfactory to Lessor; and (viii) such other documents or agreements as may be required by the terms of the Equipment Schedule or as Lessor may reasonably request; (b) Lessor shall have the right (by assignment or otherwise) to purchase the Equipment identified in the applicable Equipment Schedule for a price not to exceed the Lessor's Capitalized Cost (as identified in such Equipment Schedule) and on terms and conditions otherwise reasonably satisfactory to the Lessor; (c) Lessor shall have received evidence of the filing of Uniform Commercial Code financing statements or other records relating to such Equipment in form and substance satisfactory to Lessor in the jurisdiction in which Lessee is a registered organization and such other jurisdiction as Lessor may reasonably request; (d) Lessor shall have received evidence of insurance policies covering the Equipment which comply with the requirements of Section 10, hereof; (e) the representations and warranties of the Lessee contained herein and in each of the Lease Documents shall be true and correct on and as of the Delivery and Acceptance Date both with and without giving effect to the transactions contemplated by the applicable Lease; (f) no Default or Event of Default shall have occurred and be continuing or result from the transactions contemplated by the Lease; (g) Lessee shall have paid the fees and reasonable out-of-pocket expenses of Lessor (including the fees and expenses of counsel to the Lessor and any filing or recordation fees) incurred in connection with the negotiation, execution and delivery of the Equipment Schedule and other Lease Documents relating thereto, however the pre-funding documentation and processing fees shall not exceed two hundred fifty dollars (\$250.00) per Equipment Schedule funded by Lessor from the date of this Master Lease through the first anniversary of this Master Lease; and (h) no material adverse change in the existing or prospective financial condition or results of operations of Lessee or any guarantor of Lessee's obligations hereunder (a "Guarantor") which may affect the ability of Lessee to perform its obligations under the Lease Documents, or the ability of any Guarantor to perform its obligations under any Guaranty, shall have occurred since the date of the most recent audited financial statements of Lessee delivered to Lessor.

8. Use and Maintenance: Alterations.

(a) Lessee covenants and agrees that it: (i) shall use the Equipment solely in the conduct of its business, for the purpose, and in the manner, for which the Equipment was designed, (and shall not permanently discontinue use of the Equipment); (ii) shall operate, maintain, service and repair the Equipment, and maintain all records and other materials relating thereto, (A) in accordance and consistent with (1) the Supplier's recommendations all maintenance and operating manuals or service agreements, whenever furnished or entered into, including any subsequent amendments or replacements thereof, issued by the Supplier or other service provider (including requiring all components, fuels and fluids installed in or used on the Equipment to meet the standards specified by the Supplier from time to time), (2) the requirements of all applicable insurance policies, (3) the Supply Contract, so as to preserve all of Lessee's and Lessor's rights thereunder, including all rights to any warranties, indemnities or other rights or remedies, (4) all applicable laws, and (5) the prudent practice of other similar companies in the same business as Lessee, but in any event, to no lesser standard than that employed by Lessee for comparable equipment owned or leased by it; and (B) without limiting the foregoing, so as to cause the Equipment to be in good repair and operating condition and in at least the same condition as when delivered to Lessee hereunder, except for ordinary wear and tear resulting despite Lessee's full compliance with the terms hereof; (iii) shall not discriminate against the Equipment with respect to scheduling of maintenance, parts or service; (iv) shall not change the location of any Equipment as specified in the Equipment Schedule unless, (x) Lessee provides Lessor with written notice of the change in location within thirty (30) days of such location change, and (y) the Equipment remains within the continental United States; and (v) to the extent requested by Lessor, shall cause each item of the Equipment to be continually marked, in a plain and distinct manner, with the name of Lessor followed by the words "Owner and Lessor," or other appropriate words designated by Lessor on labels furnished by Lessor. If the location for any Equipment specified in the Equipment Schedule is a facility leased by Lessee or owned by Lessee subject to one or more mortgage liens, upon the request of Lessor, Lessee

will obtain a real property waiver or waivers in form and substance satisfactory to Lessor from the lessors or mortgagees of such facility.

(b) Lessee, at its own cost and expense, will promptly replace all parts, appliances, systems, components, instruments and other equipment ("Parts") incorporated in, or installed on, the Equipment which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. In addition, in the ordinary course of maintenance, service repair, overhaul or testing, Lessee may remove any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, *provided* that Lessee shall replace such Parts as promptly as practicable. All replacement Parts shall be free and clear of all Liens (as defined in Section 8(c)) and shall be in as good an operating condition as, and shall have a value and utility at least equal to, the Parts replaced, assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof. Any replacement Part installed, or incorporated on, the Equipment shall be considered an accession to such Equipment and title to such replacement Part shall immediately vest in Lessor without cost or expense to Lessor.

(c) Lessee will keep the Equipment and its interest therein free and clear of all liens, claims, mortgages, charges and encumbrances of any type regardless of how arising ("Liens") other than any Lien arising out of claims against Lessor not relating to the lease of the Equipment to Lessee ("Permitted Liens"). Lessee will defend, at its own expense, Lessor's title to the Equipment from all such Liens. If any Lien shall attach to any item of Equipment, Lessee will provide written notification to Lessor within five (5) days after Lessee receives notice of any such attachment stating the full particulars thereof and the location of such Equipment on the date of such notification.

(d) At its sole option, Lessee may make any alteration, modification or attachment to the Equipment deemed appropriate by Lessee, *provided* that such alteration, modification, attachment is of a type which is readily removable without damage to the Equipment does not decrease the value, condition, utility or useful life of the Equipment or cause such Equipment to become "limited use property" (as defined in Revenue Procedure 2001-28, 2001-19 I.R.B. 1158 or any successor publication or Treasury Regulation issued pursuant to the Internal Revenue Code of 1986 (as amended, supplemented or modified from time to time, the "Code")), a fixture (as defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), or real property or affect the insurability or impair any manufacturer's warranty with respect to the Equipment. All alterations, modifications and attachments of whatsoever kind or nature made to any item of Equipment that cannot be removed without damaging or reducing the functional capability, economic value or insurability of the item of Equipment or impairing any manufacturer's warranty shall only be made with the prior written consent of the Lessor and shall be deemed to be part of the Equipment. Under no circumstance shall any alteration, modification or attachment be subjected by Lessee to any encumbrance other than this Lease.

9. Assignment and Sublease. Lessee shall not sublease or otherwise relinquish possession of any Item of Equipment (except to a subsidiary of Lessee upon written notice from Lessee to Lessor, or to any non-subsidiary affiliate of Lessee upon prior written consent of Lessor), or assign, transfer or encumber its rights, interests or obligations hereunder or under any Equipment Schedule executed pursuant hereto unless expressly permitted pursuant to the terms of the Equipment Schedule relating to such Equipment. No assignment, transfer or sublease, in any event, shall relieve Lessee of, and Lessee shall remain primarily liable for, its obligations under each Lease Document.

10. Insurance.

(a) Lessee shall provide, maintain and pay for insurance coverage with respect to the Equipment, insuring against, among other things, the loss, theft, damage, or destruction of the Equipment, in an amount not less than the Stipulated Loss Value (as defined in the applicable Equipment Schedule) of such Equipment at any time; and public liability and property damage with respect to the use or operation of the Equipment, in the amounts set forth in the applicable Equipment Schedule. All insurance against loss shall name Lessor as the sole loss payee and all liability insurance shall name

Lessor and its Assignees (as defined in Section 20) and their subsidiaries and affiliated companies, and their successors and assigns as additional insureds. All of such insurance shall be in form (including all endorsements required by Lessor), and with companies, reasonably satisfactory to Lessor.

(b) All policies of insurance required hereunder shall (i) provide that any cancellation, expiration, lapse, or material modification shall not be effective as to the Lessor for a period of thirty (30) days after receipt by Lessor of written notice thereof; (ii) provide that premiums may be paid by the Lessor, but without liability on the part of the Lessor for such premiums; (iii) be primary without any right of set-off or right of contribution from any other insurance carried by the Lessor; (iv) contain breach of warranty provisions providing that, in respect of the interests of the Lessor, the insurance shall not be invalidated by any action, inaction or breach of warranty, declaration, or condition by the Lessee or any other person or by any fact or information known to Lessor; and (v) waive any right of subrogation against Lessor. Prior to the Delivery and Acceptance Date for any Item of Equipment, and thereafter, not less than 15 days prior to each renewal or replacement of such insurance, Lessee will deliver to Lessor certificates issued by the insurance carriers thereunder evidencing the insurance required to be maintained pursuant to this Lease.

(c) The proceeds (if any) of the insurance maintained by Lessee that are received with respect to the loss or damage of any Equipment, shall be applied and paid first, to Lessor for any amount then due and payable by Lessee under this Lease, second, if an Event of Loss (as defined in Section 11) has occurred, to Lessor for the payment of Stipulated Loss Value or otherwise, to Lessee for its reasonable, documented, out-of-pocket costs to repair or replace such item of Equipment pursuant to Section 11(b) (i), to the extent that such repairs or replacements were necessitated by the occurrence of the loss for which such proceeds were paid, third, to Lessee to reimburse Lessee for any Stipulated Loss Value actually paid to, and retained by Lessor and fourth, any excess to Lessor. Proceeds of any liability insurance shall promptly be paid to the party entitled thereto.

(d) If Lessee does not obtain, maintain or furnish to Lessor acceptable proof of the insurance coverage required by this Agreement, then, except for the initial insurance coverage required by Lessor prior to the first funding under this Master Lease, Lessor shall be entitled to procure such insurance coverage within thirty (30) days (or immediately if an Event of Default has occurred) after the insurance expiration or maturity date stated on Lessee's certificates of insurance, as Lessor shall deem appropriate in its discretion, at Lessee's sole cost and expense.

#### 11. Risk of Loss; Damage to Equipment.

(a) Lessee shall bear the entire risk of loss and damage to any and all Items of Equipment from any cause whatsoever, whether or not insured against, during the Term until the Equipment is returned to Lessor in accordance with Section 14 hereof. No loss or damage shall relieve Lessee of the obligation to pay Rent or of any other obligation under this Lease. An "Event of Loss" shall be deemed to have occurred with respect to any Item of Equipment if such Item of Equipment or any material part thereof has been lost, stolen, requisitioned or condemned by any governmental authority, damaged beyond repair or damaged in such a manner that results in an insurance settlement on the basis of an actual or arranged total loss.

(b) Upon any loss or damage to any Item of Equipment not constituting an Event of Loss, Lessee will promptly, and in any event within thirty (30) days of such loss or damage (or such longer period as Lessor shall determine in its sole discretion), place such Item of Equipment in good condition and repair as required by the terms of this Lease. If an Event of Loss to any Item of Equipment has occurred, Lessee shall immediately notify Lessor of same, and at the option of Lessor, Lessee shall: (i) not more than thirty (30) days following such Event of Loss (or such longer period as Lessor shall determine in its sole discretion) replace such Item of Equipment with replacement equipment (acceptable to Lessor) in as good condition and repair, and with the same value remaining useful economic life and utility, as such replaced Item of Equipment immediately preceding the Event of Loss (assuming that such replaced Item of Equipment was in the condition required by this Lease), which replacement equipment shall immediately, and without further act, be deemed to constitute Items of Equipment and be fully

subject to this Lease as if originally leased hereunder and shall be free and clear of all Liens; or (ii) pay to Lessor on the next succeeding Rent Payment Date the sum of (A) all Rent due and owing hereunder with respect to such Item of Equipment (at the time of such payment) including all Basic Rent payable on such Rent Payment Date plus (B) the Stipulated Loss Value as of such Rent Payment Date with respect to such Item of Equipment. Upon Lessor's receipt of the payment required under subsection (ii) above, Lessee shall be entitled to Lessor's interest in such Item of Equipment, in its then condition and location, "as is" and "where is", without any representations or warranties, express or implied.

12. Financial, Other Information and Notices.

(a) Lessee shall maintain a standard and modern system for accounting and shall furnish to Lessor, either directly from Lessee or indirectly through its parent entity, Patriot Coal Corporation ("Parent"):

(i) Within forty-five (45) days after the end of each quarter, a copy of Parent's unaudited consolidated financial statements for that quarter and for the year to date in a form reasonably acceptable to Lessor, prepared and certified as complete and correct, subject to changes resulting from year-end adjustments, by a member, managing member or other chief financial officer of Parent.

(ii) Within ninety (90) days after the end of each fiscal year, a copy of Parent's consolidated year end financial statements audited by a firm of independent certified public accountants acceptable to Lessor (which acceptance shall not be unreasonably withheld) and accompanied by an audit opinion of such accountants without qualification.

All such financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied. So long as Parent is a reporting company under the Securities Exchange Act of 1934 and is timely filing the reports required thereunder to the Securities Exchange Commission, Lessee will have no obligation to furnish its Parent's financial statements to Lessor as provided above.

(b) Lessee shall provide prompt written notice to Lessor (i) of any Event of Default (ii) of any loss or damage to any Item of Equipment or any Event of Loss with respect to any Item of Equipment, and (iii) any existing or threatened investigation, claim or action by any governmental authority which could adversely affect the Equipment or this Lease.

(c) Lessee shall furnish such other information as Lessor may reasonably request from time to time relating to the Equipment, this Lease or the operation or condition of Lessee including, without limitation, such additional financial statements of the Lessee for such periods as Lessor may request.

13. Inspections. Lessor may from time to time during Lessee's normal business hours, inspect the Equipment and Lessee's records with respect thereto. Lessee shall cooperate with Lessor in scheduling such inspection and in making the Equipment available for inspection by Lessor or its designee at a single location as reasonably specified by Lessee. Lessee will, upon reasonable request, provide a report on the condition of the Equipment, a record of its maintenance and repair, a summary of all items suffering an Event of Loss, a certificate of no Event of Default, or such other information or evidence of compliance with Lessee's obligations under the Lease as Lessor may reasonably request.

14. Condition Upon Return. At the expiration of the Term, unless Lessee has elected to purchase the Equipment in accordance with the terms of the Equipment Schedule, Lessee shall promptly, at its own cost and expense: (a) perform any testing and repairs required to place each Item of Equipment in the same condition and appearance as when received by Lessee (reasonable wear and tear excepted) and in good working order for its originally intended purpose and eligible for

manufacturer's maintenance (if available), free of all Lessee's markings and free of all Liens other than Permitted Liens; (b) if de-installation, disassembly or crating is required, cause such Items of Equipment to be de-installed, disassembled and crated by an authorized manufacturer's representative or such other service person as is reasonably satisfactory to Lessor; and (c) return such Items of Equipment in the condition and in the manner specified in the Equipment Schedule (collectively, the "Return Condition"). The Equipment, as returned, will include related maintenance logs, operating manuals, and other related materials. All operating manuals for the Equipment must be returned to Lessor undamaged and containing all pages. If lost or destroyed, Lessee shall, at its own expense, provide replacement operating manuals. Lessor may, but is not required to, inspect the Equipment prior to its return. If Lessor determines that the Equipment does not conform to the Return Condition, Lessor will promptly notify Lessee of such determination specifying the repairs or refurbishments needed to place the Equipment in the Return Condition. Lessor may, at its option, either require Lessee to effect such repairs or itself effect such repairs. In either case, all costs associated with any repairs and inspections will be paid by Lessee. Until Lessee has returned the Equipment in compliance with the requirements of this Lease, the Lease shall continue in full force and effect and Lessee shall continue to pay Rent notwithstanding any expiration or termination of the Term through and including the date on which the Equipment is accepted for return by Lessor as conforming with the Return Condition.

15. Lessee's Representations and Warranties. Lessee represents and warrants as of the date of execution and delivery of this Master Lease and each Equipment Schedule as follows: (a) Lessee is a limited liability company organized under the laws of the State of Delaware, having a principal place of business at 12312 Olive Blvd., Suite 400, St. Louis, MO 63141, duly organized, validly existing under the laws of the jurisdiction of its organization with full power to enter into and to pay and perform its obligations under the Equipment Schedule and this Lease as incorporated therein by reference, and is duly qualified or licensed in all other jurisdictions where its failure to so qualify would adversely affect the conduct of its business or its ability to perform any of its obligations under or the enforceability of this Lease; (b) each Equipment Schedule, this Master Lease and all other Lease Documents have been duly authorized, executed and delivered by Lessee, are valid, legal and binding obligations of Lessee, are enforceable against Lessee in accordance with their terms and do not and will not contravene any provisions of or constitute a default under Lessee's organization documents, any agreement to which it is a party or by which it or any of its property is bound, or any applicable law, regulation or order of any governmental authority; (c) Lessor's right, title and interest in and to the Equipment and the Rent therefrom will vest in Lessor upon Lessee's acceptance of the Equipment for lease hereunder and will not be affected or impaired by the terms of any agreement or instrument by which Lessee or any of its property is bound; (d) no approval of, or filing with, any governmental authority or other person is required in connection with Lessee's entering into, or the payment or performance of its obligations under, this Lease and the other Lease Documents; (e) there are no suits or proceedings pending or, to the knowledge of Lessee, threatened, before any court or governmental agency against or affecting Lessee which, if decided adversely to Lessee, would materially adversely affect the conduct of its business or its ability to perform any of its obligations under or the enforceability of this Lease; (f) the financial statements of Lessee which have been delivered to Lessor have been prepared in accordance with generally accepted accounting principles consistently applied, and fairly present Lessee's financial condition and the results of its operations as of the date of and for the period covered by such statements (subject to customary year-end adjustments), and since the date of such statements there has been no material adverse change in such financial condition or operations; (g) Lessee's full and correct legal name is set forth on the signature page hereof and Lessee will not change its legal name or the location of its jurisdiction of organization without giving to Lessor at least thirty (30) days prior written notice thereof; (h) the Equipment will always be used for business or commercial, and not personal, purposes; (i) Lessee is not in default under any obligation for borrowed money, for the deferred purchase price of property or any lease agreement which, either individually or in the aggregate, would have an adverse effect on the condition of its business or its ability to perform any of its obligations under or the enforceability of this Lease; (j) under the laws of the jurisdiction(s) in which the Equipment is to be located, the Equipment consists solely of personal property and not fixtures; and (k) Lessee is, and will remain, in full compliance with all laws and regulations applicable to it including without limitation, (i) ensuring that no person who owns a controlling interest in or otherwise controls Lessee is or shall be (A) listed on the Specially Designated National and Blocked Person List maintained by the Office of Foreign Assets Control

("OFAC"), Department of the Treasury and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, executive order or regulations or (C) a person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar executive order and (ii) compliance with all applicable Bank Secrecy Act ("BSA") laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations.

Lessee's representations and warranties shall survive termination or expiration of the Lease.

16. Events of Default and Remedies.

(a) Each of the following events constitutes an "Event of Default" hereunder and any event that, with the passage of time or the giving of notice, or both, would constitute an Event of Default shall constitute a "Default" hereunder: (i) Lessee fails to pay any Rent when due under this Lease and such failure continues for a period of ten (10) days; (ii) any representation or warranty made by Lessee in the Lease or in any other Lease Document shall at any time prove to have been incorrect in any material respect as and when made; (iii) Lessee fails (A) to obtain and maintain the insurance coverage required herein; or (B) fails to observe or perform any other covenant, condition or agreement under this Lease and, in the case of clause (B), such failure continues unremedied for a period of fifteen (15) days; (iv) Lessee or any Guarantor shall have consolidated with, merged with or into, or conveyed, sold or otherwise transferred all or substantially all of its assets or shall have failed to maintain its corporate existence; (v) Lessee or any Guarantor (A) ceases doing business as a going concern; (B) makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they mature or generally fails to pay its debts as they become due; (C) initiates any voluntary bankruptcy, reorganization, insolvency or similar proceeding; (D) fails to obtain the discharge of any bankruptcy, reorganization, insolvency or similar proceeding initiated against it by others within sixty (60) days of the date such proceedings were initiated; (E) requests or consents to the appointment of a trustee, custodian or receiver or other officer with similar powers for itself or a substantial part of its property; or (F) a trustee, custodian or receiver or other officer with similar powers is appointed for itself or for a substantial part of its property; (vi) Lessee fails to return the Equipment or fails to return the Equipment in the required condition at the expiration of the Term; (vii) a default shall have occurred and be continuing under any contract(s), agreement(s) or document(s) relating to an aggregate indebtedness or obligation(s) in excess of five hundred thousand dollars (\$500,000) between Lessee and any of its other creditors, (viii) a default shall have occurred and be continuing under any contract, agreement or document between Lessee or any Guarantor and Lessor or any affiliate of Lessor; (ix) if Lessee's obligations are guaranteed by any other party, an "Event of Default" (under and as defined in the Guaranty executed by such Guarantor) shall occur; (x) Lessor shall have determined, in its sole discretion, that a material adverse change in Lessee's existing or prospective financial condition or results of operations since the date hereof which may affect the ability of Lessee to perform its obligations under the Lease Documents has occurred; or (xi) the owners of the capital stock or other units of ownership on the date of this Lease entitled to vote for the election of the board of directors of the Lessee or other similar governing body cease to own or do not have the unencumbered right to vote in the aggregate at least fifty-one percent (51%) of such capital stock or other ownership interest of Lessee.

(b) Upon the occurrence of an Event of Default, Lessor may exercise any one or more of the following remedies and any additional rights and remedies permitted by law (none of which shall be exclusive) and shall be entitled to recover all its reasonable costs and expenses including incidental and consequential damages (as described in Section 2A-530 of the Uniform Commercial Code) and attorneys' fees in enforcing its rights and remedies:

(i) Lessee shall upon demand assemble or cause to be assembled any or all of the Equipment at a location designated by Lessor; and/or to return promptly, at Lessee's expense, any or all of the Equipment to Lessor at such location, in the condition and otherwise in accordance with all of the terms of Section 14 hereof; and/or

(ii) Lessor may itself or by its agents enter upon the premises of Lessee or any other location where the Equipment is located and take possession of and render unusable by Lessee any or all of the Equipment, wherever it may be located, without any court order or other process of law and without liability for any damages occasioned by such taking of possession; and/or

(iii) Sell, re-lease or otherwise dispose of any or all of the Equipment, whether or not in Lessor's possession, at public or private sale with or without notice to Lessee, with the right of Lessor to purchase and apply the net proceeds of such disposition, after deducting all costs of such disposition (including but not limited to costs of transportation, possession, storage, refurbishing, advertising and brokers' fees), to the obligations of Lessee under this Lease, with Lessee remaining liable for any deficiency and with any excess being retained by Lessor, or retain any and all of the Equipment; and/or

(iv) Cancel such Equipment Schedule as to any or all of the Equipment; and/or

(v) Proceed by appropriate court action, either at law or in equity (including an action for specific performance), to enforce performance by Lessee or to recover damages associated with such Event of Default; or exercise any other right or remedy available to Lessor at law or in equity; and/or

(vi) By offset, recoupment or other manner of application, apply any security deposit, monies held in deposit or other sums then held by Lessor or any affiliate of Lessor, and with respect to which Lessee has an interest, against any obligations of Lessee arising under this Lease or any other Lease Document, whether or not Lessee has pledged, assigned or granted a security interest to Lessor in any or all such sums as collateral for said obligations.

(c) In addition to the foregoing, Lessee shall pay to Lessor on demand the sum of (i) any and all Rent which is then due or which has accrued to the date of demand and (ii) at Lessor's option (A) an amount equal to the Stipulated Loss Value (as set forth in the related Equipment Schedule) as of the Rent Payment Date on or immediately preceding the date of demand for the Items of Equipment as Lessor shall specify or (B) all Basic Rent and all other sums, including any tax indemnities becoming due as a result of such Event of Default, for the Term (including any mandatory Renewal Term) and all amounts due upon the expiration of the Term including any return fees and/or any amounts due with respect to the mandatory purchase of the Equipment becoming due under this Lease from the date of demand to the Expiration Date for such Items of Equipment plus the assumed residual value of such Equipment (as determined by Lessor). The Lessor and Lessee agree that Lessor shall be entitled to such amount as damages for loss of bargain and not as a penalty and that such amount is reasonable in light of the anticipated harm to Lessor caused by an Event of Default.

(d) If Lessee pays the full amount referred to in Section 16(c) to Lessor prior to the termination of this Lease as it relates to such Items of Equipment, title to the relevant Equipment shall immediately vest in Lessee without representation or warranty by Lessor. If Lessee fails to pay such amount and Lessor subsequently sells, releases or otherwise disposes of such Items of Equipment, the amount due from Lessee under Section 16(c) shall be reduced by an amount equal to (i) the actual cash proceeds received and retained by Lessor upon any sale or disposition or (ii) if Lessor leases such Equipment by a lease agreement substantially similar to this Lease, the present value of the rents (discounted at the Prime Rate as announced by Fifth Third Bank and in effect at the time of demand plus 2.00%) payable under such subsequent Lease for the remaining Term of this Lease (without regard to any Renewal Terms other than the then current Renewal Term (if applicable)), in each case, net of all costs and expenses incurred in connection with such sale, disposition or lease including any incidental damages.



(e) A cancellation or termination hereunder shall occur only upon written notice by Lessor to Lessee, and only with respect to such Items of Equipment as Lessor specifically elects to cancel or terminate by such notice. Except as to any such Items of Equipment with respect to which there is a cancellation or termination, this Lease shall remain in full force and effect and Lessee shall be and remain liable for the full performance of all its obligations under this Lease.

(f) Lessee shall indemnify, defend and hold Lessor harmless for any loss, personal injury (including death), or damage to property, suffered by Lessor, its employees or any of its agents in connection with its entry onto the premises of Lessee or any third party hereunder. Each of the rights and remedies of Lessor hereunder and under the other Lease Documents is in addition to all of its other rights and remedies hereunder, under the other Lease Documents and under applicable law and nothing in this Lease or any other Lease Document shall be construed as limiting any such right or remedy. Lessor's failure to exercise or delay in exercising any right, power or remedy available to Lessor shall not constitute a waiver or otherwise affect or impair its rights to the future exercise of any such right, power or remedy. Waiver by Lessor of any Event of Default shall not be a waiver by Lessor of any other or subsequent Events of Default.

17. General Indemnification. Lessee shall pay, and shall indemnify and hold Lessor, its directors, officers, agents, employees, successors and assigns (each an "Indemnitee") harmless on an after-tax basis from and against, any and all liabilities, causes of action, claims, suits, penalties, damages, losses, costs or expenses (including attorneys' fees), obligations, liabilities, demands and judgments, and Liens, of any nature whatsoever (collectively, a "Liability") arising out of or in any way related to: (a) the Lease Documents, (b) the manufacture, purchase, ownership, title, selection, acceptance, rejection, possession, lease, sublease, operation, use, maintenance, documenting, inspection, control, loss, damage, destruction, removal, storage, surrender, sale, use, condition, delivery, nondelivery, return or other disposition of or any other matter relating to any Item of Equipment or any part or portion thereof (including, in each case and without limitation, latent or other defects, whether or not discoverable, any claim for patent, trademark or copyright infringement) and any and all Liabilities in any way relating to or arising out of injury to persons, properties or the environment or any and all Liabilities based on strict liability in tort, negligence, breach of warranties or violations of any regulatory law or requirement, (c) a failure to comply fully with applicable law and (d) Lessee's failure to perform any covenant, or Lessee's breach of any representation or warranty, hereunder; *provided*, that the foregoing indemnity shall not extend to the Liabilities to the extent resulting solely from the gross negligence or willful misconduct of an Indemnitee.

18. General Tax Indemnification. Lessee shall pay when due and shall indemnify and hold each Indemnitee harmless from and against (on an after-tax basis) any and all taxes, fees, withholdings, levies, imposts, duties, assessments and charges of any kind and nature ("Taxes") arising out of or related to this Lease or any other Lease Document (together with interest and penalties thereon and including, without limitation, sales, use, gross receipts, personal property, real property, real estate excise, *ad valorem*, business and occupational, value added, leasing, leasing use, documentary, stamp or other taxes imposed upon or against any Indemnitee, Lessee or any Equipment by any governmental authority with respect to any Equipment or the manufacturing, ordering, sale, purchase, shipment, delivery, acceptance or rejection, ownership, titling, registration, leasing, subleasing, possession, use, operation, removal, return or other dispossession thereof or upon the rents, receipts or earnings arising therefrom or upon or with respect to this Lease, whether payable at the inception of a Lease, during the Term thereof or at the expiration thereof, excepting only all United States federal, state and local taxes based on or measured by Lessor's net income. Whenever this Lease or any other Lease Document terminates as to any Item of Equipment, Lessee shall, upon written request by Lessor, advance to Lessor the amount estimated by Lessor to be the personal property or other taxes on such Item of Equipment which are not yet payable, but for which Lessee is responsible. Lessor shall, at Lessee's request, provide Lessee with Lessor's method of computation of any estimated taxes. Except as otherwise provided in the Equipment Schedule relating to any Equipment, upon receipt of any tax bill relating to such Equipment from a relevant taxing authority, Lessor will pay the Tax identified on such tax bill. Lessee will, on demand, reimburse Lessor for the amount of such Tax paid to such taxing authority; Lessor agrees to

provide Lessee with copies of tax bills to accompany any demand by Lessor for reimbursement of Tax payments.

19. Ownership.

(a) Title to the Equipment shall at all times remain in Lessor, and Lessee shall acquire no ownership, title, property, right, equity or interest in the Equipment other than its leasehold interest solely as Lessee subject to all the terms and conditions hereof. This Lease, is intended to be a "finance lease" solely for the purposes of Article 2A of the Uniform Commercial Code as that term is defined in Article 2A of the Uniform Commercial Code. To the extent permitted by applicable law, Lessee (a) waives any and all rights and remedies of Lessee under Sections 2A-508 through 2A-522 of the Uniform Commercial Code and (b) any rights now or hereafter conferred by statute or otherwise to recover incidental or consequential damages from Lessor for any breach or any other reason whatsoever. If, notwithstanding the express intent of the parties, a court of competent jurisdiction determines that any Equipment Schedule is not a "finance lease", the parties agree that in such event (i) (A) in order to secure the prompt payment of Rent under and with respect to this Lease, and the performance and observance by Lessee of all the agreements, covenants and provisions hereof (collectively, the "Obligations"), Lessee hereby grants to Lessor a first priority security interest in all of Lessee's right, title and interest in the following (whether now existing or hereafter created and whether now owned or hereafter acquired): (1) the Equipment (including, without limitation, all inventory, equipment, fixtures or other property comprising the same), and general intangibles relating thereto, (2) additions, attachments, accessories and accessions thereto whether or not furnished by the Supplier of such Equipment, (3) all subleases (including the right to receive any payment thereunder and the right to make any election or determination or give any consent or waiver thereunder), chattel paper, accounts, security deposits and bills of sale relating thereto, (4) any and all substitutions, replacements or exchanges for any such Equipment or other collateral, and (5) any and all products and proceeds of any collateral hereunder (including all insurance and requisition proceeds) and all other payments of any kind with respect to the Equipment and other collateral in and against which a security interest is granted hereunder and (B) Lessee agrees that with respect to the Equipment, in addition to all of the other rights and remedies available to Lessor hereunder upon the occurrence of an Event of Default, Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code; and (ii) the original principal amount of the obligations hereunder shall be an amount equal to the Lessor's Capitalized Cost, and that such principal amount shall accrue interest at the lesser of (x) the maximum lawful rate permitted by applicable law or (y) the implicit interest rate reflecting Lessor's financial assumptions at the time of the execution of the Lease (including any assumed residual value at the end of the Term as determined by Lessor.

(b) Lessee hereby authorizes Lessor to file, solely at the expense of Lessee, any Uniform Commercial Code financing statements or other similar documents that Lessor reasonably deems necessary or advisable to protect its interest. Lessee agrees promptly to execute and deliver to Lessor such further documents or other assurances, and to take such further action, including obtaining landlord and mortgagee waivers, as Lessor may from time to time reasonably request.

20. Assignment by Lessor. Lessor may at any time assign, grant a security interest in, or otherwise dispose of (individually or collectively, a "transfer"), all or any portion of its rights, title or interests in, to and under this Lease, any Equipment Schedule or any Item of Equipment, together or separately, to one or more persons or entities (each, an "Assignee"). Upon any such transfer, this Lease shall remain in full force and effect. If Lessee is given notice of any such transfer, it shall acknowledge receipt thereof in writing and execute, or otherwise authenticate, such further instruments as may be reasonably requested by Assignee with respect to such transfer, including without limitation, a consent certifying certain material facts and circumstances related to this Lease and the Equipment. Unless otherwise expressly agreed by Assignee, Assignee shall not assume any of the obligations of Lessor under this Lease. Upon written notice to Lessee of an assignment, Lessee agrees to pay the Rent with respect to the Items of Equipment covered by such assignment to such Assignee in accordance with the instructions specified in such notice and Lessee shall not assert against Assignee any defense, counterclaim or offset that Lessee may have against Lessor. All obligations and liabilities of Lessee to Lessor under this Lease (including, without limitation, any schedules, exhibits, riders or other attachments

attached hereto or otherwise incorporated herein) are also hereby made for the express benefit of Assignee.

21. Miscellaneous.

(a) Lessee shall pay all costs and expenses of Lessor, including, without limitation, reasonable attorneys' and other professional fees, the fees of any collection agencies and appraisers and all other costs and expenses related to any sale or re-lease of the Equipment (including storage costs), costs incurred in perfecting any security interest or registering Lessor's ownership, payment of any obligations of Lessee required to be performed under this Lease (including without limitation, taxes and assessments with respect to any Equipment), incurred by Lessor in the preparation, negotiation and execution of this Lease or any amendment or supplement hereto, enforcing any of the terms, conditions or provisions hereof and in protecting Lessor's rights hereunder. If Lessee fails to reimburse Lessor for any such costs and expenses within thirty (30) days of invoice, interest shall accrue at a rate equal to the lesser of (a) eighteen percent (18%) per annum or (b) the maximum amount permitted under applicable law, on the unpaid balance thereof.

(b) This Lease shall be governed by and construed in accordance with the laws of the State of Ohio. Any judicial proceeding arising out of or relating to this Lease may be brought in any court of competent jurisdiction in Hamilton County, Ohio and each of the parties hereto (i) accepts the nonexclusive jurisdiction of such courts and any related appellate court and agrees to be bound by any judgment rendered by any such court in connection with any such proceeding and (ii) waives any objection it may now or hereafter have as to the venue of any such proceeding brought in such court or that such court is an inconvenient forum. EACH OF THE LESSEE AND LESSOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY RELATING TO THIS LEASE, ANY EQUIPMENT SCHEDULE, OR ANY OTHER LEASE DOCUMENT AND ANY ASSIGNMENT, SUBLEASE OR OTHER DOCUMENT EXECUTED IN CONNECTION THEREWITH.

(c) All notices delivered hereunder shall be in writing (including facsimile) and shall be delivered to the following addresses:

if to Lessee:

Patriot Leasing Company LLC  
12312 OLIVE BLVD., STE 400  
ST. LOUIS, MO 63141  
Attn: TREASURY  
Facsimile: (314) 275-3658

if to Lessor:

Fifth Third Commercial Leasing Company  
38 Fountain Square Plaza  
MD10904A  
Cincinnati, Ohio 45263  
Facsimile: (513) 534-6706

(d) Lessee acknowledges and agrees that time is of the essence with respect to its performance under the Lease Documents. Any failure of Lessor to require strict performance by Lessee or any waiver by Lessor of any provision herein shall not be construed as a consent or waiver of any provision of this Lease. This Lease shall be binding upon, and inure to the benefit of, the parties hereto, their permitted successors and assigns.

(e) This Lease, together with all other Lease Documents, constitutes the entire understanding or agreement between Lessor and Lessee with respect to the leasing of the Equipment,

and supercedes all prior agreements, representations and understandings relating to the subject matter hereof. Neither this Lease nor any other Lease Document may be amended except by a written instrument signed by Lessor and Lessee.

(f) This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(g) Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction. Captions are intended for convenience or reference only, and shall not be construed to define, limit or describe the scope or intent of any provisions hereof.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Master Lease as of the day and year first above written.

LESSOR:

THE FIFTH THIRD LEASING COMPANY

By: 

Name:

Gerald Whitfield, VP

Title:

LESSEE:

PATRIOT LEASING COMPANY LLC

By: 

Name:

Robert L. Meads

Title:

VICE PRESIDENT & TREASURER

**EXHIBIT B**

## SALE OF SUBORDINATED RESIDUAL INTEREST AGREEMENT

THIS SALE OF SUBORDINATED RESIDUAL INTEREST AGREEMENT ("Agreement") is made as of the 27 day of May, 2011, by and between SG EQUIPMENT FINANCE USA CORP. ("SGEF") and SOMERSET CAPITAL GROUP, LTD. ("Somerset").

WITNESSETH:

WHEREAS, The Fifth Third Leasing Company ("Lessor") and Patriot Leasing Company LLC ("Lessee") have entered into Equipment Schedule No. 019, Equipment Schedule No. 020, Equipment Schedule No. 021, Equipment Schedule No. 022, Equipment Schedule No. 023 and Equipment Schedule No. 024 (each a "Lease" and collectively, the "Leases") each issued pursuant to and incorporating the terms and conditions of that certain Master Equipment Lease Agreement dated as of May 15, 2008; and

WHEREAS, Lessor intends to sell to SGEF all of Lessor's right, title and interest in and to each Lease, the equipment and other property subject thereto ("Equipment," the payments required to be made by the Lessee thereunder and all other rights, powers and remedies of Lessor with respect thereto, all as more specifically described in a Specification of Purchased Assets executed on or about June 3, 2011 (each a "Specification" and collectively, the "Specifications"), each issued pursuant to and incorporating the terms of Master Assignment Agreement dated as of July 20, 2009 by and between Lessor and SGEF ("Master Assignment Agreement"); and

WHEREAS, SGEF desires to sell and assign on a subordinated basis to Somerset, and Somerset desires to purchase from SGEF, on the terms and conditions contained herein, SGEF's residual interest in each Lease and the Equipment subject thereto, all as more specifically set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Conveyance; Purchase Price.

(a) Conveyance. Subject and subordinate to SGEF's Retained Interest, as defined herein, and in exchange for Somerset's full and final payment to SGEF of the applicable Purchase Price set forth in Exhibit 1, and all of Somerset's other agreements hereunder, SGEF does hereby sell, assign and transfer unto Somerset, and Somerset agrees to fully purchase as of the Effective Date, the following with respect to each Lease (collectively, the "Residual Interest"):

(1) SGEF's title to the Equipment, as defined in each Lease, including the right to claim any and all Federal and/or state tax benefits which accrue to the owner of the Equipment ("Anticipated Tax Benefits"), subject to the retention by SGEF of a first priority security interest in the Equipment, as more specifically described herein;

(2) all interests, rights, remedies, obligations and liabilities of SGEF under each Lease which accrue following Lease Satisfaction, as defined herein, including, but not limited to, the right to receive any and all sums due and to become due under, or recoverable in connection with, the exercise by Lessee of any end of Lease purchase and/or renewal options, and all rights and remedies relating thereto;

(3) all interests, rights, remedies, obligations and liabilities of SGEF under any and all guaranties and other credit support documents (if any) and additional documents, opinions, certificates or other writings (if any) delivered to SGEF in connection with or as an inducement for SGEF to take assignment of each Lease from Lessor, and any amendments, addenda and riders to any of the foregoing (collectively, the "Related Documents") which accrue following Lease Satisfaction;

(4) all interests, rights, remedies, obligations and liabilities of SGEF with respect to, and only to the extent assignable, those certain agreements with suppliers of Equipment (each a "Vendor") solely as such agreements relate to the Equipment (the "Vendor Agreements," and together with the Related Documents and the Lease, the "Lease Documents"), and including all manufacturers' and/or vendors' warranties with respect to the Equipment;

(5) all of SGEF's rights, interests and remedies under the Lease Documents which accrue following Lease Satisfaction, including, without limitation, the right to initiate and conclude any and all proceedings, legal, equitable or otherwise, that SGEF might otherwise take, together with all income and proceeds from the Equipment or the Lease Documents, subject, prior to Lease Satisfaction, to SGEF's prior written consent (not to be unreasonably withheld) in the case of initiation of proceedings with respect to the Lease and Related Documents;

(6) all of the covenants, representations and warranties of Lessor under the applicable Specification and all of SGEF's rights, interests and remedies as Assignee under such Specification which accrue following Lease Satisfaction;

(7) the nonexclusive right to monitor compliance by the Lessee, Lessor and/or Vendor(s) with all such parties' respective obligations concerning the use, maintenance, warranty service, tax compliance and other obligations relating to the Equipment under the Lease (collectively, the "Equipment Obligations");

(8) the right to enforce the Equipment Obligations following Lease Satisfaction for such Lease; and

(9) subject to prior consultation with, and the prior written consent of, SGEF, such consent not to be unreasonably withheld or delayed, the right to enforce the Equipment Obligations prior to Lease Satisfaction.

The sale, assignment, delegation, transfer and setting over by SGEF to Somerset of the Residual Interest with respect to each Lease hereunder shall hereinafter be referred to as a "Conveyance" and collectively the "Conveyances."

(b) Retained Rights and Obligations. Notwithstanding anything contained herein to the contrary, the Residual Interest relating to each Lease shall expressly exclude, and SGEF shall retain and does not hereby convey to Somerset: (i) any and all of the rights, obligations, remedies and other benefits under or with respect to the Lease Documents and Specification (other than as provided in subsection 1(a)(6) and (8) above) to the extent the same arose, accrued or were payable during, or were attributable to, the period prior to Lease Satisfaction (other than Anticipated Tax Benefits, which shall be for the present benefit of Somerset), including, without limitation, all lease payments, insurance payments, early termination amounts; provided, however, with respect to any indemnifications or other provisions of the Lease Documents and Specification that are and remain exercisable or otherwise for the benefit of both SGEF and Somerset after giving effect to the applicable Conveyance, each of SGEF and Somerset shall be entitled to the non-exclusive rights and benefits of the same to the extent such indemnifications or other provisions relate to such party (e.g., a claim against or harm suffered by either such party for which an indemnification is available under the Lease Documents); and (ii) as collateral for the performance when due of all of the obligations of any person or entity that is an obligor, lessee, borrower or guarantor (each, an "Obligor" and, collectively, the "Obligors") under the Lease Documents to SGEF and Lessor's obligations to SGEF, in both cases to the extent arising prior to Lease Satisfaction, SGEF reserves for itself and Somerset grants to SGEF, a first priority security interest in and to the Residual Interest (collectively, the "Retained Interest"). It is agreed and understood that the Leases provide for cross-defaults and cross-collateralization and that SGEF shall be entitled to such right with respect to all Leases; provided that once Lease Satisfaction has occurred for a Lease, such Lease shall no longer be subject to a right of cross-default or cross collateralization in favor of SGEF.

(c) Lease Satisfaction. It is the intention of the parties that SGEF shall be entitled on a priority basis to all rent payments coming due during the Base Lease Term of each Lease, plus applicable taxes (collectively, the "Base Term Payments"). For the purposes hereof, "Lease Satisfaction" shall occur with respect to a Lease once SGEF has received full, final and indefeasible payment of the Lease Satisfaction Amount, as defined below, for such Lease. For the purposes hereof, "Lease Satisfaction Amount" shall be calculated with respect to each Lease as the sum of the following: (i) all Base Term Payments then due but unpaid; plus (ii) all remaining Base Term Payments, if any, discounted to the date of calculation at the per annum rate specified in Exhibit 1, plus one percent (1%) of the foregoing; plus (iii) all accrued taxes; late fees, indemnification amounts, and other amounts payable to SGEF under the Lease with respect to the Base Term Payments. SGEF shall advise Somerset in writing that Lease Satisfaction has occurred with respect to a Lease within five (5) business days after it has occurred whether at expiration of the Base Lease Term or prior thereto or thereafter. SGEF shall also promptly provide Somerset with such information regarding the status of each Lease and the Base Term Payments and other amounts owed thereunder as Somerset shall from time to time reasonably request. Notwithstanding any provision contained herein to the contrary, if following Lease Satisfaction SGEF is required by court order or other legal requirements to return to any Obligor or other party any amount received by SGEF with respect to the

Retained Interest and applied to the Lease Satisfaction Amount (any such returned amount, a "Returned Amount"), then Somerset shall pay to SGEF on demand the Returned Amount, together with interest thereon at the rate ordered by such legal requirements or court order, but only to the extent that Somerset has received payment with respect to the Residual Interest.

(d) Waiver and Release of Certain Rights. Somerset acknowledges and agrees that, notwithstanding any cross-collateralization provision that may be contained in a Lease Document, Somerset shall only be entitled to exercise rights in the personal property of any Obligor under such Lease Documents in which Somerset has an interest (whether by assignment from SGEF or otherwise) and may only exercise such rights in respect of obligations owned by Somerset (whether by assignment from SGEF or otherwise).

(e) Purchase Price. In exchange for the Conveyance by SGEF of the Residual Interest with respect to each Lease, Somerset shall pay to SGEF, in cash, on the date of execution of this Agreement (the "Closing Date") the purchase price specified in Exhibit 1 (the "Purchase Price"); and both parties agree that none of the right, title or interest so conveyed shall pass to Somerset unless and until SGEF has received the full and final payment of the Purchase Price.

(f) Sale. The agreement set forth in this Section 1 constitutes a transfer and assignment of 100% of SGEF's interest in each Residual Interest and, notwithstanding any other provision of this Agreement, shall in no way be construed as an extension of credit or financing by Somerset to SGEF.

2. Disclaimer. THE SALE, TRANSFER AND ASSIGNMENT BY ASSIGNOR TO ASSIGNEE AS DESCRIBED HEREIN IS WITHOUT RECOURSE, REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, EXCEPT THOSE REPRESENTATIONS AND WARRANTIES THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. IN ADDITION TO AND WITHOUT LIMITING THE FOREGOING, ASSIGNOR CONVEYS EACH RESIDUAL INTEREST "AS IS, WHERE IS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED (EXCEPT THOSE REPRESENTATIONS AND WARRANTIES THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT). ASSIGNEE FURTHER ACKNOWLEDGES THAT ASSIGNOR TAKES NO RESPONSIBILITY FOR ANY FINANCIAL INFORMATION REGARDING THE OBLIGOR(S) FURNISHED TO SOMERSET BY SGEF.

3. SGEF's Representations and Warranties as to EACH Conveyance. With respect to the Conveyance of each Residual Interest, SGEF hereby represents and warrants, as of the Closing Date, that:

(a) SGEF (i) is duly organized, validly existing and in good standing under the laws of its state of organization, (ii) has full power, and all licenses necessary (except where the failure to have all such licenses would not have a material adverse effect on SGEF), to own its properties and to carry on its business as now being conducted and (iii) has full power and authority to enter into this Agreement and to carry out the terms and conditions contained herein;

(b) no approval of, or consent from, any third party or any governmental authority is required for the execution, delivery or performance by SGEF of this Agreement;

(c) the execution by SGEF of this Agreement and the other documents and instruments required to be delivered pursuant to Section 6(a) hereof (collectively, the "Assignment Documents") to which it is a party and its participation in the transaction specified herein is in its ordinary course of business and within the scope of its existing authority, or has otherwise been duly authorized;

(d) there is no action, suit or proceeding pending against SGEF before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution and delivery by SGEF of or performance by SGEF under this Agreement, any of the other Assignment Documents or any of the Lease Documents to which SGEF is a party;

(e) each of the Assignment Documents to which SGEF is a party: (i) has been duly and validly authorized, executed and delivered by SGEF; (ii) is in full force and effect with respect to SGEF; and (iii) constitutes the legal, valid and binding obligations of SGEF, enforceable against SGEF in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided therein;



(f) SGEF covenants and agrees to enforce for the benefit of Somerset, the covenants, representations and warranties given by Lessor to SGEF under the Specification and given by Lessee under the Lease with respect to the Equipment to the extent such covenants, representations and warranties relate to the Residual Interest and, unless an event of default has occurred under the Lease Documents and Somerset has not exercised the right to buyout SGEF's Retained Interest, as set forth in Section 8(f) hereof, not to modify, amend, waive or terminate any such covenants, representations and warranties as they relate to the Residual Interest;

(g) SGEF has paid to Lessor the full Consideration specified in the Specification and received the title to the Equipment and Lease Documents set forth in the Specification (and the Master Assignment Agreement as it relates thereto) and the copies of the Lease and other Lease Documents delivered to Somerset pursuant to Section 6 hereof are true, correct and complete copies thereof (to the best of SGEF's knowledge in the case of the Lease and other Lease Documents);

(h) to Assignor's knowledge, no event has occurred which constitutes a casualty with respect to the Equipment or any item comprising the Equipment; and

(i) upon the payment of the Purchase Price, Somerset shall receive whatever title to the Equipment and other items of the Residual Interest as was conveyed to SGEF under the Specification, such title being subject and subordinate to the Retained Interest, but otherwise free from liens and encumbrances arising by SGEF, except for those created by and in favor of SGEF and retained by SGEF and/or assigned to Somerset hereunder and the interests of the applicable Obligor(s) under the Lease(s).

4. Somerset's Warranties and Representations. Somerset hereby warrants and represents, as of the Closing Date, that:

(a) Somerset (i) is duly organized, validly existing and in good standing under the laws of its state of organization, (ii) has full power, and all licenses necessary (except where the failure to have all such licenses would not have a material adverse effect on Somerset), to own its properties and to carry on its business as now being conducted and (iii) has full power and authority to enter into this Agreement and to carry out the terms and conditions contained herein;

(b) there is no action, suit or proceeding pending against Somerset before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution and delivery by Somerset of, or performance by Somerset under, this Agreement;

(c) no approval of, or consent from, any third party or any governmental authority is required for the execution, delivery or performance by Somerset of this Agreement;

(d) the execution, and delivery by Somerset of and performance by Somerset under this Agreement and the transactions contemplated hereby (i) do not contravene any provisions of law or of any rule, regulation, permit, order, ruling or injunction applicable to Somerset, and (ii) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under, any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other document, instrument, writing or agreement to which Somerset is a party, by which Somerset may be bound, to which Somerset or its property may be subject, or Somerset's organizational documents; and

(e) this Agreement constitutes the valid and binding obligations of Somerset, enforceable against Somerset in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein.

5. Mutual Warranties and Representations. Each of SGEF and Somerset represents and warrants as of the date hereof and as of the Closing Date, that:

(a) it understands that the Conveyance of each Residual Interest, to the extent it may involve the sale of a security, is being offered and sold without registration under the Securities Act of 1933, as amended (the "Act"), and

applicable state securities laws in reliance upon an exemption from the registration requirements of the Act and applicable state securities laws; and

(b) it understands that the Conveyance of each Residual Interest, to the extent it may involve the sale of a security, is subject to restrictions on transferability and resale except as permitted under the Act and applicable state securities laws and Somerset is acquiring the Residual Interest solely for its own account, for investment, and not with a view to resale, but Somerset reserves the right to transfer the Residual Interest in compliance with any applicable securities laws and subject to the terms hereof.

6. Delivery of Documents and Conditions Precedent. As a condition precedent to Somerset's payment of the Purchase Price, and performance of its other obligations with respect to the Conveyance of each Residual Interest, all of the conditions precedent enumerated below must be satisfied (in Somerset's reasonable discretion):

(a) SGEF shall have delivered to Somerset all of the following, in form and substance reasonably acceptable to Somerset:

(i) (A) a copy of the executed Lease and the Notice and Acknowledgment of Assignment executed by the Lessor and the Lessee pursuant to the Master Assignment Agreement referencing Somerset as owner of the Residual Interest;

(B) copies of all other Lease Documents which directly relate to the Lease and the Equipment, including, but not limited to, all guaranties relating to the Residual Interest and certificates of insurance;

(C) copies of the Specification and Master Assignment Agreement;

(ii) a bill of sale from SGEF to Somerset for the subject Equipment in substantially the form attached hereto as Exhibit No. 2;

(iii) copies of any UCC-1 Financing Statements filed against the Obligor by Lessor or SGEF in accordance with its customary practices with respect to the Equipment; and

(iv) such documents and instruments (if any) as reasonably may be required by Somerset to effect the assignment by SGEF to Somerset of any warranties (to the extent assignable) under the Vendor Agreements (if any have been assigned) solely to the extent applicable to the Residual Interest.

(b) All of the SGEF's respective representations and warranties provided herein or in any of the other Assignment Documents shall be true and correct on the Closing Date, in all material respects.

## 7. Covenants.

(a) Remittances. Each of the parties covenants and agrees promptly to remit to the other party any payments incorrectly received by such party with respect to each Lease, the other Lease Documents or the Equipment. With respect to any remittance not made within two (2) Business Days after receipt of any amount required to be remitted pursuant to the provisions hereof, the party failing to timely remit such amounts shall also pay to the other party interest accruing on such remittance at a per annum interest rate equal to the one percent per month. As used herein, "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday on which commercial banks are permitted or required to be closed in the State of New York or the state in which Somerset's principal place of business is located.

(b) SGEF's Records. SGEF will make appropriate notations in its books and records indicating the assignment to Somerset of the Residual Interest.

(c) Taxes.

(i) SGEF shall be solely responsible for, and shall indemnify, protect, defend, save and keep harmless, Somerset, on an after-tax basis, from and against any and all taxes, fees, levies, imposts, duties, charges, assessments and withholdings, of any kind or nature whatsoever ("Taxes"), in each such case, to the extent any of the same are attributable or otherwise assessed with respect to each Retained Interest, together with any assessments,

penalties, fines, additions to tax or interest thereon, which at any time or from time to time may be imposed on, or asserted against, the Retained Interest (or any part thereof or any interest therein), by any Federal, state, local or foreign government or taxing authority in connection with or relating to the Retained Interest (or any part thereof or interest therein); but only to the extent, if any, that Somerset is not otherwise indemnified with respect thereto under the Lease Documents.

(ii) Somerset shall be solely responsible for, and shall indemnify, protect, defend, save and keep harmless, SGEF, on an after-tax basis, from and against any and all Taxes, and any sales or transfer tax arising in connection with the sale and assignment of each Residual Interest, in each such case, to the extent any of the same are attributable or otherwise assessed with respect to the Residual Interest, together with any assessments, penalties, fines additions to tax or interest thereon, which at any time or from time to time may be imposed on, or asserted against, the Residual Interest (or any part thereof or any interest therein) by any federal, state, local or foreign government or taxing authority in connection with or relating to the Residual Interest (or any part thereof or interest therein), but only to the extent, if any, that SGEF is not otherwise indemnified with respect thereto under the Lease Documents.

(iii) Each of SGEF and Somerset agrees to notify the other party promptly after becoming aware of any Taxes, whether pending or threatened that is the subject of indemnification pursuant to this Section; provided, however, that the failure by either such party to so notify the indemnifying party will not in any manner affect such indemnifying party's obligations under this Section, except to the extent, if any, the indemnifying party shall have been materially and adversely prejudiced by such failure.

(iv) The indemnities set forth in this section shall survive the expiration or earlier termination of this Agreement.

(v) In no event shall either party be liable for any loss of use, revenue, anticipated profits or special, indirect, incidental or consequential damages arising in any way out of or in connection with this Agreement.

8. Administration of Lease Documents. (a) Prior to Lease Satisfaction, SGEF shall be solely entitled to enforce and administer the Lease Documents relating to each Lease, using SGEF's standard servicing and administration practices, including, but not limited to, (i) the collection of the Base Term Payments and all other amounts coming due under the Lease Documents; (ii) the exercise of any and all rights and remedies following an event of default under the Lease Documents; and (iii) the granting or withholding of any consent requested by an Obligor with respect to the Lease Documents and/or Equipment; provided, however, that, unless an event of default has occurred under the Lease Documents and Somerset has not exercised the right to buyout SGEF's Retained Interest, as set forth in Section 8(f) hereof, no such consent shall be granted by SGEF which has a material effect upon the Residual Interest without Somerset's prior written consent (such consent not to be unreasonably withheld). Following Lease Satisfaction with respect to a Lease, Somerset shall be entitled to the exclusive right to administer the related Lease Documents. SGEF shall invoice the applicable Obligor and continue to require Obligor, as applicable, to remit all Base Term Payments and other amounts due under the Lease Documents to and in the name of SGEF for the benefit of SGEF and subordinated benefit of Somerset. SGEF shall also collect, remit and file any applicable Taxes, including property taxes ("Property Taxes"). Upon receipt of Property Taxes or as otherwise provided in the Lease Documents, SGEF shall file and remit Property Taxes to the applicable taxing authorities. SGEF shall retain possession of the Lease Documents and shall make such documents available to Somerset as may be reasonably necessary for Somerset to enforce its rights with respect thereto. Upon Lease Satisfaction, SGEF shall turn the Lease Documents and ancillary documents over to Somerset.

(b) SGEF shall provide Somerset as soon as practicable with any material information received by or made known to SGEF concerning an Event of Default under the Lease Documents. To the extent that SGEF receives them, SGEF shall deliver to Somerset: (i) copies, if any, of Obligor's regularly prepared financial statements received by SGEF under the terms of the Lease Documents; and (ii) if requested by Somerset, copies of any other information required to be provided by an Obligor under the terms of the Lease Documents and received by SGEF. SGEF has no obligation to request or obtain information from an Obligor. Somerset agrees that any information delivered or made available to Somerset under this Agreement will be subject to the nondisclosure and confidentiality provisions of Somerset's Nondisclosure Agreement with SGEF.

(c) It is agreed and understood that all proceeds of the Lease Documents, Equipment and Assignment Documents received by SGEF shall first be applied by SGEF to the payment of all amounts due and owing with respect to the Retained Interest. SGEF may hold funds in either its own bank account or in a ledger account on SGEF's books and shall not be required to segregate such funds in any manner. If SGEF is required by court order or other legal requirements to return to an Obligor any amount received by SGEF with respect to the Lease Documents and/or Equipment, Somerset shall repay to SGEF on demand any portion of such amount that SGEF has previously distributed to Somerset, together with interest thereon at the rate ordered by such legal requirements or court order.

(d) Subject to the terms of this Agreement, SGEF shall have the exclusive right in SGEF's name alone to enforce and collect the all amounts due and to become due under the Lease Documents, to exercise and enforce all rights and privileges accrued to Somerset in the Residual Interest, and to take any legal action to enforce or protect SGEF's interests with respect to the Retained Interest. Prior to Lease Satisfaction, Somerset will not have, and shall not seek to exercise, without SGEF's prior written consent (not to be unreasonably withheld), any right of legal or equitable redress against any Obligor or any other person having any obligation with respect to the Residual Interest. Subject to the terms of this Agreement, upon the occurrence of an event of default under the Lease Documents, SGEF shall promptly proceed with such course of action which it determines, in its reasonable discretion, to be appropriate.

(e) To the extent that SGEF reasonably incurs out-of-pocket expenses in connection with the administration and/or enforcement of the Lease Documents and Equipment which are required to be paid or reimbursed under the Lease Documents, including, but not limited to attorneys fees and expenses, such expenses shall be added to the applicable Retained Interest and must be paid to or recovered by SGEF prior to Lease Satisfaction.

(f) Notwithstanding any provision contained herein to the contrary, following the occurrence of an event of default under the Lease Documents, SGEF shall not be required to obtain Somerset's prior consent with respect to any matter relating to the administration and enforcement of the Lease Documents and Equipment. Somerset's duties under this Agreement are absolute, unconditional and continuing, and will be unaffected by any: (i) amendment or waiver of any term of the Lease Documents; (ii) extension, indulgence granted or agreed to in relation to the Lease Documents and/or Equipment; (iii) invalidity, unenforceability or insufficiency of any of the Lease Documents; (iv) default by or insolvency of any Obligor or any other person obligated to make payments under the Lease Documents; (v) act or omission on SGEF's part relating to its actions taken in accordance with the terms of this Agreement or any of the Lease Documents; (vi) absence of notice to Somerset of any of the foregoing; or (vii) defenses in law or equity which Somerset may have to the full discharge of any of Somerset's obligations under this Agreement. Prior to exercising any rights or remedies under the Lease Documents upon an event of default thereunder, SGEF shall notify Somerset in writing thereof and offer to Somerset the right and opportunity to purchase all, but not less than all, of the then remaining Retained Interests from SGEF for an amount equal to the then applicable Lease Satisfaction Amount for each such Retained Interest. Such purchase right shall be exercisable by Somerset within ten (10) days after receipt by it of the notice referenced in the immediately preceding sentence. Upon payment by Somerset of the aforesaid amount to SGEF, SGEF shall assign and transfer to Somerset the Retained Interest(s) and all of SGEF's right, title and interest under the related Lease Documents.

(g) SGEF represents that it shall exercise the same degree of skill and care that it exercises in the service and administration of lease transactions held solely for SGEF's own account. Except for a breach of SGEF's fiduciary duty with respect to monies received, in the absence of gross negligence or willful misconduct, SGEF will not be liable to Somerset for any action or failure to act or any error of judgment, negligence, mistake or oversight on SGEF's part, or on the part of any of SGEF's agents, officers, employees or attorneys in the administration of the Lease Documents and/or Equipment; provided, however, that in no event will SGEF be liable for any action or failure of action taken by SGEF at Somerset's direction, and shall incur no liability by acting upon any notice, consent, certificate or other instrument or writing (which may be received by email, fax or comparable transmission) reasonably believed by SGEF to be genuine and signed or sent by the proper party. SGEF shall not be responsible for the present or future solvency or financial worth of any Obligor. Except as provided herein:

(i) In exercising the discretion and authority provided herein, SGEF may, without incurring any liability to Somerset, rely upon the advice of legal counsel, accountants, appraisers and other experts, and SGEF shall not be liable for any action taken or omitted to be taken in good faith by SGEF in accordance with the advice of such counsel, accountants, appraisers, or other experts.

(ii) SGEF does not and will not have any duty, either initially or on a continuing basis, to make any inquiry, investigation, evaluation or appraisal on Somerset's behalf, nor will SGEF have any responsibility or liability with respect to the accuracy or completeness of any information provided to Somerset which has been provided to SGEF by an Obligor or any other person.

(iii) SGEF shall not be responsible for the performance or observance of any of the terms, covenants, or conditions of the Lease Documents or any related document. With respect to any property held by SGEF which is independent of any of the Residual Interest, SGEF shall have no obligation to make any claim, or assert any lien upon, or assert any offset. SGEF shall incur no liability with respect to (A) any failure to realize upon the Lease Documents, (B) any failure to collect or receive any amounts due under the Lease Documents or other sum owing from an Obligor, (C) making or failing to make any examinations, appraisals, audits, or check-ups of any Obligor's affairs or (d) granting extensions, renewals, or indulgences to any Obligor.

9. Subordination of Residual Interest. Somerset hereby acknowledges and agrees that each Residual Interest and all proceeds thereof (collectively, the "Collateral") are subject to a security interest granted by Somerset in favor of SGEF. Until Lease Satisfaction with respect to a Lease, Somerset hereby subordinates any present or future title, security interest or other interest that it may have in the Collateral related to such Lease to any present or future security interest or any other right, title or interest that SGEF may have therein and the payment and performance in full of all then outstanding Retained Interests. Prior to Lease Satisfaction with respect to a Lease, Somerset shall not, at any time, assert any interest in any of the related Collateral having parity with or priority over, the interest of SGEF therein. This subordination shall remain in full force and effect notwithstanding that SGEF or Somerset terminates or modifies, by agreement or otherwise, any of their respective agreements with any Obligor, or under the Lease Documents. The subordination by Somerset contained herein is effective irrespective of: (a) the time or order of acquisition, attachment or perfection of any security interest or other interest of Somerset or SGEF in any of the Collateral; (b) the time or order of filing of financing statements by Somerset or SGEF; (c) the acquisition of purchase money or other priority with respect to any such security or other interest; or (d) the failure to give notice or timely notice of the acquisition or expected acquisition of purchase money or other priority with respect to any such security interest or other interest. Somerset will, upon the request of SGEF, execute and deliver to SGEF such further and additional documents as SGEF may reasonably deem necessary or desirable to effect the subordination of Somerset's interests in the Collateral contemplated hereby. Furthermore, and in addition to the foregoing subordination, in order to secure the payment and performance of all Retained Interests and the performance of Somerset's obligations hereunder (the "Obligations"), Somerset does hereby convey, warrant, mortgage, assign, pledge and grant to SGEF a first priority security interest in all of its right, title and interest in and to each Residual Interest, including the Equipment, and all such other Collateral (and irrevocably authorizes SGEF to file such UCC filings with respect to the Collateral as SGEF may reasonably deem necessary to perfect and maintain SGEF's first priority security interest in and to the Collateral), and Somerset expressly acknowledges and agrees that its interest in the Collateral shall in all respects be subject in right and subordinate to the rights and interest of SGEF. Upon Lease Satisfaction with respect to a Lease, SGEF's Retained Interest therein (other than SGEF's right to be indemnified by the Obligors thereunder) shall automatically terminate and SGEF's security interest in the related Residual Interest granted to it by Somerset shall also terminate and SGEF authorizes Somerset to amend any related UCC filings to reflect such termination with respect (but only with respect) to the Retained Interest so terminated.

#### 10. Miscellaneous.

(a) Assignment. Somerset may not sell, assign or otherwise transfer, or delegate, all or any of its right, title, interest and/or obligations in and to any Residual Interest without prior written notice to, and the consent of, SGEF, provided however, that no such consent shall be required for an assignment by Somerset of a Residual Interest to a subsidiary or affiliate of Somerset or as collateral security to a financing source that finances Somerset's acquisition of the Residual Interest so long as prior written notice of such assignment is delivered to SGEF and such assignee agrees in writing to the subordination provisions of this Agreement in a document reasonably acceptable to SGEF and provided, further, that any such assignment or delegation shall not relieve Somerset from any of its obligations or duties under this Agreement. SGEF shall be entitled to assign its rights or delegate its duties or obligations with respect to any Retained Interest hereunder and/or other Assignment Documents without notice to Somerset; provided, however, any such assignment or delegation shall not relieve SGEF from any of its obligations or duties under this Agreement. Subject to the foregoing, the rights and obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) Notices. All notices and other communications hereunder shall be in writing, personally delivered, sent electronically, sent by a nationally recognized courier service or sent by certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party; and shall be effective from the date of receipt.

(c) Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

(d) Entire Agreement. This Agreement and the other Assignment Documents constitute the entire agreement between the parties with respect to the subject matter hereof and thereof. This Agreement shall not be modified, amended or altered in any manner except by a document in writing executed by both parties. No oral agreement shall be binding.

(e) Titles. Section titles are for convenience of reference only and shall not be of any legal effect.

(f) Further Assurances. The parties further covenant and agree to do, execute and deliver, or cause to be done, executed and delivered, all such further acts, transfers and assurances, for the better assuring, conveying and confirming unto Somerset and its successors and assigns, all and singular, the Residual Interest hereby assigned, and otherwise implementing the intention of the parties hereunder and the other Assignment Documents, as the parties and their successors and assigns reasonably shall request.

(g) Jurisdiction, Forum Selection, Venue, Waiver of Jury Trial. SGEF and Somerset: (a) agree to submit for themselves, and any legal action or proceeding relating to this Agreement and any of the other Assignment Documents and the transactions contemplated hereby or thereby, any dealings between the parties hereto relating to the subject matter hereof or thereof, and/or the relationship that is being established hereby, to the jurisdiction of the state or Federal courts located in the State of New York, (b) consent that any action or proceeding shall be brought in such courts, and waive any objection that each may now have or hereafter have to the venue of any such action or proceeding in any such court; and (C) agree that nothing herein shall affect the right to bring any action in any other court of competent jurisdiction and/or the right to effect service of process in any other manner permitted by law. SGEF AND SOMERSET HEREBY UNCONDITIONALLY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE ASSIGNMENT DOCUMENTS, ANY DEALINGS BETWEEN SGEF AND SOMERSET RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN SGEF AND SOMERSET. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, EACH SPECIFICATION OR THE CONTRACT DOCUMENTS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(h) Counterparts. With respect to each of this Agreement and any of the other Assignment Documents or other documents delivered pursuant to this Agreement, each such agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

(i) Survival. The respective representations, warranties, obligations, liabilities, duties and indemnities of SGEF and Somerset contained in this Agreement, the other Assignment Documents, and the other documents and agreements relating hereto or thereto shall survive the consummation of the transaction evidenced hereby, and shall survive any termination to the extent required for their full observance and performance.

(j) Recitals. Both parties agree that all of the recitals are hereby incorporated herein and are acknowledged as being true and correct.

(k) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability of any other provision hereof or thereof.

(l) Waivers. No failure or delay on the part of either party in exercising any power, right or remedy under agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy.

(m) Transaction Expenses. Each of SGEF and Somerset shall bear and be responsible for its own costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and any other agreements, documents, certificates and instruments relating hereto, and it shall not have any right of reimbursement or indemnity for such costs and expenses as against the other party.

(n) No Third Party Benefit. Notwithstanding the terms of this Agreement or the Assignment Documents, the agreements contained in the Assignment Documents are solely for the benefit of SGEF and Somerset (except as otherwise expressly provided therein), and shall not benefit in any way whatsoever any other person, including (without limitation) an Obligor; and nothing contained in an Assignment Document shall affect, limit or in any way diminish the claims, rights, remedies and/or recourse of SGEF against any other person, including (without limitation) an Obligor, with regard to any matter and/or the Retained Interest, all of which claims, rights, remedies and/or recourse are expressly reserved by SGEF.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SG EQUIPMENT FINANCE USA CORP.

By: *Patricia Hensley*  
Name: Patricia Hensley  
Title: Vice President

SG Equipment Finance USA Corp.  
480 Washington Blvd.  
Jersey City, NJ 07310  
Facsimile: \_\_\_\_\_

SOMERSET CAPITAL GROUP, LTD.

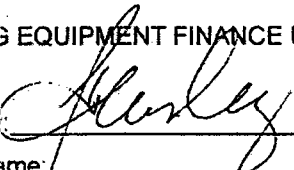
By: *Keely J. Woronick*  
Name: Keely J. Woronick  
Title: Assistant Corporate Secretary

Somerset Capital Group, Ltd.  
Merritt Corporate Woods  
612 Wheelers Farms Road  
Milford, CT 06461  
Facsimile: \_\_\_\_\_

EXHIBIT NO. 1

Lease	Purchase Price	Discount Rate
Equipment Schedule No. 019	\$42,006.55	6.00%
Equipment Schedule No. 020	\$363,125.04	5.75%
Equipment Schedule No. 021	\$9,116.31	6.00%
Equipment Schedule No. 022	\$9,431.76	6.00%
Equipment Schedule No. 023	\$394,932.17	6.00%
Equipment Schedule No. 024	\$34,640.79	6.00%

SG EQUIPMENT FINANCE USA CORP.

By:   
Name: \_\_\_\_\_  
Title: **Patricia Hensley**  
**Vice President**

SOMERSET CAPITAL GROUP, LTD.

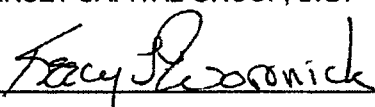
By:   
Name: Keely J. Woronick  
Title: Assistant Corporate Secretary



EXHIBIT NO. 2

EQUIPMENT BILL OF SALE

THIS EQUIPMENT BILL OF SALE is given by SG Equipment Finance USA Corp. (herein the "Seller"), to Somerset Capital Group, Ltd. (herein the "Buyer").

WITNESSETH:

THAT FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby bargain, sell, assign, transfer and set over to Buyer, its successors and assigns, Seller's title to the items of equipment listed on the schedule attached hereto (the "Equipment").

The Equipment is sold hereunder subject to the representations, warranties, covenants and other provisions set forth in that certain Sale of Subordinated Residual Interest Agreement dated as of May 27, 2011, by and between Buyer and Seller.

IN WITNESS WHEREOF, Seller has caused this instrument to be duly executed as of the 3 day of June, 2011.

SG Equipment Finance USA Corp.

By: 

Name:

**Patricia Hensley**

Title:

**Vice President**

**EXHIBIT C**



**EQUIPMENT SCHEDULE – No. 023  
DATED MAY 16, 2011**

**TO MASTER EQUIPMENT LEASE AGREEMENT  
DATED AS OF MAY 15, 2008**

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**Lessor:** FIFTH THIRD EQUIPMENT FINANCE COMPANY,  
(f/k/a The Fifth Third Leasing Company)  
an Ohio corporation

**Lessee:** PATRIOT LEASING COMPANY LLC

All of the terms of the Master Equipment Lease Agreement dated as of May 15, 2008 (as amended, supplemented or modified from time to time, the "Master Lease") between Lessee and Lessor are incorporated by reference herein. Lessor may include any parent, subsidiary or affiliate of Fifth Third Bank who endorses an Equipment Schedule. By endorsing herein such party hereby agrees to, and shall be bound by the terms and conditions of the Master Lease regardless of whether it executed such Master Lease as the original Lessor. Capitalized terms used, and not otherwise defined, herein shall have the meanings ascribed thereto in the Master Lease. This Equipment Schedule as it incorporates the terms of the Master Lease and each schedule, exhibit and rider attached hereto is referred to as this "Lease". This Equipment Schedule, and the Master Lease, as incorporated herein shall constitute a separate and enforceable lease. If any term of any schedule, exhibit or rider hereto conflicts with or is inconsistent with any term of this Equipment Schedule or the Master Lease, the terms of such schedule, exhibit or rider shall govern.

**1. Equipment.**

This Equipment Schedule relates to the Equipment described on Schedule 1 hereto (collectively, the "Equipment").

**2. Financial Terms.**

- (a) Base Lease Term Commencement Date: June 3, 2011.
- (b) Base Lease Term: 60 months
- (c) Rent Payment Dates: July 3, 2011 and on the same day of each month thereafter during the Term (including all Renewal Terms, if any)
- (d) Expiration Date: June 3, 2016.
- (e) Lessor's Capitalized Cost: \$3,755,973.76
- (f) Processing Fee: Lessee agrees to pay Lessor a lease processing fee of \$250.00
- (g) Rent: The Base Term Rental Factor is .0173000 (or \$64,978.35 per month as of the Base Lease Term Commencement Date), provided, however, that (A) such Base Term Rental Factor is

based on the US dollar, a 30/360 day year, with a Semi-Annual Settlement and a term approximating the weighted average life of this Equipment Schedule, as quoted in the Bloomberg SWAP Rate report as of the day preceding the date of this Equipment Schedule, and (B) may be adjusted by Lessor as of Lessor's funding date using the SWAP rate for a term approximating the applicable weighted average SWAP rate for the most recent previous day and shall remain constant throughout the Base Lease Term. Lessor will provide Lessee with notice of any such adjustment.

(h) Equipment Location(s): As specified on Schedule 1. Lessee shall not use, or permit any of the Equipment to be used, predominately outside the United States within the meaning of Section 168(j)(1)(A) of the Code except under the circumstances described in Section 168(g)(4) of the Code, if applicable to the Equipment.

(i) The Stipulated Loss Value for the Equipment shall be equal to Lessor's Capitalized Cost for such Equipment multiplied by the applicable percentage amount for the relevant date set forth on Schedule 2 attached hereto.

(j) Pursuant to Section 18 of the Master Lease, on or prior to the Delivery and Acceptance Date if requested by Lessor, Lessee will execute and deliver a tax payment certification providing for the manner of reimbursement of Taxes paid by Lessor with respect to the Equipment and/or making such representations and warranties as may appear appropriate as to the exempt status of the Equipment.

(k) Lessee's federal taxpayer identification number is 20-5622045 and Lessee's state charter or organizational identification number is 4329802.

### **3. Rent and Tax Payments**

(a) On each Rent Payment Date during the Base Lease Term, Lessee shall pay (i) as Basic Rent for the Equipment, the product of the Base Term Rental Factor and Lessor's Capitalized Cost for the Equipment and (ii) in respect of Taxes scheduled to become due, such amounts monthly (or at such other interval as Lessor may deem appropriate) as Lessor determines will be due and payable. In addition to the foregoing, on the Base Lease Term Commencement Date, Lessee shall pay to Lessor as interim rent for each day from the Delivery and Acceptance Date to the Base Lease Term Commencement Date, the sum of (A) \$2,165.95, as daily rent and (B) such amounts daily in respect of Taxes as Lessor determines will be due and payable.

(b) On each Rent Payment Date during each Renewal Term (if any), Lessee shall pay (i) as Basic Rent for the Equipment, the product of the Renewal Term Rental Factor and Lessor's Capitalized Cost for the Equipment and (ii) in respect of Taxes scheduled to become due, such amounts monthly (or at such other interval as Lessor may deem appropriate) as Lessor determines will be due and payable.

### **4. Income Tax**

(a) Lessee represents and warrants that (i) beginning in Lessor's taxable year which includes the date of acceptance by Lessee of the Equipment and at all times during the Term, Lessor shall be entitled to take the maximum deductions for depreciation allowable pursuant to Section 167(a) or any successor provision of the Code and that the deductions for depreciation of the Equipment shall be determined as provided in Section 168 (including, without limitation, Section 168(a)) or any successor provision of the Code and shall be based on Lessor's Capitalized Cost for the Equipment (together with the Bonus Depreciation described in the next sentence, the "Depreciation Deduction"), (ii) the applicable "recovery period" for the Equipment as provided in Section 168(c) or any successor provision of the Code shall be as indicated on Schedule 1, (iii) Lessor shall be entitled to take the maximum deductions pursuant to Section 163 or any successor provision of the Code, with respect to interest payable on Lessor's borrowing (if any) in connection with the acquisition or financing of Equipment (the "Interest Deduction" and together with the Depreciation Deduction, the "Tax Benefits"), and (iv) Lessor will not be required to include in its gross income at any time during the Term any amount with respect to the

transactions contemplated by the Lease Documents other than (A) Basic Rent as such amounts accrue in accordance with the terms of the Lease, (B) the amount of any income or gain resulting from the payment of Stipulated Loss Value or from the loss, sale or other disposition of the Equipment (except to the extent that the calculation of such payment does not properly take into account the timing of such event for tax purposes), (C) amounts paid by Lessee on an after-tax basis, and (D) amounts identified as interest (such amounts collectively the "Assumed Income Amounts."). If Bonus Depreciation is shown on Schedule 1 as being applicable, in addition to the foregoing, Lessee represents and warrants that (1) the Equipment constitutes "qualified property" pursuant to Section 168(k) of the Code and is eligible for an additional depreciation deduction in the first year equal to fifty percent (50%) (as a percentage of Lessor's Capitalized Cost) as contemplated by Section 168 of the Code (the "Bonus Depreciation"), (2) the Equipment shall be treated as originally placed in service not earlier than the date of the execution and delivery of this Lease, or in the event the transaction is a sale-leaseback transaction, Lessee shall not have placed the Equipment in service at any time prior to three (3) months before the execution and delivery of this Lease, (3) Lessee has not arranged to purchase, and Lessor is not purchasing, the Equipment pursuant to a binding written contract entered into before January 1, 2008, and (4) the Equipment shall be placed in service before January 1, 2009

(b) If, as a result of (i) the inaccuracy of any of the representations or warranties set forth in Section 4(a), (ii) any change in applicable law, (iii) the breach by Lessee of any of its covenants or agreements in this Lease, (iv) any act or omission of Lessee or any affiliate of Lessee, or (v) the sale or other disposition of any item of Equipment or any interest therein after the occurrence of an Event of Default, there shall be a disallowance, elimination, reduction, disqualification, recapture or other change in whole or in part of the Depreciation Deduction or Interest Deduction, including without limitation a charge in the Depreciation Deduction schedule (or Lessor is required to include in income amounts other than the "Assumed Income Amounts") (a "Tax Loss"), Lessee shall, upon request by Lessor and subject to the provisions of this Section 4, pay to Lessor on each Rent Payment Date, commencing with the first such date following written notice to Lessee by Lessor of such Tax Loss, such additional Rent as shall be in amounts which shall cause Lessor's after tax economic yield and after tax cash flow (computed on the same assumptions, including without limitation, the tax rates and discount rates utilized by Lessor in connection with this Lease or, in the case of a Tax Loss based on an income inclusion event, the then applicable federal, state and local tax rates) to equal the economic yield and cash flows that would have been realized by Lessor if such Tax Loss had not occurred. If the date of the Tax Loss with respect to any Equipment occurs following the termination of the Lease with respect to such Equipment, said additional Rent shall be payable in a lump sum on demand. In addition to the amounts payable as provided above, Lessee will also pay any interest, additions to tax and penalties (except additions to tax and penalties caused by the gross negligence or willful misconduct of Lessor) paid or payable with respect to the Tax Loss or on account of having claimed the deduction giving rise to such Tax Loss. For purposes of this Section 4, the term "Lessor" shall include any Assignee and any affiliated group, within the meaning of Section 1504 or any successor provision of the Code, of which Lessor or Assignee, respectively, is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(c) For the purpose of this Section 4, a Tax Loss shall occur upon the earliest of (i) the happening of any event which may cause such Tax Loss, (ii) the payment by Lessor to the Internal Revenue Service of the tax increase resulting from such Tax Loss, or (iii) the adjustment of the tax return of Lessor to reflect such Tax Loss. A certificate of an officer of Lessor describing such Tax Loss in reasonable detail shall be conclusive evidence of the amount and date of such Tax Loss (absent manifest error).

(d) Lessee shall not be required to make any payment pursuant to the provisions of this Section 4 in respect of any Tax Loss which results from any one or more of the following causes: (i) the failure of Lessor to have sufficient income to benefit from such Depreciation Deductions or Interest Deductions, (ii) failure of Lessor to claim in a timely and proper manner (including making all appropriate permissible elections under the Code) any permissible deductions and treatment of income and deductions in its income tax returns for the appropriate years, or (iii) application or imposition of a minimum tax.

(e) If the Internal Revenue Service proposes an adjustment in any item of income, gain, loss, deduction or credit which if agreed to by Lessor would result in a Tax Loss, Lessor hereby agrees to take such action in connection with contesting such proposed adjustment as Lessee shall reasonably request in writing from time to time, *provided that*: (i) within thirty (30) days after notice by Lessor to Lessee of such claim, Lessee shall have requested that such proposed adjustment be contested, (ii) before undertaking, at Lessee's request, any administrative appeals, proceedings, hearings or conferences with the Internal Revenue Service or any judicial resolution or any other such action in respect of such proposed adjustment, Lessor shall have been furnished by Lessee with an opinion of a law firm selected by Lessor and reasonably acceptable to Lessee, to the effect that Lessee is more likely than not to prevail in contesting such proposed adjustment, (iii) Lessee shall have indemnified or provided for the indemnification of Lessor in a manner reasonably satisfactory to Lessor for all expenses which Lessor may incur as the result of contesting such proposed adjustment and hereby agrees to pay or reimburse Lessor for (in addition to all other indemnification under this Lease), on demand, all actual and reasonable costs and expenses which Lessor may incur in connection with contesting such proposed adjustment, including, without limitation, reasonable attorneys' and accountants' fees, expenses and disbursements, (iv) at such time as judicial resolution is available and appropriate, if Lessor elects to pay the Tax claimed and sue for a refund in the appropriate court, Lessee shall have paid the full amount of such Tax, (v) Lessor need not appeal any adverse judicial determination by any such court or any administration agency, and (vi) Lessor has determined that such proposed adjustment or any proposed contest does not involve a risk of criminal liability or of the loss of use or possession or the forfeiture, seizure, confiscation or sale of any Equipment. Lessor may elect not to contest such proposed adjustment or imposition, despite a request by Lessee pursuant to clause (i) of this Section 4(e) that a proposed adjustment be contested; *provided that*, if Lessor so elects despite such a request by Lessee, Lessee shall be relieved of all its indemnification obligations in respect of any such Tax Loss resulting from such proposed adjustment. In the case of any such proposed adjustment referred to above, Lessor agrees promptly to notify Lessee in writing of such proposed adjustment and agrees not to make payment of the Tax claimed, if such payment has been demanded, prior to the earlier of (A) the date such amount is due and (B) thirty (30) days after the giving of such notice and agrees to give to Lessee any relevant information relating to such proposed adjustment which may be particularly within the knowledge of Lessor. If Lessee has paid any Tax on behalf of Lessor pending a suit for a refund, Lessor will promptly remit to Lessee any refund received by Lessor as a result of such proceeding (net of any amounts due and payable pursuant to this Lease). Notwithstanding any other provision of this Lease, including this Section, Lessor shall have the affirmative control of any contest litigation.

**5. Insurance**

The amount of public liability insurance including personal injury and property damage required to be maintained by Lessee pursuant to Section 10(a) of the Master Lease is \$5,000,000.00 per occurrence.

**6. Early Expiration**

(a) Early Expiration Dates Each Rent Payment Date designated below is called an "Early Expiration Date" and corresponds to an Early Buy-out Percent as follows (which amount is in addition to any Rent due on that date):

<u>Early Expiration Date</u>	<u>Early Buy-out Percent</u>
June 3, 2015	38.87%

So long as (i) no Default or Event of Default has occurred and (ii) this Lease shall not have been earlier terminated, on the Early Expiration Date specified above, Lessee may exercise with respect to all but not less than all of the Equipment an option specified in this Section 6.

(b) Purchase Option. Lessee shall have the right, upon the terms and conditions set forth below, to purchase all but not less than all of the Equipment on such Early Expiration Date, for a price equal to the Early Buy-out Percent times Lessor's Capitalized Cost and corresponding to the Early Expiration Date specified above, plus all Rent then due and payable pursuant to this Lease (including Basic Rent due on such Early Expiration Date) and all Taxes (including all sales and use Taxes) payable in connection with such purchase; *provided* that Lessee gives Lessor written notice of Lessee's intent to exercise such right not less than one hundred eighty (180) days and not more than two hundred seventy (270) days prior to the applicable Early Expiration Date. Failure to provide notice within such period shall terminate any right of Lessee to purchase the Equipment pursuant to this Section. If Lessee exercises its right to purchase the Equipment in accordance with the terms hereof, upon payment of the purchase price and all other Rent then due and payable under this Lease, Lessor will deliver to Lessee a bill of sale transferring title to the Equipment to Lessee on an "as-is, where-is" basis without representation or warranty of any kind except that Lessor shall warrant that the Equipment is free, clear and unencumbered of all Liens arising by, through or under Lessor except for such Liens that Lessee is required to remove pursuant to the terms of the Lease.

**7. End of Term.**

Upon the expiration of the Term, Lessee shall exercise with respect to all, but not less than all, of the Equipment one of the following options in accordance with the terms hereof.

(a) Renewal Option. So long as (i) no Default or Event of Default has occurred and (ii) this Lease shall not have been earlier terminated, upon the expiration of the Base Lease Term, Lessee shall have the option to renew this Lease with respect to all but not less than all of the Equipment, for a renewal term as agreed between Lessor and Lessee prior to the end of the Base Lease Term. All terms and conditions of this Lease shall be applicable during such Renewal Term; *provided* that Basic Rent shall be calculated based on a rental factor equal to the Fair Market Rental Value (as defined below) of the Equipment determined at the expiration of the Base Lease Term.

As used herein, "Fair Market Rental Value" shall mean the value the equipment for lease, expressed as a percentage of Lessor's Capitalized Cost, (A) agreed upon between Lessor and Lessee not less than ninety (90) days prior to the end of the Base Lease Term, or (B) if not so agreed, subject to receipt of applicable notice as provided in this Section, shall be determined by an independent appraiser selected by Lessor, or if Lessee reasonably objects to such appraiser, an independent appraiser upon whom Lessor and Lessee may mutually agree, or, failing such agreement, the average appraised value of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third by the first two so selected which determination shall be binding upon Lessee and Lessor. In determining the Fair Market Rental Value, each such appraiser shall determine the value which would be obtained in an arm's length transaction between an informed and willing lessee and an informed and willing Lessor under no compulsion to lease such Equipment, assuming the Equipment to be in the condition required to be maintained and returned pursuant to the Lease. In such determination of Fair Market Rental Value, such lease shall be on the term and conditions hereof. The fees and expenses of all such appraisers shall be paid by Lessee. Each period for which Lessee is entitled to renew the term of this Lease is referred to as a "Renewal Term" and the rental factor for such Renewal Term determined in accordance with the provisions of this Section 7(a) is referred to as the "Renewal Term Rental Factor".

If Lessor and Lessee are unable to agree upon the Fair Market Rental Value of the Equipment prior to the date ninety (90) days prior to the end of the Base Lease Term or applicable Renewal Term, notwithstanding any election to renew the Term with respect to the Equipment, subject to Section 2 of the Master Lease, by delivery of written notice not less than the date ninety (90) days prior to the end of the Base Lease Term or the applicable Renewal Term, Lessee may either (i) terminate its election to renew the Term with respect to the Equipment by delivering written notice of its irrevocable election to return the Equipment or (ii) irrevocably elect to determine the Fair Market Rental Value in accordance with clause (B) of the definition thereof. Failure to provide such notice shall constitute an election by Lessee to seek a negotiated determination of the Fair Market Rental Value but shall not impose any additional obligation on Lessor.

(b) Purchase Option. So long as (i) no Default or Event of Default has occurred and (ii) this Lease shall not have been earlier terminated, Lessee shall have the right upon the terms and conditions set forth below, to purchase all but not less than all of the Equipment upon expiration of the Term, for a price equal to the Fair Market Value for the Equipment (plus all Taxes (including all sales and use Taxes) payable in connection with such purchase) provided that Lessee gives Lessor written notice of Lessee's intent to exercise such right not less than one hundred eighty (180) days and not more than two hundred seventy (270) days prior to the end of the Term. Failure to provide notice within such period shall terminate any right of Lessee to purchase the Equipment pursuant to this Section. "Fair Market Value" shall mean (A) the amount agreed upon between Lessor and Lessee not less than ninety (90) days prior to the end of the Term or (B) if not so agreed, shall be determined not later than the end of the Term by an independent appraiser selected by Lessor, or if Lessee reasonably objects to such appraiser, an independent appraiser upon whom Lessor and Lessee may mutually agree, or, failing such agreement, the average appraised value of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third by the first two so selected which determination shall be binding upon Lessee and Lessor. In determining the Fair Market Value, each such appraiser shall determine the value which would be obtained in an arm's length transaction between an informed and willing buyer-user and an informed and willing seller under no compulsion to sell such Equipment, assuming the Equipment to be in the condition required to be maintained and returned pursuant to the Lease. In such determination of Fair Market Value, (i) the costs of removal of the Equipment from its present location shall not be a deduction from such value, (ii) if the Equipment is installed, the value shall be determined on an installed basis, (iii) such purchase shall be on an "as-is, where-is" basis and without warranty or representations, except that Lessor shall warrant that the Equipment is free, clear or unencumbered of all Liens arising by, through or under Lessor except for such Liens that Lessee is required to remove pursuant to the terms of the Lease and (iv) the purchase price shall be payable in cash. The fees and expenses of all such appraisers shall be paid by Lessee. If Lessee exercises its right to purchase the Equipment in accordance with the terms hereof, upon payment of the purchase price and all other amounts then due and payable under this Lease, Lessor will deliver to Lessee a bill of sale transferring title to the Equipment to Lessee on an "as-is, where-is" basis without representation or warranty of any kind except that Lessor shall warrant that the Equipment is free, clear and unencumbered of all Liens arising by, through or under Lessor except for such Liens that Lessee is required to remove pursuant to the terms of the Lease.

If Lessee and Lessor are unable to agree upon the Fair Market Value of the Equipment prior to the date ninety (90) days prior to the end of the Base Lease Term or applicable Renewal Term, notwithstanding any election to purchase the Equipment, subject to Section 2 of the Master Lease, by delivery of written notice not less than the date ninety (90) days prior to the end of the Base Lease Term or the applicable Renewal Term, Lessee may either (i) terminate its election to purchase the Equipment by delivering written notice of its irrevocable election to return the Equipment or (ii) irrevocably elect to determine the Fair Market Value in accordance with clause (B) of the definition thereof. Failure to provide such notice shall constitute an election by Lessee to seek a negotiated determination of the Fair Market Value but shall not impose any additional obligation on Lessor.

(c) Return Option. If Lessee fails to purchase the Equipment pursuant to the provisions of the preceding Section, Lessee shall return the Equipment to Lessor in accordance with the terms of this Section on 7(c) and Section 14 of the Master Lease.

(i) At the expiration of the period specified in clause (v) below, Lessee shall return all, but not less than all, of the Equipment. Lessee shall provide Lessor with not less than one hundred eighty (180) days prior written notice of its intent to return the Equipment ("Notice of Return"). Such Notice of Return will contain a detailed inventory of the Equipment and all components thereof, including a listing of the model and serial number of all components comprising the Equipment and will identify the then current location of the Equipment.

(ii) On or before the expiration of the Term, Lessee shall return the Equipment, at Lessee's cost and expense to any location(s) designated by Lessor. The Equipment will be transported in accordance with manufacturer's recommendations and applicable government laws, rules and regulations



(iii) Upon delivery of the Equipment, Lessee shall deliver all maintenance records and other similar documents pertaining to the Equipment and, to the extent Lessor is not the owner of such records, title thereto will immediately vest in Lessor.

(iv) At least sixty (60) days prior to the scheduled return and redelivery of the Equipment, Lessee shall, at its own cost and expense, provide Lessor with a report from a certified manufacturer or dealer of the Equipment, or such other qualified party reasonably acceptable to Lessor, stating that such person has performed an inspection and testing of the Equipment and that such Equipment is in the condition required by the Lease.

(v) At the request of Lessor, Lessee will store the Equipment, at its own cost and expense, for a period of up to one hundred eighty (180) days. Lessee will promptly notify Lessor of the location for the storage of the Equipment which location shall be safe and secure and reasonably designed to prevent damage to or loss of the Equipment and which location shall have access to such facilities (including electrical power, if applicable) to demonstrate the operation of the Equipment. Lessee will provide Lessor access to the Equipment during normal business hours to inspect or display the Equipment. During such storage, Lessor will maintain insurance in respect of the Equipment as required by the Lease and will maintain the Equipment in the condition required by the Lease including performing any maintenance or repair required by Section 8 of the Master Lease. Notwithstanding any other provision of the Lease or this Schedule, Lessee will not be required to pay Basic Rent during the period in which it is storing such Equipment.

(vi) Upon return, the Equipment shall be:

(A) cleaned or steam cleaned as applicable and treated with respect to rust, corrosion and appearance in accordance with manufacturer's recommendations and consistent with the best practices of dealers in used equipment similar to the Equipment;

(B) free of all advertising and insignia placed thereon by Lessee;

(C) mechanically and structurally sound, capable of performing the functions for which it was originally designed and able to operate within the original specifications and tolerances with no loss of power and, if applicable, no excessive emission of exhaust at ignition or starting of the machinery;

(D) accompanied by a detailed inventory of the Equipment and all components thereof, including a listing of the model and serial number of all components comprising the Equipment;

(E) accompanied by a current set of all manuals, blueprints, process flow diagrams, equipment configuration diagrams and other data reasonably requested by Lessor; and

(F) accompanied by a certificate of the manufacturer or of a maintenance provider acceptable to Lessor that the Equipment qualifies for the manufacturer's used equipment maintenance program (if any) and all manufacturer's and maintenance provider's warranties (if any).

(vii) In addition and without limiting the foregoing, upon return the Equipment shall comply with the following conditions:

(A) The Equipment shall include all conveyor equipment (including all belts, chains and drives) in a condition that is operable in a manner that is consistent with the Equipment's overall design capacities;

(B) Each engine or motor shall have at least seventy percent (70%) useful life remaining before the next overhaul or replacement as recommended by the manufacturer and set forth in the applicable maintenance manuals and compliance with such condition shall be determined by subjecting the engine to manifold pressure, oil analysis, dynamometer, blow-by, turbo boost and exhaust back pressure tests and such other tests as Lessor may reasonably request;

(C) All pumps, motors, valves and cylinders shall be in good operating condition and without leaks and the hydraulic system shall be free from contaminants with such condition to be determined by subjecting the hydraulic system to an oil sample analysis;

(D) All wearable components in the crushing equipment shall have at least seventy percent (70%) of remaining wear available before the next overhaul or replacement as recommended by the manufacturer or, if not so specified by the manufacturer, in accordance with industry practice; and

(E) All safety accessories, devices, or systems that are required by any federal, state or local government to operate the Equipment shall be delivered in fully functional condition.

(F) All tests to confirm compliance with the foregoing conditions (if any) shall be performed at Lessee's sole cost and expense by a maintenance or service provider approved by the manufacturer of the Equipment or otherwise reasonably acceptable to Lessor.

(viii) If Lessee is required to return the Equipment, or any portion of the Equipment, prior to the scheduled expiration of the Term as a result of an Event of Default or the cancellation or termination of this Lease in accordance with the terms hereof, Lessee shall return such Equipment in the condition required by and in accordance with the terms of this Section 7, provided that any requirement in this Section 7 to provide notice prior to taking any required action, or to take any action within a period specified prior to the scheduled expiration of the Term, shall not be applicable and Lessee shall be required to comply with such provisions on demand.

(ix) At the request of Lessor, Lessee shall cooperate with Lessor in attempting to remarket the Equipment and take all such actions as Lessor may reasonably request in connection therewith, including, without limitation, displaying and demonstrating the Equipment to prospective purchasers or lessees and allowing Lessor to conduct any private or public sale of the Equipment on Lessee's premises. Lessee shall be responsible for all costs associated with any such activities

#### **8. Amendments to Master Lease and Additional Lease Provisions**

(a) Notwithstanding Section 9 of the Master Lease, Lessee may sublease the Equipment to the operating companies of Patriot Coal Corporation subject to the following terms and conditions:

(i) the term of such sublease shall not be longer than the Base Lease Term, or, if such sublease is entered into during a Renewal Term, the remainder of such Renewal Term;

(ii) such sublease shall be on terms and conditions reasonably acceptable to Lessor including that such sublease shall be expressly subject and subordinate to all the terms of this Lease;

(iii) such sublease shall not affect the rights and remedies of Lessor under this Lease, including the right to repossess the Equipment and all terms, conditions and provisions of this Lease shall remain in full force and effect;

(iv) Lessee shall remain primarily liable hereunder for the performance of all terms and conditions of this Lease to the same extent as if such sublease had not been entered into;

(v) any such sublease shall expressly prohibit further assignment or sublease; and

(vi) not less than 10 days prior to the effectiveness of such sublease, Lessee shall deliver to Lessor (A) the executed original chattel paper copy of such sublease (for which there shall be only one chattel paper original) and (B) upon the request of Lessor, an acknowledgement and agreement executed by Lessee and the proposed sublessee in form and substance satisfactory to Lessor.

(b) In order to secure the prompt payment of Rent under and with respect to this Lease, and the performance and observance by Lessee of all the agreements, covenants and provisions hereof (collectively, the "Obligations"), Lessee hereby grants to Lessor a security interest in all of Lessee's right, title and interest in the following (whether now existing or hereafter created and whether now owned or hereafter acquired): (A) all subleases (including the right to receive any payment thereunder and the right to make any election or determination or give any consent or waiver thereunder) and chattel paper, accounts, security deposits and bills of sale relating thereto, and (B) any and all products and proceeds of any collateral hereunder (including all insurance and requisition proceeds and all other payments of any kind with respect to the Equipment and other collateral in and against which a security interest is granted hereunder). Lessee hereby authorizes Lessor to file, solely at the expense of Lessee, any Uniform Commercial Code financing statements or other similar documents that Lessor reasonably deems necessary or advisable to protect its interest. Lessee agrees promptly to execute and deliver to Lessor such further documents or other assurances, and to take such further action, including obtaining landlord and mortgagee waivers, as Lessor may from time to time reasonably request.

Except as expressly modified hereby, all terms and provisions of the Master Lease shall remain in full force and effect. This Equipment Schedule is not binding or effective with respect to the Master Lease or Equipment until executed on behalf of Lessor and Lessee by authorized representatives of Lessor and Lessee, respectively.

#### **9. Sales, Use and Property Taxes.**

(a) For purposes of sales, use and similar taxes, Lessee represents and warrants with respect to the Equipment that:

(i) Lessor's acquisition of, and the leasing pursuant to this Lease of, the Equipment is exempt from all sales, use and similar taxes imposed upon or payable by either Lessor or Lessee as a result of the acquisition, use or rental of such Equipment, and Lessee has furnished to Lessor an appropriate tax exemption certificate or other documentation (which must be satisfactory to Lessor) evidencing such exemption;

(ii) to the extent that the acquisition, use or rental of such Equipment is not exempt from all sales, use and similar taxes, Lessee complied and will continue to comply with its obligations under the Lease to reimburse Lessor for full amount of such taxes; and

(iii) any tax exemption certificates, or any similar documentation, furnished to Lessor by Lessee's claiming any exemption, abatement or exception to sales, use or similar tax, shall be true, accurate and complete in all respects and Lessor is entitled to rely thereon in not remitting or paying any such tax

(b) For purposes of tangible personal property taxes applicable to this Equipment Schedule, Lessee agrees that it:

(i) will declare, when listing property to taxing authorities, the Equipment as LEASED equipment only; and

(ii) will reimburse Lessor on demand for any Taxes paid by Lessor assessed on, or in respect of, the Equipment.

*Remainder of page intentionally left blank. Signature page follows*


IN WITNESS WHEREOF, Lessee and Lessor have caused this Equipment Schedule to be executed by their duly authorized representatives as of the date first above written.

**LESSOR:**

**LESSEE :**

**FIFTH THIRD EQUIPMENT FINANCE COMPANY**

**PATRIOT LEASING COMPANY LLC**

By:   
Name: Chris Dyke  
Title:

By:   
Name: Robert L. Mead  
Title: Vice President & Treasurer

THIS LEASE MAY BE EXECUTED IN SEVERAL COUNTERPARTS AND TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE MAY BE PERFECTED THROUGH THE TRANSFER OF POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH SHALL BE IDENTIFIED AS THE CHATTEL PAPER ORIGINAL ON THE SIGNATURE PAGE THEREOF. THIS IS THE CHATTEL PAPER ORIGINAL.

**CHATTEL PAPER ORIGINAL**

IN WITNESS WHEREOF, Lessee and Lessor have caused this Equipment Schedule to be executed by their duly authorized representatives as of the date first above written.

LESSOR:

LESSEE:

FIFTH THIRD EQUIPMENT FINANCE COMPANY

PATRIOT LEASING COMPANY LLC

By: [Signature]  
Name: [Signature]  
Title: VP

By: [Signature]  
Name: Robert L. Mead  
Title: Vice President & Treasurer

THIS LEASE MAY BE EXECUTED IN SEVERAL COUNTERPARTS AND TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE MAY BE PERFECTED THROUGH THE TRANSFER OF POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH SHALL BE IDENTIFIED AS THE CHATTEL PAPER ORIGINAL ON THE SIGNATURE PAGE THEREOF. THIS IS NOT THE CHATTEL PAPER ORIGINAL.

SCHEDULE 1  
TO  
EQUIPMENT SCHEDULE NO. 023  
DESCRIPTION OF EQUIPMENT

Manuf. and/or Vendor Name & Invoice No.	Description of Equipment and MACRS Depreciation Recovery Period	Quantity	Per Item Cost (if applicable)	Sales Tax, Delivery, Installation & Other Charges	Invoice Total	Equipment Location
Mine Power Systems, Inc. Invoice No. 9780	64-125-21 Battery, Serial Nos. 80472C1, and HEB-6915	2	\$43,348.00		\$53,650.00	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208
	Charger Serial No. BA0897000F2;	1	\$10,302.00			
Mine Power Systems, Inc. Invoice No. 9779	64-125 21 Battery; Serial Nos. HCB-6871, and 80462C1	2	\$43,348.00		\$53,650.00	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208
	Charger Serial No. AZ632400011	1	\$10,302.00			
Brookville Equipment Corporation, Invoice No. 0201103455;	13 Man Personnel Carrier, Serial No. 9593; 13 Man Set 660AH Battery; 680AH Battery Charger;	1	\$221,252.14	\$1,800.00	\$223,052.14	Workman's 2 Gas Mine, 1100 Workman's Branch Road Wharton, WV 25208
Fairchild International Invoice No. 541140	New Fairchild Model 35C-WH-DC Battery Powered Scoop, Serial No T339-577; with Set J & R Single Plug Battery Changing Cable 30 AMP 128V, Utility Electric P.T.O Laminated Parts Catalog - Liquid, Tear Proof Rock Duster Mounts	1			\$272,937.11	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208
Fairchild International Invoice No. 541141	Fairchild Model 35C-WH-DC Battery Powered Scoop, Serial No T339-573; with Set J & R Single Plug Battery Changing Cable 30 AMP 128V, Utility Electric P.T.O Laminated Parts Catalog - Liquid, Tear Proof Rock Duster Mounts	1			\$272,937.11	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208
J. H. Fletcher & Co., Invoice No 2010168	Chddr-13 Dual Head Roof Control Drill, Serial No. 2010168	1			\$653,006.25	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208
J. H. Fletcher & Co., Invoice No 2010169	Chddr-13 Dual Head Roof Control Dril, Serial No. 2010169	1			\$653,006.25	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208
Joy Mining Machinery Invoice No 94034941-9	10SC32 56ABH-5 Shuttle Car Serial No. ET17950;	1			\$700,804.65	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208

Joy Mining Machinery / Invoice No. 9403463948	10SC32-58ABH-5 Shuttle Car Serial No. ET17886;	1			\$700,040.25	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208
Mining Controls, Inc. Invoice 388646	1500 KVA Face Power Center, Ship Voltage: 12470	1			\$172,890.00	Workman's 2 Gas Mine; 1100 Workman's Branch Road Wharton, WV 25208
<b>Total:</b>					<b>\$3,755,973.76</b>	



SCHEDULE 2  
TO  
EQUIPMENT SCHEDULE 023

RENT PAYMENT DATE  
STIPULATED LOSS VALUE PERCENTAGES

Payment Number	Rent Payment Date	Stipulated Loss Value Percentage
1	7/3/2011	103.93
2	8/3/2011	102.86
3	9/3/2011	101.77
4	10/3/2011	100.68
5	11/3/2011	99.57
6	12/3/2011	98.45
7	1/3/2012	97.32
8	2/3/2012	96.18
9	3/3/2012	95.03
10	4/3/2012	93.87
11	5/3/2012	92.70
12	6/3/2012	91.51
13	7/3/2012	90.31
14	8/3/2012	89.10
15	9/3/2012	87.89
16	10/3/2012	86.65
17	11/3/2012	85.41
18	12/3/2012	84.16
19	1/3/2013	82.89
20	2/3/2013	81.61
21	3/3/2013	80.32
22	4/3/2013	79.02
23	5/3/2013	77.72
24	6/3/2013	76.40
25	7/3/2013	75.07
26	8/3/2013	73.74
27	9/3/2013	72.39
28	10/3/2013	71.04
29	11/3/2013	69.68
30	12/3/2013	68.30
31	1/3/2014	66.92
32	2/3/2014	65.53
33	3/3/2014	64.12

34	4/3/2014	62.71
35	5/3/2014	61.29
36	6/3/2014	59.86
37	7/3/2014	58.43
38	8/3/2014	56.99
39	9/3/2014	55.53
40	10/3/2014	54.07
41	11/3/2014	52.60
42	12/3/2014	51.12
43	1/3/2015	49.64
44	2/3/2015	48.14
45	3/3/2015	46.64
46	4/3/2015	45.12
47	5/3/2015	43.60
48	6/3/2015	42.07
49	7/3/2015	40.53
50	8/3/2015	38.98
51	9/3/2015	37.42
52	10/3/2015	35.86
53	11/3/2015	34.28
54	12/3/2015	32.69
55	1/3/2016	31.10
56	2/3/2016	29.50
57	3/3/2016	27.88
58	4/3/2016	26.26
59	5/3/2016	24.64
60	6/3/2016	23.00

NOTE: THE SLV PERCENTAGE DOES NOT INCLUDE RENT DUE ON EACH APPLICABLE RENT PAYMENT DATE. LESSEE IS REQUIRED TO PAY ALL RENT DUE ON THE APPLICABLE PAYMENT DATE.

**EXHIBIT D**



**EQUIPMENT SCHEDULE – No. 027**  
**DATED FEBRUARY 21, 2012**

**TO MASTER EQUIPMENT LEASE AGREEMENT**  
**DATED AS OF MAY 15, 2008**

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**Lessor: FIFTH THIRD EQUIPMENT FINANCE COMPANY**  
**(F/K/A The Fifth Third Leasing Company),**  
**an Ohio corporation**

**Lessee: PATRIOT LEASING COMPANY LLC**

All of the terms of the Master Equipment Lease Agreement dated as of May 15, 2008 (as amended, supplemented or modified from time to time, the "Master Lease") between Lessee and Lessor are incorporated by reference herein. Lessor may include any parent, subsidiary or affiliate of Fifth Third Bank who endorses an Equipment Schedule. By endorsing herein such party hereby agrees to, and shall be bound by the terms and conditions of the Master Lease regardless of whether it executed such Master Lease as the original Lessor. Capitalized terms used, and not otherwise defined, herein shall have the meanings ascribed thereto in the Master Lease. This Equipment Schedule as it incorporates the terms of the Master Lease and each schedule, exhibit and rider attached hereto is referred to as this "Lease". This Equipment Schedule, and the Master Lease, as incorporated herein shall constitute a separate and enforceable lease. If any term of any schedule, exhibit or rider hereto conflicts with or is inconsistent with any term of this Equipment Schedule or the Master Lease, the terms of such schedule, exhibit or rider shall govern.

**1. Equipment.**

This Equipment Schedule relates to the Equipment described on Schedule 1 hereto (collectively, the "Equipment").

**2. Financial Terms.**

- (a) Base Lease Term Commencement Date: February 24, 2012.
- (b) Base Lease Term: 60 months.
- (c) Rent Payment Dates: March 24, 2012 and on the same day of each month thereafter during the Term (including all Renewal Terms, if any)
- (d) Expiration Date: February 24, 2017.
- (e) Lessor's Capitalized Cost: \$2,382,869.00
- (f) Processing Fee: Lessee agrees to pay Lessor a lease processing fee of \$250.00
- (g) Rent: The Base Term Rental Factor is .0170254 (or \$40,569.23 per month as of the Base Lease Term Commencement Date); provided, however, that (A) such Base Term Rental Factor is based on the US dollar, a 30/360 day year, with a Semi-Annual Settlement and a term approximating the weighted average life of this

Equipment Schedule, as quoted in the Bloomberg SWAP Rate report as of the day preceding the date of this Equipment Schedule, and (B) may be adjusted by Lessor as of Lessor's funding date using the SWAP rate for a term approximating the applicable weighted average SWAP rate for the most recent previous day and shall remain constant throughout the Base Lease Term. Lessor will provide Lessee with notice of any such adjustment.

(h) Equipment Location(s): As specified on Schedule 1. Lessee shall not use, or permit any of the Equipment to be used, predominately outside the United States within the meaning of Section 168(g)(1)(A) of the Code except under the circumstances described in Section 168(g)(4) of the Code, if applicable to the Equipment.

(i) The Stipulated Loss Value for the Equipment shall be equal to Lessor's Capitalized Cost for such Equipment multiplied by the applicable percentage amount for the relevant date set forth on Schedule 2 attached hereto.

(j) Pursuant to Section 18 of the Master Lease, on or prior to the Delivery and Acceptance Date, if requested by Lessor, Lessee will execute and deliver a tax payment certification providing for the manner of reimbursement of Taxes paid by Lessor with respect to the Equipment and/or making such representations and warranties as may appear appropriate as to the exempt status of the Equipment.

(k) Lessee's federal taxpayer identification number is 20-5622045 and Lessee's state charter or organizational identification number is 4329802.

### 3. Rent and Tax Payments.

(a) On each Rent Payment Date during the Base Lease Term, Lessee shall pay (i) as Basic Rent for the Equipment, the product of the Base Term Rental Factor and Lessor's Capitalized Cost for the Equipment and (ii) in respect of Taxes scheduled to become due, such amounts monthly (or at such other interval as Lessor may deem appropriate) as Lessor determines will be due and payable. In addition to the foregoing, on the Base Lease Term Commencement Date, Lessee shall pay to Lessor as interim rent for each day from the Delivery and Acceptance Date to the Base Lease Term Commencement Date, the sum of (A) \$1,352.31 as daily rent and (B) such amounts daily in respect of Taxes as Lessor determines will be due and payable.

(b) On each Rent Payment Date during each Renewal Term (if any), Lessee shall pay (i) as Basic Rent for the Equipment, the product of the Renewal Term Rental Factor and Lessor's Capitalized Cost for the Equipment and (ii) in respect of Taxes scheduled to become due, such amounts monthly (or at such other interval as Lessor may deem appropriate) as Lessor determines will be due and payable.

### 4. Income Tax.

(a) Lessee represents and warrants that (i) beginning in Lessor's taxable year which includes the date of acceptance by Lessee of the Equipment and at all times during the Term, Lessor shall be entitled to take the maximum deductions for depreciation allowable pursuant to Section 167(a) or any successor provision of the Code and that the deductions for depreciation of the Equipment shall be determined as provided in Section 168 (Including, without limitation, Section 168(a)) or any successor provision of the Code and shall be based on Lessor's Capitalized Cost for the Equipment (together with the Bonus Depreciation described in the next sentence, the "Depreciation Deduction"), (ii) the applicable "recovery period" for the Equipment as provided in Section 168(c) or any successor provision of the Code shall be as indicated on Schedule 1, (iii) Lessor shall be entitled to take the maximum deductions pursuant to Section 163 or any successor provision of the Code, with respect to interest payable on Lessor's borrowing (if any) in connection with the acquisition or financing of Equipment (the "Interest Deduction" and together with the Depreciation Deduction, the "Tax Benefits"), and (iv) Lessor will not be required to include in its gross income at any time during the Term any amount with respect to the transactions contemplated by the Lease Documents other than (A) Basic Rent as such amounts accrue in accordance with the terms of the Lease, (B) the amount of any income or gain resulting from the payment of Stipulated Loss Value or from the loss, sale or other disposition of the Equipment (except to the extent that the calculation of such payment does not properly take into account the timing of such event for tax purposes), (C) amounts paid by Lessee on an after-tax basis, and (D) amounts identified as interest (such amounts collectively the "Assumed Income Amounts."). If

Bonus Depreciation is shown on Schedule 1 as being applicable, in addition to the foregoing, Lessee represents and warrants that (1) the Equipment constitutes "qualified property" pursuant to Section 168(k) of the Code and is eligible for an additional depreciation deduction in the first year equal to fifty percent (50%) (as a percentage of Lessor's Capitalized Cost) as contemplated by Section 168 of the Code (the "Bonus Depreciation"), (2) the Equipment shall be treated as originally placed in service not earlier than the date of the execution and delivery of this Lease, or in the event the transaction is a sale-leaseback transaction, Lessee shall not have placed the Equipment in service at any time prior to three (3) months before the execution and delivery of this Lease, (3) Lessee has not arranged to purchase, and Lessor is not purchasing, the Equipment pursuant to a binding written contract entered into before January 1, 2008, and (4) the Equipment shall be placed in service before January 1, 2009.

(b) If, as a result of (i) the inaccuracy of any of the representations or warranties set forth in Section 4(a), (ii) any change in applicable law, (iii) the breach by Lessee of any of its covenants or agreements in this Lease, (iv) any act or omission of Lessee or any affiliate of Lessee, or (v) the sale or other disposition of any item of Equipment or any interest therein after the occurrence of an Event of Default, there shall be a disallowance, elimination, reduction, disqualification, recapture or other change in whole or in part of the Depreciation Deduction or Interest Deduction, including without limitation a change in the Depreciation Deduction schedule (or Lessor is required to include in Income amounts other than the "Assumed Income Amounts") (a "Tax Loss"), Lessee shall, upon request by Lessor and subject to the provisions of this Section 4, pay to Lessor on each Rent Payment Date, commencing with the first such date following written notice to Lessee by Lessor of such Tax Loss, such additional Rent as shall be in amounts which shall cause Lessor's after tax economic yield and after tax cash flow (computed on the same assumptions, including without limitation, the tax rates and discount rates utilized by Lessor in connection with this Lease or, in the case of a Tax Loss based on an Income Inclusion event, the then applicable federal, state and local tax rates) to equal the economic yield and cash flows that would have been realized by Lessor if such Tax Loss had not occurred. If the date of the Tax Loss with respect to any Equipment occurs following the termination of the Lease with respect to such Equipment, said additional Rent shall be payable in a lump sum on demand. In addition to the amounts payable as provided above, Lessee will also pay any interest, additions to tax and penalties (except additions to tax and penalties caused by the gross negligence or willful misconduct of Lessor) paid or payable with respect to the Tax Loss or on account of having claimed the deduction giving rise to such Tax Loss. For purposes of this Section 4, the term "Lessor" shall include any Assignee and any affiliated group, within the meaning of Section 1504 or any successor provision of the Code, of which Lessor or Assignee, respectively, is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(c) For the purpose of this Section 4, a Tax Loss shall occur upon the earliest of (i) the happening of any event which may cause such Tax Loss, (ii) the payment by Lessor to the Internal Revenue Service of the tax increase resulting from such Tax Loss, or (iii) the adjustment of the tax return of Lessor to reflect such Tax Loss. A certificate of an officer of Lessor describing such Tax Loss in reasonable detail shall be conclusive evidence of the amount and date of such Tax Loss (absent manifest error).

(d) Lessee shall not be required to make any payment pursuant to the provisions of this Section 4 in respect of any Tax Loss which results from any one or more of the following causes: (i) the failure of Lessor to have sufficient income to benefit from such Depreciation Deductions or Interest Deductions, (ii) failure of Lessor to claim in a timely and proper manner (including making all appropriate permissible elections under the Code) any permissible deductions and treatment of income and deductions in its income tax returns for the appropriate years, or (iii) application or imposition of a minimum tax.

(e) If the Internal Revenue Service proposes an adjustment in any item of income, gain, loss, deduction or credit which if agreed to by Lessor would result in a Tax Loss, Lessor hereby agrees to take such action in connection with contesting such proposed adjustment as Lessee shall reasonably request in writing from time to time, *provided that*: (i) within thirty (30) days after notice by Lessor to Lessee of such claim, Lessee shall have requested that such proposed adjustment be contested, (ii) before undertaking, at Lessee's request, any administrative appeals, proceedings, hearings or conferences with the Internal Revenue Service or any judicial resolution or any other such action in respect of such proposed adjustment, Lessor shall have been furnished by Lessee with an opinion of a law firm selected by Lessor and reasonably acceptable to Lessee, to the effect that Lessee is more likely than not to prevail in contesting such proposed adjustment, (iii) Lessee shall have indemnified

or provided for the indemnification of Lessor in a manner reasonably satisfactory to Lessor for all expenses which Lessor may incur as the result of contesting such proposed adjustment and hereby agrees to pay or reimburse Lessor for (in addition to all other indemnification under this Lease), on demand, all actual and reasonable costs and expenses which Lessor may incur in connection with contesting such proposed adjustment, including, without limitation, reasonable attorneys' and accountants' fees, expenses and disbursements, (iv) at such time as judicial resolution is available and appropriate, if Lessor elects to pay the Tax claimed and sue for a refund in the appropriate court, Lessee shall have paid the full amount of such Tax, (v) Lessor need not appeal any adverse judicial determination by any such court or any administration agency, and (vi) Lessor has determined that such proposed adjustment or any proposed contest does not involve a risk of criminal liability or of the loss of use or possession or the forfeiture, seizure, confiscation or sale of any Equipment. Lessor may elect not to contest such proposed adjustment or imposition, despite a request by Lessee pursuant to clause (i) of this Section 4(e) that a proposed adjustment be contested; *provided that*, if Lessor so elects despite such a request by Lessee, Lessee shall be relieved of all its indemnification obligations in respect of any such Tax Loss resulting from such proposed adjustment. In the case of any such proposed adjustment referred to above, Lessor agrees promptly to notify Lessee in writing of such proposed adjustment and agrees not to make payment of the Tax claimed, if such payment has been demanded, prior to the earlier of (A) the date such amount is due and (B) thirty (30) days after the giving of such notice and agrees to give to Lessee any relevant information relating to such proposed adjustment which may be particularly within the knowledge of Lessor. If Lessee has paid any Tax on behalf of Lessor pending a suit for a refund, Lessor will promptly remit to Lessee any refund received by Lessor as a result of such proceeding (net of any amounts due and payable pursuant to this Lease). Notwithstanding any other provision of this Lease, including this Section, Lessor shall have the affirmative control of any contest litigation.

5. Insurance.

The amount of public liability insurance including personal injury and property damage required to be maintained by Lessee pursuant to Section 10(a) of the Master Lease is \$5,000,000.00 per occurrence.

6. Early Expiration.

(a) Early Expiration Dates. Each Rent Payment Date designated below is called an "Early Expiration Date" and corresponds to an Early Buy-out Percent as follows (which amount is in addition to any Rent due on that date):

<u>Early Expiration Date</u>	<u>Early Buy-out Percent</u>
February 24, 2016	37.81%

So long as (i) no Default or Event of Default has occurred and (ii) this Lease shall not have been earlier terminated, on the Early Expiration Date specified above, Lessee may exercise with respect to all but not less than all of the Equipment an option specified in this Section 6.

(b) Purchase Option. Lessee shall have the right, upon the terms and conditions set forth below, to purchase all but not less than all of the Equipment on such Early Expiration Date, for a price equal to the Early Buy-out Percent times Lessor's Capitalized Cost and corresponding to the Early Expiration Date specified above, plus all Rent then due and payable pursuant to this Lease (including Basic Rent due on such Early Expiration Date) and all Taxes (including all sales and use Taxes) payable in connection with such purchase; *provided that* Lessee gives Lessor written notice of Lessee's intent to exercise such right not less than one hundred eighty (180) days and not more than two hundred seventy (270) days prior to the applicable Early Expiration Date. Failure to provide notice within such period shall terminate any right of Lessee to purchase the Equipment pursuant to this Section. If Lessee exercises its right to purchase the Equipment in accordance with the terms hereof, upon payment of the purchase price and all other Rent then due and payable under this Lease, Lessor will deliver to Lessee a bill of sale transferring title to the Equipment to Lessee on an "as-is, where-is" basis without representation or warranty of any

kind except that Lessor shall warrant that the Equipment is free, clear and unencumbered of all Liens arising by, through or under Lessor except for such Liens that Lessee is required to remove pursuant to the terms of the Lease.

**7. End of Term.**

Upon the expiration of the Term, Lessee shall exercise with respect to all, but not less than all, of the Equipment one of the following options in accordance with the terms hereof:

(a) **Renewal Option.** So long as (i) no Default or Event of Default has occurred and (ii) this Lease shall not have been earlier terminated, upon the expiration of the Base Lease Term, Lessee shall have the option to renew this Lease with respect to all but not less than all of the Equipment, for a renewal term as agreed between Lessor and Lessee prior to the end of the Base Lease Term. All terms and conditions of this Lease shall be applicable during such Renewal Term; *provided* that Basic Rent shall be calculated based on a rental factor equal to the Fair Market Rental Value (as defined below) of the Equipment determined at the expiration of the Base Lease Term.

As used herein, "Fair Market Rental Value" shall mean the value the equipment for lease, expressed as a percentage of Lessor's Capitalized Cost, (A) agreed upon between Lessor and Lessee not less than ninety (90) days prior to the end of the Base Lease Term, or (B) if not so agreed, subject to receipt of applicable notice as provided in this Section, shall be determined by an independent appraiser selected by Lessor, or if Lessee reasonably objects to such appraiser, an independent appraiser upon whom Lessor and Lessee may mutually agree, or, failing such agreement, the average appraised value of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third by the first two so selected which determination shall be binding upon Lessee and Lessor. In determining the Fair Market Rental Value, each such appraiser shall determine the value which would be obtained in an arm's length transaction between an informed and willing lessee and an informed and willing Lessor under no compulsion to lease such Equipment, assuming the Equipment to be in the condition required to be maintained and returned pursuant to the Lease. In such determination of Fair Market Rental Value, such lease shall be on the term and conditions hereof. The fees and expenses of all such appraisers shall be paid by Lessee. Each period for which Lessee is entitled to renew the term of this Lease is referred to as a "Renewal Term" and the rental factor for such Renewal Term determined in accordance with the provisions of this Section 7(a) is referred to as the "Renewal Term Rental Factor".

If Lessor and Lessee are unable to agree upon the Fair Market Rental Value of the Equipment prior to the date ninety (90) days prior to the end of the Base Lease Term or applicable Renewal Term, notwithstanding any election to renew the Term with respect to the Equipment, subject to Section 2 of the Master Lease, by delivery of written notice not less than the date ninety (90) days prior to the end of the Base Lease Term or the applicable Renewal Term, Lessee may either (i) terminate its election to renew the Term with respect to the Equipment by delivering written notice of its irrevocable election to return the Equipment or (ii) irrevocably elect to determine the Fair Market Rental Value in accordance with clause (B) of the definition thereof. Failure to provide such notice shall constitute an election by Lessee to seek a negotiated determination of the Fair Market Rental Value but shall not impose any additional obligation on Lessor.

(b) **Purchase Option.** So long as (i) no Default or Event of Default has occurred and (ii) this Lease shall not have been earlier terminated, Lessee shall have the right upon the terms and conditions set forth below, to purchase all but not less than all of the Equipment upon expiration of the Term, for a price equal to the Fair Market Value for the Equipment (plus all Taxes (including all sales and use Taxes) payable in connection with such purchase) *provided* that Lessee gives Lessor written notice of Lessee's intent to exercise such right not less than one hundred eighty (180) days and not more than two hundred seventy (270) days prior to the end of the Term. Failure to provide notice within such period shall terminate any right of Lessee to purchase the Equipment pursuant to this Section. "Fair Market Value" shall mean (A) the amount agreed upon between Lessor and Lessee not less than ninety (90) days prior to the end of the Term or (B) if not so agreed, shall be determined not later than the end of the Term by an independent appraiser selected by Lessor, or if Lessee reasonably objects to such appraiser, an independent appraiser upon whom Lessor and Lessee may mutually agree, or, failing such agreement, the average appraised value of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third by the first two so selected which determination shall be binding upon Lessee and Lessor. In



determining the Fair Market Value, each such appraiser shall determine the value which would be obtained in an arm's length transaction between an informed and willing buyer-user and an informed and willing seller under no compulsion to sell such Equipment, assuming the Equipment to be in the condition required to be maintained and returned pursuant to the Lease. In such determination of Fair Market Value, (i) the costs of removal of the Equipment from its present location shall not be a deduction from such value, (ii) if the Equipment is installed, the value shall be determined on an installed basis, (iii) such purchase shall be on an "as-is, where-is" basis and without warranty or representations, except that Lessor shall warrant that the Equipment is free, clear or unencumbered of all Liens arising by, through or under Lessor except for such Liens that Lessee is required to remove pursuant to the terms of the Lease and (iv) the purchase price shall be payable in cash. The fees and expenses of all such appraisers shall be paid by Lessee. If Lessee exercises its right to purchase the Equipment in accordance with the terms hereof, upon payment of the purchase price and all other amounts then due and payable under this Lease, Lessor will deliver to Lessee a bill of sale transferring title to the Equipment to Lessee on an "as-is, where-is" basis without representation or warranty of any kind except that Lessor shall warrant that the Equipment is free, clear and unencumbered of all Liens arising by, through or under Lessor except for such Liens that Lessee is required to remove pursuant to the terms of the Lease.

If Lessee and Lessor are unable to agree upon the Fair Market Value of the Equipment prior to the date ninety (90) days prior to the end of the Base Lease Term or applicable Renewal Term, notwithstanding any election to purchase the Equipment, subject to Section 2 of the Master Lease, by delivery of written notice not less than the date ninety (90) days prior to the end of the Base Lease Term or the applicable Renewal Term, Lessee may either (i) terminate its election to purchase the Equipment by delivering written notice of its irrevocable election to return the Equipment or (ii) irrevocably elect to determine the Fair Market Value in accordance with clause (B) of the definition thereof. Failure to provide such notice shall constitute an election by Lessee to seek a negotiated determination of the Fair Market Value but shall not impose any additional obligation on Lessor.

(c) **Return Option.** If Lessee fails to purchase the Equipment pursuant to the provisions of the preceding Section, Lessee shall return the Equipment to Lessor in accordance with the terms of this Section 7(c) and Section 14 of the Master Lease.

(i) At the expiration of the period specified in clause (v) below, Lessee shall return all, but not less than all, of the Equipment. Lessee shall provide Lessor with not less than one hundred eighty (180) days prior written notice of its intent to return the Equipment ("Notice of Return"). Such Notice of Return will contain a detailed inventory of the Equipment and all components thereof, including a listing of the model and serial number of all components comprising the Equipment and will identify the then current location of the Equipment.

(ii) On or before the expiration of the Term, Lessee shall return the Equipment, at Lessee's cost and expense, to any location(s) designated by Lessor. The Equipment will be transported in accordance with manufacturer's recommendations and applicable government laws, rules and regulations.

(iii) Upon delivery of the Equipment, Lessee shall deliver all maintenance records and other similar documents pertaining to the Equipment and, to the extent Lessor is not the owner of such records, title thereto will immediately vest in Lessor.

(iv) At least sixty (60) days prior to the scheduled return and redelivery of the Equipment, Lessee shall, at its own cost and expense, provide Lessor with a report from a certified manufacturer or dealer of the Equipment, or such other qualified party reasonably acceptable to Lessor, stating that such person has performed an inspection and testing of the Equipment and that such Equipment is in the condition required by the Lease.

(v) At the request of Lessor, Lessee will store the Equipment, at its own cost and expense, for a period of up to one hundred eighty (180) days. Lessee will promptly notify Lessor of the location for the storage of the Equipment which location shall be safe and secure and reasonably designed to prevent damage to or loss of the Equipment and which location shall have access to such facilities (including electrical power, if applicable) to demonstrate the operation of the Equipment. Lessee will provide Lessor access to the Equipment during normal business hours to inspect or display the Equipment. During such

storage, Lessor will maintain insurance in respect of the Equipment as required by the Lease and will maintain the Equipment in the condition required by the Lease including performing any maintenance or repair required by Section 8 of the Master Lease. Notwithstanding any other provision of the Lease or this Schedule, Lessee will not be required to pay Basic Rent during the period in which it is storing such Equipment.

(vi) Upon return, the Equipment shall be:

(A) cleaned or steam-cleaned as applicable and treated with respect to rust, corrosion and appearance in accordance with manufacturer's recommendations and consistent with the best practices of dealers in used equipment similar to the Equipment;

(B) free of all advertising and insignia placed thereon by Lessee;

(C) mechanically and structurally sound, capable of performing the functions for which it was originally designed and able to operate within the original specifications and tolerances with no loss of power and, if applicable, no excessive emission of exhaust at ignition or starting of the machinery;

(D) accompanied by a detailed inventory of the Equipment and all components thereof, including a listing of the model and serial number of all components comprising the Equipment;

(E) accompanied by a current set of all manuals, blueprints, process flow diagrams, equipment configuration diagrams and other data reasonably requested by Lessor; and

(F) accompanied by a certificate of the manufacturer or of a maintenance provider acceptable to Lessor that the Equipment qualifies for the manufacturer's used equipment maintenance program (if any) and all manufacturer's and maintenance provider's warranties (if any).

(vii) In addition and without limiting the foregoing, upon return the Equipment shall comply with the following conditions:

(A) The Equipment shall include all conveyor equipment (including all belts, chains and drives) in a condition that is operable in a manner that is consistent with the Equipment's overall design capacities;

(B) Each engine or motor shall have at least seventy percent (70%) useful life remaining before the next overhaul or replacement as recommended by the manufacturer and set forth in the applicable maintenance manuals and compliance with such condition shall be determined by subjecting the engine to manifold pressure, oil analysis, dynamometer, blow-by, turbo boost and exhaust back pressure tests and such other tests as Lessor may reasonably request;

(C) All pumps, motors, valves and cylinders shall be in good operating condition and without leaks and the hydraulic system shall be free from contaminants with such condition to be determined by subjecting the hydraulic system to an oil sample analysis;

(D) All wearable components in the crushing equipment shall have at least seventy percent (70%) of remaining wear available before the next overhaul or replacement as recommended by the manufacturer or, if not so specified by the manufacturer, in accordance with industry practice; and

(E) All safety accessories, devices, or systems that are required by any federal, state or local government to operate the Equipment shall be delivered in fully functional condition.

(F) All tests to confirm compliance with the foregoing conditions (if any) shall be performed at Lessee's sole cost and expense by a maintenance or service provider approved by the manufacturer of the Equipment or otherwise reasonably acceptable to Lessor.

(viii) If Lessee is required to return the Equipment, or any portion of the Equipment, prior to the scheduled expiration of the Term as a result of an Event of Default or the cancellation or termination of this Lease in accordance with the terms hereof, Lessee shall return such Equipment in the condition required by and in accordance with the terms of this Section 7; provided that any requirement in this Section 7 to provide notice prior to taking any required action, or to take any action within a period specified prior to the scheduled expiration of the Term, shall not be applicable and Lessee shall be required to comply with such provisions on demand.

(ix) At the request of Lessor, Lessee shall cooperate with Lessor in attempting to remarket the Equipment and take all such actions as Lessor may reasonably request in connection therewith, including, without limitation, displaying and demonstrating the Equipment to prospective purchasers or lessees and allowing Lessor to conduct any private or public sale of the Equipment on Lessee's premises. Lessee shall be responsible for all costs associated with any such activities.

**8. Amendments to Master Lease and Additional Lease Provisions.**

(a) Notwithstanding Section 9 of the Master Lease, Lessee may sublease the Equipment to the operating companies of Patriot Coal Corporation subject to the following terms and conditions:

(i) the term of such sublease shall not be longer than the Base Lease Term, or, if such sublease is entered into during a Renewal Term, the remainder of such Renewal Term ;

(ii) such sublease shall be on terms and conditions reasonably acceptable to Lessor including that such sublease shall be expressly subject and subordinate to all the terms of this Lease;

(iii) such sublease shall not affect the rights and remedies of Lessor under this Lease, including the right to repossess the Equipment and all terms, conditions and provisions of this Lease shall remain in full force and effect;

(iv) Lessee shall remain primarily liable hereunder for the performance of all terms and conditions of this Lease to the same extent as if such sublease had not been entered into;

(v) any such sublease shall expressly prohibit further assignment or sublease; and

(vi) not less than 10 days prior to the effectiveness of such sublease, Lessee shall deliver to Lessor (A) the executed original chattel paper copy of such sublease (for which there shall be only one chattel paper original) and (B) upon the request of Lessor, an acknowledgement and agreement executed by Lessee and the proposed sublessee in form and substance satisfactory to Lessor.

(b) In order to secure the prompt payment of Rent under and with respect to this Lease, and the performance and observance by Lessee of all the agreements, covenants and provisions hereof (collectively, the "Obligations"), Lessee hereby grants to Lessor a security interest in all of Lessee's right, title and interest in the following (whether now existing or hereafter created and whether now owned or hereafter acquired): (A) all subleases (including the right to receive any payment thereunder and the right to make any election or determination or give any consent or waiver thereunder) and chattel paper, accounts, security deposits and bills of sale relating thereto, and (B) any and all products and proceeds of any collateral hereunder (including all insurance and requisition proceeds and all other payments of any kind with respect to the Equipment and other collateral in and against which a security interest is granted hereunder). Lessee hereby authorizes Lessor to file, solely at the expense of Lessee, any Uniform Commercial Code financing statements or other similar documents that Lessor reasonably deems necessary or advisable to protect its interest. Lessee agrees promptly to execute and deliver to

Lessor such further documents or other assurances, and to take such further action, including obtaining landlord and mortgage waivers, as Lessor may from time to time reasonably request.

Except as expressly modified hereby, all terms and provisions of the Master Lease shall remain in full force and effect. This Equipment Schedule is not binding or effective with respect to the Master Lease or Equipment until executed on behalf of Lessor and Lessee by authorized representatives of Lessor and Lessee, respectively.

**9. Sales, Use and Property Taxes.**

(a) For purposes of sales, use and similar taxes, Lessee represents and warrants with respect to the Equipment that:

(i) Lessor's acquisition of, and the leasing pursuant to this Lease of, the Equipment is exempt from all sales, use and similar taxes imposed upon or payable by either Lessor or Lessee as a result of the acquisition, use or rental of such Equipment, and Lessee has furnished to Lessor an appropriate tax exemption certificate or other documentation (which must be satisfactory to Lessor) evidencing such exemption;

(ii) to the extent that the acquisition, use or rental of such Equipment is not exempt from all sales, use and similar taxes, Lessee complied and will continue to comply with its obligations under the Lease to reimburse Lessor for full amount of such taxes; and

(iii) any tax exemption certificates, or any similar documentation, furnished to Lessor by Lessee's claiming any exemption, abatement or exception to sales, use or similar tax, shall be true, accurate and complete in all respects and Lessor is entitled to rely thereon in not remitting or paying any such tax.

(b) For purposes of tangible personal property taxes applicable to this Equipment Schedule, Lessee agrees that it :

(i) will declare, when listing property to taxing authorities, the Equipment as LEASED equipment only; and

(ii) will reimburse Lessor on demand for any Taxes paid by Lessor assessed on, or in respect of, the Equipment.

*Remainder of page intentionally left blank. Signature page follows.*


IN WITNESS WHEREOF, Lessee and Lessor have caused this Equipment Schedule to be executed by their duly authorized representatives as of the date first above written.

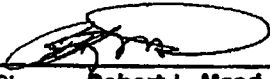
**LESSOR:**

**LESSEE:**

**FIFTH THIRD EQUIPMENT FINANCE COMPANY**

**PATRIOT LEASING COMPANY LLC**

By:   
Name: Christina Kelly  
Title: VP

By:   
Name: Robert L. Mead  
Title: Vice President & Treasurer

THIS LEASE MAY BE EXECUTED IN SEVERAL COUNTERPARTS AND TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE MAY BE PERFECTED THROUGH THE TRANSFER OF POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH SHALL BE IDENTIFIED AS THE CHATTEL PAPER ORIGINAL ON THE SIGNATURE PAGE THEREOF. THIS IS NOT THE CHATTEL PAPER ORIGINAL.

SCHEDULE 1  
TO  
EQUIPMENT SCHEDULE No. 027  
DESCRIPTION OF EQUIPMENT

Manuf. and/or Vendor Name & Invoice No.	Description of Equipment and MACRS Depreciation Recovery Period	Quantity	Per Item Cost (if applicable)	Sales Tax, Delivery, Installation & Other Charges	Invoice Total	Equipment Location
Mining Controls, Inc. No. 396376	750 KVA Belt Power Center/Starter, With Options #2 & #3	1			\$90,385.00	Gateway Eagle Mine 1196 Skin Fork Road Wharton, WV 25208
Mining Controls, Inc. No. 396338	750 KVA Combination Belt Power Center/Starter, Per Quote #18850-B	1			\$90,385.00	Gateway Eagle Mine 1196 Skin Fork Road Wharton, WV 25208
Brookville Equipment Corporation No. 0201202058	Tractor, Rubber Tire, 15 Ton, 20 Man, Unit Serial #9888	1			\$313,600.00	Pearless Mine, Left Hand Fork Joes Creek, Comfort, WV 25049
A.L. Lee Corporation Coal Fork No. 905215	627 RM Duster	1			\$100,310.00	Speed Mine, Cabin Creek Rd., Dawes Hollow, Dawes, WV 25049
Line Power No. 162875	1000 KVA Charger PC Serial No. U4219 B	1			\$105,478.00	Highland No. 9 Mine 530 French Road Waverly KY, 42462
Line Power No. 163178	Freight (related to Serial Nos. U4219A & U4219B)	1			\$1,783.32	Highland Mine #9 Mine 530 French Road Waverly KY, 42462
Line Power No. 163179	Freight (related to Serial Nos. U4233A & U4233B & U4233C)	1			\$2,286.68	Highland #9 Mine 530 French Road, Waverly KY, 42462
Line Power No. 163001	Vacuum Circuit Breaker II Serial No U4233A & Vacuum Circuit Breaker II Serial No. U4233B	1			\$118,842.00	Highland #9 Mine 530 French Rd Waverly KY 42462
Line Power No. 163000	Vacuum Circuit Breaker II Serial No. U4219A	1			\$59,421.00	Highland #9 Mine 530 French Rd Waverly KY 42462
Line Power No. 162878	1500 Belt PC W/ Wheels	1			\$115,883.00	Highland #9 Mine 530 French Rd Waverly KY 42462
CAI Industries Invoice No. 84429	2064-A Shuttle Car Serial No. 2064-0033	1			\$398,000.00	Pearless Mine, Left Hand Fork Joes Creek, Comfort, WV 25049
Anderson Equipment Invoice No. 4111002430	DM-50 Rotary Blasthole Drill 2011 Including: XL1050 Compressor, 30ft Tower 4SV-2-10 2-speed rotary head, spline lubrication, cab a/c 4,000 lb Main Winch, windshield, wipers rear and front, C15 diesel engine, emissions compliance (sulphur) Atlas Copco ACGT-2500 Undercarriage timing shaft, Wiggins service center Atlas Copco 4500 Dust Collector, angle telescoping dust curtain, Auto Lube system, with pump, 6.25 drill steels	1			\$871,787.00	Guyan Mine HC 61 Box 156 Rum Creek Road Yolyn WV
Kennametal Invoice No. 9037024306	Two Joy 7LS J 450D Shear Drums (listed as 5124218) Two Water Spiders (listed as 5124219)	1			\$114,748.00	Federal #2 Warehouse 1044 Miracle Run Road Fairview WV 26570
Total:					\$2,382,869.00	

**SCHEDULE 2  
TO  
EQUIPMENT SCHEDULE 027**

**RENT PAYMENT DATE  
STIPULATED LOSS VALUE PERCENTAGES**

Payment Number	Rent Payment Date	Stipulated Loss Value Percentage
1	3/24/2012	104.00
2	4/24/2012	103.00
3	5/24/2012	101.96
4	6/24/2012	100.92
5	7/24/2012	99.84
6	8/24/2012	98.75
7	9/24/2012	97.65
8	10/24/2012	96.52
9	11/24/2012	95.37
10	12/24/2012	94.22
11	1/24/2013	93.04
12	2/24/2013	91.84
13	3/24/2013	90.64
14	4/24/2013	89.42
15	5/24/2013	88.21
16	6/24/2013	86.98
17	7/24/2013	85.74
18	8/24/2013	84.50
19	9/24/2013	83.25
20	10/24/2013	81.99
21	11/24/2013	80.72
22	12/24/2013	79.44
23	1/24/2014	78.16
24	2/24/2014	76.86
25	3/24/2014	75.56
26	4/24/2014	74.24
27	5/24/2014	72.93
28	6/24/2014	71.60
29	7/24/2014	70.27
30	8/24/2014	68.93
31	9/24/2014	67.58
32	10/24/2014	66.22

33	11/24/2014	64.86
34	12/24/2014	63.48
35	1/24/2015	62.10
36	2/24/2015	60.72
37	3/24/2015	59.32
38	4/24/2015	57.91
39	5/24/2015	56.49
40	6/24/2015	55.07
41	7/24/2015	53.65
42	8/24/2015	52.21
43	9/24/2015	50.76
44	10/24/2015	49.31
45	11/24/2015	47.85
46	12/24/2015	46.38
47	1/24/2016	44.91
48	2/24/2016	43.43
49	3/24/2016	41.93
50	4/24/2016	40.43
51	5/24/2016	38.92
52	6/24/2016	37.40
53	7/24/2016	35.88
54	8/24/2016	34.35
55	9/24/2016	32.81
56	10/24/2016	31.27
57	11/24/2016	29.71
58	12/24/2016	28.15
59	1/24/2017	26.58
60	2/24/2017	25.00

NOTE: THE SLV PERCENTAGE DOES NOT INCLUDE RENT DUE ON EACH APPLICABLE RENT PAYMENT DATE. LESSEE IS REQUIRED TO PAY ALL RENT DUE ON THE APPLICABLE PAYMENT DATE.



PERETORE & PERETORE, P.C.  
110 Park Street  
Staten Island, NY 10306  
(718) 667-8785  
*Attorneys for Somerset Capital Group, Ltd.*

                  /s/                    
Frank Peretore #7020

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

\_\_\_\_\_X

**In re:**

**Patriot Coal Corporation, et. al.,**

Debtors.

-----X

:  
: Case No. 12-12900 (SCC)  
: Jointly Administered  
: Chapter 11  
: Manhattan Vicinage  
: Hearing Date: To Be Determined  
:  
:  
: CERTIFICATE OF SERVICE  
:

STATE OF NEW JERSEY       :  
  :    ss  
COUNTY OF SUSSEX        :

I, MARLENE MEYERS, am over 18 years of age and am not a party to this action, being duly sworn accordingly to law, SAY

1. On October 19, 2012, I served, via Federal Express Overnight, a copy of the Objection of Somerset Capital Group, Ltd. To Debtor's Fifth Omnibus Notice of Rejection of Certain Executory Contracts and Unexpired Leases and Abandonment of Expendable Property to the as follows:

U.S. Trustee  
Attention: Elisabetta G. Gasparini and Paul K. Schwartzberg  
33 Whitehall Street, 21<sup>st</sup> Floor  
New York, New York 10004

Davis Polk & Wardwell LLP  
Attention: Marshall S. Huebner and Brian M. Resnick  
450 Lexington Avenue  
New York, New York 10017

Weil Gotshal & Manges, LLP  
Attention: Marcia Goldstein and Joseph Smolinsky  
767 Fifth Avenue  
New York, New York 10153

Willkie Farr & Gallagher, LLP  
Attention: Margot B. Schonholtz and Ana Alfonso  
787 Seventh Avenue  
New York, New York 10019

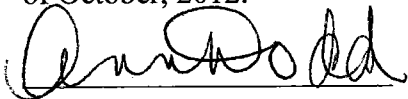
Kramer Levin Naftalis & Frankel LLP  
Attention: Adam C. Rogoff, Esq. and Gregory G. Plotko, Esq.  
1177 Avenue of the Americas  
New York, New York 10036

via Federal Express overnight mail which were deposited in the Federal Express Depository  
located at 191 Woodport Road, Sparta, NJ 07871.



Marlene Meyers

Sworn to and subscribed  
before me this 19<sup>th</sup> day  
of October, 2012.



**ANN DODD**  
ID # 2291088  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
My Commission Expires August 21, 2017