

Objection Deadline: September 4, 2012 at 4:00 pm (prevailing Eastern Time)  
Hearing Date (if necessary): September 11, 2012 at 1:30 p.m. (prevailing Eastern Time)

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

**In re:**

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

**Debtors.<sup>1</sup>**

**Chapter 11**

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

**(Jointly Administered)**

**DEBTORS' MOTION FOR APPROVAL OF PATRIOT'S ASSUMPTION  
AND EXECUTION OF CERTAIN AGREEMENTS WITH PEABODY**

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

**Relief Requested**

1. The Debtors seek an order in the form attached hereto as Exhibit A (the "**Order**") approving the agreement (the "**Agreement**") between certain of the Debtors and

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

Peabody COALTRADE, LLC, Peabody Terminals, LLC, James River Coal Terminal, LLC and Elkland Holdings, LLC (collectively, “**Peabody**”; together with Patriot Coal Corporation, Patriot Coal Sales LLC, Eastern Associated Coal, LLC and Pine Ridge Coal Company, LLC, the “**Parties**”) in which the Parties agree, *inter alia*, that (a) Patriot will assume, pursuant to sections 363(b) and 365(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and subject to the approval of this Court, (1) the Throughput and Storage Agreement, dated October 22, 2007, by and among Peabody Terminals, LLC, James River Coal Terminal, LLC and Patriot Coal Sales LLC, as amended on January 1, 2010, September 30, 2010, and May 3, 2011; (2) the Coal Terminaling Agreement dated May 3, 2011, by and between Peabody Terminals, LLC and James River Coal Terminal, LLC, and Patriot Coal Sales LLC; (3) the Second Amended and Restated Transloading Agreement dated December 22, 2011, by and among Eastern Associated Coal, LLC and Elkland Holdings, LLC; (4) the Amended and Restated Road Use Agreement dated January 1, 2011, by and between Eastern Associated Coal, LLC and Elkland Holdings, LLC; (5) the Amended and Restated Road Use Agreement dated January 1, 2011, by and between Pine Ridge Coal Company, LLC and Elkland Holdings, LLC; (6) the Coal Washing Agreement dated May 3, 2011, by and between Eastern Associated Coal, LLC and Elkland Holdings, LLC; and (7) the Transaction Confirmation dated November 16, 2011, between Patriot Coal Sales LLC and Peabody COALTRADE, LLC, with a trade date of November 10, 2011 (collectively, the “**Assumed Agreements**”); and (b) certain coal supply agreements between Patriot Coal Sales LLC and Peabody COALTRADE, LLC (collectively, the “**Prior Agreements**”) will be replaced and superseded by an agreement dated August 24, 2012, between Patriot Coal Sales LLC and Peabody COALTRADE, LLC, entered into in the ordinary course of business (the “**Coal Supply Agreement**”). This motion seeking the Court’s approval of the Agreement encompasses a

request that the Court approve each of its constituent elements, including the assumption of the Assumed Agreements; the Coal Supply Agreement; and a cure payment of \$384,944.66 to be paid by the date that is thirty days after entry of the Order, agreed to by the Parties in connection with the assumption of the Assumed Agreements (the “**Cure Payment**”).<sup>2</sup>

### **Background and Jurisdiction**

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

3. These chapter 11 cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Court’s Joint Administration Order entered on July 10, 2012 [ECF No. 30].

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

### **Basis for Relief**

5. The Debtors seek approval pursuant to sections 363(b) and 365(a) of the Bankruptcy Code of the Agreement, including approval of (a) the assumption of the Assumed

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<sup>2</sup> Pursuant to the Order Establishing Certain Notice, Case Management and Administrative Procedures entered July 16, 2012 [ECF No. 84] (the “**Case Management Order**”), because the Agreement, the Assumed Agreements, the Prior Agreements and the Coal Supply Agreement contain sensitive commercial information, the Debtors have not attached copies to this motion but will provide copies to the Court, the United States Trustee and advisors to the official committee of unsecured creditors on a professional eyes’ only basis; *provided, however*, that such copies may be shared with the members of the subcommittee formed to address coal sale contracts. Failure to describe in this motion any provision of the Agreement, the Assumed Agreements or the Coal Supply Agreement will not affect their enforceability.

Agreements and (b) the Coal Supply Agreement, which will replace and supersede the Prior Agreements. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor, after notice and a hearing, to “use” property other than in the ordinary course of business, and section 365(a) of the Bankruptcy Code authorizes a debtor to assume any executory contract or unexpired lease. Courts in the Second Circuit have required that decisions by debtors to use estate property pursuant to section 363(b)(1) be based upon the sound business judgment of the debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (a judge determining a section 363(b) application must find from the evidence presented a good business reason to grant such application); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (“courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence” (citing *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992))).

6. Likewise, the decision to assume an executory contract is subject to the business judgment rule. *See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993) (the standard to be applied by a court in determining whether an executory contract or unexpired lease should be assumed is the “business judgment” test). Upon finding that a debtor has exercised its sound business judgment in determining that assumption of an agreement is in the best interests of its estate, the Court should approve the assumption under section 365(a) of the Bankruptcy Code. *See, e.g., In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989); *In re TS Indus., Inc.*, 117 B.R. 682, 685 (Bankr. D. Utah 1990); *In re Del*

*Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990). Moreover, when assuming an executory contract, a debtor is required to cure any defaults under the contract or provide adequate assurance that it will promptly cure such defaults. 11 U.S.C. § 365(b)(1)(A). If there has been a default, the debtor must also provide adequate assurance of future performance under the contract. 11 U.S.C. § 365(b)(1)(C).

7. The Agreement, which incorporates the Debtors' assumption of the Assumed Agreements and the execution of the Coal Supply Agreement, which replaces and supersedes the Prior Agreements, is in the best interests of the Debtors and their estates. Patriot and Peabody have numerous business arrangements, including those memorialized in the Assumed Agreements, that are mutually beneficial, and assumption of the Assumed Agreements will ensure the continuation of benefits to Patriot. Replacement of the Prior Agreements with the Coal Supply Agreement will result in an improvement to Patriot of the negotiated terms on which it will sell certain coal to Peabody. Further, the Agreement contains an express reservation of rights and preservation of claims between the Parties. Consequently, the Debtors seek entry of the Order authorizing the Debtors to assume the Assumed Agreements and enter into the Coal Supply Agreement pursuant to sections 363(b) and 365(a) of the Bankruptcy Code.

**Relief Under Bankruptcy Rule 6004(h)**

8. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtors request that any order granting the relief requested herein be effective immediately by providing that the 14-day stay under Bankruptcy Rule 6004(h) is waived.

**Notice**

9. Consistent with the Case Management Order, the Debtors will serve notice of this Motion on (a) counsel to Peabody, (b) the Core Parties and (c) the Non-ECF Service Parties (as those terms are defined in the Case Management Order). All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this motion and any order approving it will also be made available on the Debtors' Case Information Website (located at [www.PatriotCaseInfo.com](http://www.PatriotCaseInfo.com)). In light of the relief requested, the Debtors submit that no further notice is necessary. Pursuant to paragraph 21 of the Case Management Order, if no objections are timely filed and served in accordance therewith, an order granting the relief requested herein may be entered without a hearing.

**No Previous Request**

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

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

Dated: New York, New York  
August 28, 2012

By: /s/ Amelia T.R. Starr

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**SCHEDULE 1**  
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

## **Exhibit A**

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

**In re:**

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

**Debtors.<sup>1</sup>**

**Chapter 11**

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

**(Jointly Administered)**

**ORDER APPROVING PATRIOT'S ASSUMPTION  
AND EXECUTION OF CERTAIN AGREEMENTS WITH PEABODY**

Upon the motion (the "**Motion**")<sup>2</sup> of Patriot Coal Corporation ("**Patriot**") and its subsidiaries, that are debtors and debtors in possession (collectively, the "**Debtors**"), pursuant to sections 363(b) and 365(a) of the Bankruptcy Code, seeking approval of the Agreement, including approval of (a) the assumption of the Assumed Agreements, (b) the Coal Supply Agreement, which will replace and supersede the Prior Agreements, and (c) the Cure Payment, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

been provided in accordance with the Case Management Order, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, pursuant to sections 363(b) and 365(a) of the Bankruptcy Code, the relief requested in the Motion is hereby granted to the extent set forth herein; and it is further

ORDERED that the Agreement between certain of the Debtors and Peabody is hereby approved; and it is further

ORDERED that the assumption by the Debtors of the Assumed Agreements and the execution by Patriot Coal Sales LLC of the Coal Supply Agreement, on the terms and subject to the conditions set forth in the Motion, is hereby approved; and it is further

ORDERED that payment of the Cure Payment is hereby approved; and it is further

ORDERED that the failure to specifically describe or include any particular provision of the Agreement, the Assumed Agreements, the Prior Agreements or the Coal Supply Agreement in the Motion or this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Debtors are authorized to assume

the Assumed Agreements and enter into the Coal Supply Agreement in their entirety; and it is further

ORDERED that neither the entry of this Order nor any statement contained in the Agreement is intended to be, and none should be construed as, a waiver or compromise of any rights, other than as expressly set forth in the Agreement; and that, to the contrary, all parties in interest, including, without limitation, the Parties, expressly reserve all of their other respective rights, and preserve all of their other respective claims, against one another, including, without limitation, (i) any right, claim or defense that any party in interest, including any Party, has or may have in connection with the above captioned chapter 11 case, including but not limited to any Bankruptcy Code Chapter 5 causes of action or related claims and any defenses thereto, and (ii) any rights, claims or defenses that any party in interest, including the Parties, may have with respect to or under other contracts or agreements between Peabody and/or any of its insiders and/or affiliates and any of the Debtors, including the Separation Agreement, Plan of Reorganization and Distribution, dated October 22, 2007; and it is further

ORDERED that, upon payment of the Cure Payment pursuant to the terms of the Agreement and the Assumed Agreements, there shall be no defaults that preclude assumption under the Assumed Agreements, and the Debtors shall have been deemed to have satisfied all of their obligations under section 365(b)(1) of the Bankruptcy Code with respect to the Assumed Agreements; and it is further

ORDERED that, upon payment of the Cure Payment pursuant to the terms of the Agreement, the Motion, and this Order, the relief granted to Peabody pursuant to this

Order shall constitute adequate assurance for all purposes under the Bankruptcy Code for the goods and services to be provided to Peabody by the Debtors pursuant to the Assumed Agreements, and Peabody shall neither be entitled to additional or different assurance thereunder, nor shall Peabody rely on any provision of the Assumed Agreements or the Coal Supply Agreement, except as otherwise provided in the Agreement or the Coal Supply Agreement, to terminate or seek to terminate the Assumed Agreements or the Coal Supply Agreement based on the financial condition of any of the Debtors at any time during the pendency of these chapter 11 cases or upon the Debtors' emergence from chapter 11 protection; and it is further

ORDERED that, notwithstanding the possible applicability of any Bankruptcy Rule that might otherwise delay the effectiveness of this order, including, but not limited to, Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: New York, New York

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

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE