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 Jonathan D. Martin

*Counsel to Plaintiff/Debtor
 and Debtor in Possession*

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

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

Plaintiff Magnum Coal Company LLC (“**Magnum**” or “**Plaintiff**”), one of the affiliated debtor entities in the above-captioned chapter 11 case, by and through its undersigned attorneys, alleges upon personal knowledge as to Magnum and its own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION AND THE NEED FOR RELIEF

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

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

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

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

JURISDICTION AND VENUE

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

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

chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Court's Joint Administration Order entered on July 10, 2012 [ECF No. 30].

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

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

(continued...)

² The Debtors are the following entities: Affinity Mining Company; Apogee Coal Company, LLC; Appalachia Mine Services, LLC; Beaver Dam Coal Company, LLC; Big Eagle, LLC; Big Eagle Rail, LLC; Black Stallion Coal Company, LLC; Black Walnut Coal Company; Bluegrass Mine Services, LLC; Brook Trout Coal, LLC; Catenary Coal Company, LLC; Central States Coal Reserves of Kentucky, LLC; Charles Coal Company, LLC; Cleaton Coal Company; Coal Clean LLC; Coal Properties, LLC; Coal Reserve Holding Limited Liability Company No. 2; Colony Bay Coal Company; Cook Mountain Coal Company, LLC; Corydon Resources LLC; Coventry Mining Services, LLC; Coyote Coal Company LLC; Cub Branch Coal Company LLC; Dakota LLC; Day LLC; Dixon Mining Company, LLC; Dodge Hill Holding JV, LLC; Dodge Hill Mining Company, LLC; Dodge Hill of Kentucky, LLC; EACC Camps, Inc.; Eastern Associated Coal, LLC; Eastern Coal Company, LLC; Eastern Royalty, LLC; Emerald Processing, L.L.C.; Gateway Eagle Coal Company, LLC; Grand Eagle Mining, LLC; Heritage Coal Company LLC; Highland Mining Company, LLC; Hillside Mining Company; Hobet Mining, LLC; Indian Hill Company LLC; Infinity Coal Sales, LLC; Interior Holdings, LLC; IO Coal LLC; Jarrell's Branch Coal Company; Jupiter Holdings LLC; Kanawha Eagle Coal, LLC; Kanawha River Ventures I, LLC; Kanawha River Ventures II, LLC; Kanawha River Ventures III, LLC; KE Ventures, LLC; Little Creek LLC; Logan Fork Coal Company; Magnum Coal Company LLC; Magnum Coal Sales LLC; Martinka Coal Company, LLC; Midland Trail Energy LLC; Midwest Coal Resources II, LLC; Mountain View Coal Company, LLC; New Trout Coal Holdings II, LLC; Newtown Energy, Inc.; North Page Coal Corp.; Ohio County Coal Company, LLC; Panther LLC; Patriot Beaver Dam Holdings, LLC; Patriot Coal Company, L.P.; Patriot Coal Corporation; Patriot Coal Sales LLC; Patriot Coal Services LLC; Patriot Leasing Company LLC; Patriot Midwest Holdings, LLC; Patriot Reserve Holdings, LLC; Patriot Trading LLC; PCX Enterprises, Inc.; Pine Ridge Coal Company, LLC; Pond Creek Land Resources, LLC; Pond Fork Processing LLC; Remington Holdings LLC; Remington II LLC; Remington LLC; Rivers Edge Mining, Inc.; Robin Land Company, LLC; Sentry Mining, LLC; Snowberry Land Company; Speed Mining LLC; Sterling Smokeless Coal Company, LLC; TC Sales Company, LLC; The Presidents Energy Company LLC; Thunderhill Coal LLC; Trout Coal Holdings, LLC; Union County Coal Co., LLC; Viper LLC; Weatherby Processing LLC; Wildcat Energy LLC; Wildcat, LLC; Will Scarlet Properties LLC; Winchester LLC; Winifrede Dock Limited Liability Company; and Yankeetown Dock, LLC. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

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

PARTIES

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

COUNT I

Declaratory Judgment

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

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

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

REQUEST FOR RELIEF

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

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

Dated: New York, New York
August 10, 2012

MAGNUM COAL COMPANY LLC

By: /s/ Timothy Graulich
Marshall S. Huebner
Timothy Graulich
Brian M. Resnick
Antonio J. Perez-Marques
Jonathan D. Martin

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000 (telephone)
(212) 607-7983 (facsimile)

*Counsel to Plaintiff/Debtor
and Debtor in Possession*

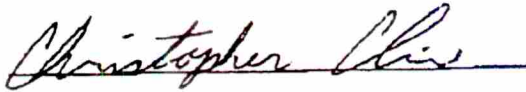
12/29/03 23:33 FAX 304 342 1110

BAILEY&GLASSER

002

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

CHRISTOPHER CLINE



TROUT COAL HOLDINGS, LLC

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager

By: _____
Name:
Title:

TIMOTHY ELLIOTT

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

CHRISTOPHER CLINE

TROUT COAL HOLDINGS, LLC

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

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner
By: ArcLight Capital Holdings, LLC, its Manager

By: _____
Name:
Title:

TIMOTHY ELLIOTT

Timothy Elliott

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

CHRISTOPHER CLINE

TROUT COAL HOLDINGS, LLC


By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager

By:  _____
Name:
Title:

TIMOTHY ELLIOTT

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

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

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

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

Definitions and Interpretation

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

Amendment and Agreement

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

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

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

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

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

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

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

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

“Overdue Interest

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

REDACTED

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

"No Assignment; Binding Effect

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

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

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

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

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

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

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

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

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

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

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

Agreement Otherwise Unchanged

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

Representations

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

Notices

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

Term of Agreement

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

Governing Law; Waiver of Jury Trial

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

Successors and Assignees

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

Amendments Waivers and Consents

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

Counterparts

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

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

CHRISTOPHER CLINE

Christopher Cline

TROUT COAL HOLDINGS, LLC

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

ACKNOWLEDGED AND AGREED:

ARCLIGHT ENERGY PARTNERS FUND I, L.P.,

By: ArcLight PEF GP, LLC, its General Partner

By: ArcLight Capital Holdings, LLC, its Manager


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

TIMOTHY ELLIOTT

Timothy Elliott

EXHIBITS C - E – Filed Under Seal

EXHIBIT F


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

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

March 4, 2008

Dear Sirs:

Clarification of Royalty Agreements

Reference is made to:

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

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

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

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

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

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

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

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

REDACTED

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

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

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

Please acknowledge that the foregoing reflects your agreement and understanding.

Yours sincerely,

MAGNUM COAL COMPANY

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

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

TROUT COAL HOLDINGS, LLC

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

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

NEW TROUT COAL HOLDINGS II, LLC

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

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

PANTHER, LLC

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

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

Acknowledged and agreed:

ROYALTYCO, LLC

By: _____
Name:
Title:

Address for Notices:

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

NEW TROUT COAL HOLDINGS II, LLC

By: _____
Name:
Title:

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

PANTHER, LLC

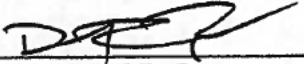
By: _____
Name:
Title:

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

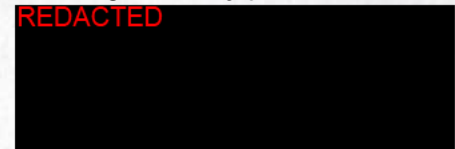
Acknowledged and agreed:

ROYALTYCO, LLC

By:  _____
Name: Daniel R. Revers
Title: President

Address for Notices:

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



Execution Copy

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

March 26, 2008

Dear Sirs:

Amended and Restated Royalty Clarification Letter Agreement

Reference is made to:

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

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

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

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

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

REDACTED

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

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

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

Please acknowledge that the foregoing reflects your agreement and understanding.

Yours sincerely,

MAGNUM COAL COMPANY

By: 

Name: Leanne Stelma

Title: CFO

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

TROUT COAL HOLDINGS, LLC

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

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

NEW TROUT COAL HOLDINGS II, LLC

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

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

PANTHER LLC

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

Address for Notices:

500 Lee Street E, Suite 900
Charleston, WV 25301

Acknowledged and agreed:

ROYALTYCO, LLC

By: 
Name: Daniel R. Revers
Title: President

Address for Notices:

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