

Canyon Fuel Company, LLC
Dugout Canyon Mine
 P.O. Box 1029
 Wellington, Utah 84542



Incoming OK
C/007/0039
#2743

February 2, 2007

Ms. Pamela Grubaugh-Littig
 Utah Division of Oil, Gas and Mining
 1594 West North Temple, Suite 1210
 Salt Lake City, UT 84114-5801

RE: Permit Area Expansion – Addition of 40 Acres to Federal Lease U-07064-027821,
 NW1/4 NW1/4 of Section 21, Township 13S Range 13E, Task ID # 2729
 Dugout Canyon Mine, Canyon Fuel Company, LLC, C/007/039, Carbon County, Utah

Dear Ms. Grubaugh-Littig:

Per a telephone conversation today with you, Wayne Hedberg and Jerriann Ernstsens, Dugout Canyon Mine is submitting the following information.

Surface Owner Agreement

A copy of the Thayn Trust Surface Owner Agreement is attached to this letter. The agreement is currently within Appendix 4-2 of the approved Dugout permit. Please note the incorporation date stamped in the corner of the attached photocopy.

In the agreement, Item 2 Surface Use Grant to CFC, it states "CFC shall have and is hereby granted an easement on, over, and through, and right to use, the surface of the Thayn Lands as may be necessary and appropriate for the following purposes in connection with mining coal by underground mining methods: (e) exclusively subside the surface of the Thayn Land."

During a conversation today with David Thayn the contact for the Thayn Trust (Item 11) he stated that, "annually he receives from Ark Land or Dugout Canyon Mine a letter describing the surface activities planned for the lands described in the surface owner agreement, with a copy of the mine plan map". He also stated that he had recently reviewed the 2007 mine plan map at a meeting with Ark Land and Dugout Canyon Mine personnel.

Surface lands described in **Exhibit A** of the "surface owner agreement" are the lands to which the agreement pertains. The 40 acres proposed for inclusion into the Dugout Canyon Mine permit area are described on this list as T13S, R13E, Salt Lake Meridian, Utah, Section 21, NW/4NW/4. This 40 acres is a portion of the pending expansion to Federal Lease U-07064-027821

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Permit Area Expansion – Addition of 40 Acres to Federal Lease U-07064-027821,

NW1/4 NW1/4 of Section 21, Township 13S Range 13E, Task ID # 2729

Dugout Canyon Mine, Canyon Fuel Company, LLC, C/007/039, Carbon County, Utah

A copy of this submittal has been delivered to the DOGM Price field office.

Thank you for your assistance and if you have any questions please call me at (435) 636-2869.

Sincerely yours,

A handwritten signature in cursive script that reads "Vicky S. Miller".

Vicky S. Miller

cc: Dave Spillman
Price Field Office

**THAYNE TRUST
SURFACE USE AGREEMENT**

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SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT (this "Agreement"), dated as of November ____, 1999 ("Effective Date"), is by and between Canyon Fuel Company, L.L.C., ("CFC"), whose mailing address is 6955 Union Park Center, Suite 540, Midvale, Utah 84047, and Milton and Ardith Thayn Trust ("Thayn"), whose mailing address is 7730 East Hwy 6, Price, Utah 84501.

Recitals

Thayn is the surface owner of lands located in Carbon County, Utah, which are described on Exhibit "A" attached hereto (the "Thayn Lands"). CFC is a coal mining company and owns and operates the Soldier Canyon Mine and Dugout Canyon Mine (the "Mines"). CFC holds rights under Federal coal leases and pursuant to mine permits granted or to be granted by the Utah Division of Oil, Gas and Mining (the "Mine Permits") to develop and mine underground coal. Thayn has agreed to grant to CFC the nonexclusive use by CFC of the surface of the Thayn Lands to facilitate its coal mining operations in exchange for rights and services from CFC.

Agreement

IN CONSIDERATION of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grants and Services to Thayn.
 - (a) CFC shall lease to Thayn for farming and grazing the following lands and grazing and water rights described in Exhibit "B" attached hereto : (1) lands owned by CFC located in the Clark Valley (the "Clark Valley Lease Lands"); (2) water rights owned by CFC appurtenant to the Clark Valley Lease Lands (the "Clark Valley Water Rights"); (3) state and federal grazing rights held by CFC related to the Clark Valley Lease Lands (the "Grazing Rights"); and (4) water rights represented by 50 shares of water stock in the Wellington Canal Company owned by CFC (the "Water Shares"). The Clark Valley Lease Lands, the Clark Valley Water Rights, the Grazing Rights and the Water Shares shall all be leased to Thayn under the "Lease Agreement" attached hereto as Exhibit "C."

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- (b) CFC hereby grants to Thayn, for the term of this Agreement and for so long thereafter as agreed in writing by the parties, the non-exclusive, limited use of the Dugout Canyon unimproved road lying north of the Dugout Canyon Mine as may be reasonable and necessary for Thayn's cattle ranching activities, provided that such use shall (i) not interfere with the regular activities of the Mines; (ii) comply with all CFC and applicable federal, state and local rules and regulations imposed on the use of the road; and (iii) not include use of the road by any third party including hunters, tourists or sight-seers.
- (c) Upon written notice to CFC, Thayn may request that CFC monitor the flow of springs, streams and seeps located on the Thayn Lands that Thayn reasonably believes may be impacted by CFC's underground mining operations. Upon receiving the written request, CFC shall meet with Thayn to discuss the monitoring sites and to reach a mutually acceptable schedule for such monitoring, provided that CFC shall only be required to monitor such sites for flow. Nothing in this Agreement shall modify CFC's water monitoring program as required by the Mine Permits.
- (d) Thayn shall have the non-exclusive right to submit bids as an independent contractor for earth-moving projects conducted on the Thayn Lands that CFC elects, in its sole discretion, to contract to a third party. Thayn shall have a preference for selection as the contractor for the project provided that Thayn can demonstrate to the reasonable satisfaction of CFC that (i) Thayn owns or has right to use the necessary equipment for the project, (ii) Thayn carries insurance coverage required by CFC's risk management procedures for the project, (iii) Thayn has the necessary licenses and permits to conduct the project, and (iv) Thayn's proposed bid is competitive with other bids solicited by CFC for the project. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require CFC to use a third party contractor for any project on the Thayn Lands or to conduct a bid process to select a third party contractor for work conducted on the Thayn Lands or on behalf of Thayn.

2. Surface Use Grants to CFC. CFC shall have and is hereby granted an easement on, over, and through, and a right to use, the surface of the Thayn

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Lands as may be necessary and appropriate for the following purposes in connection with mining coal by underground mining methods: (a) conduct subsidence and soil and water sampling, and carry out raptor, wildlife and other environmental studies; (b) conduct exploration drilling and analyses of subsurface conditions by all reasonable means; (c) place or install minor mechanical instruments such as geophones, geo-seismic lines and the like to monitor underground, mine-related activities and results; (d) drill production holes, place and relocate pipelines, and place surface facilities to develop, vent or remove coalbed methane gas, provided such use shall not interfere with regular activities of Thayn's ranching and hunting, and further provided, CFC shall coordinate such activities with Thayn to minimize disruption to Thayn's ranching and hunting activities; and (e) exclusively subside the surface of the Thayn Lands. Except as provided in Sections 3 and 5, CFC shall have no obligation to pay to Thayn any compensation for use of the Thayn Lands.

3. Compensation for Surface Facilities.

- (a) In the event CFC is required to place temporary or semi-permanent structures on the Thayn Lands (such as methane venting, exhausting equipment, methane drainage pump stations, pipelines and utilities) in connection with exercising its rights hereunder, CFC shall reasonably compensate Thayn for the use of the Thayn Lands for such structures at rates comparable to other operations in the area. (By way of example, coalbed methane venting and degasification wells are currently compensated at rates in the range of \$2,000 to \$3,500 per year until the well is plugged and reclaimed.) The parties shall use their best good faith efforts to negotiate compensation for any permanent structure placed on the Thayn Lands.
- (b) CFC shall pay Thayn \$2,000 for each exploration drill hole placed on the Thayn Lands. Thayn acknowledges that \$2,000 represents fair and reasonable compensation for each such drill hole, provided, however, if any such exploration drill hole is subsequently used for coalbed methane venting, Thayn shall be entitled to additional compensation in accordance with the provisions of Section 3(a).

4. Care of Thayn Lands.

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- (a) CFC shall use and maintain the Thayn Lands in a careful, safe, and lawful manner and shall conduct its operations in compliance with all applicable federal, state and local laws, rules and regulations. CFC shall only use the Thayn Lands for the purposes set forth herein and shall not permit the use or occupancy of the Thayn Lands by any person other than CFC, its employees, agents and contractors.
- (b) CFC shall provide Thayn with written notice prior to undertaking any activities on the Thayn Lands. Thayn's concurrence shall be obtained regarding the location of any proposed material surface disturbance, including but not limited to drilling exploration boreholes. Thayn's permission shall not be unreasonably withheld.
- (c) CFC shall give special siting consideration to potential borehole locations near springs and seeps on the Thayn Lands.
- (d) CFC shall repair or replace any improvements upon the Thayn Lands damaged by CFC's operations. CFC shall reclaim all surface areas disturbed as a result of CFC's operations and shall implement a noxious weed control program for all such disturbed areas for a period of not less than four years from the date of reclamation reseeded.
- (e) All drilling or other similar activities and all CFC-related facilities, such as "mud pits," that could result in injury or death to livestock shall be fenced or otherwise isolated to protect livestock. CFC shall repair or reclaim to the extent technologically and economically feasible subsidence damage to the Thayn Lands that could be harmful to livestock.
- (f) CFC shall maintain insurance coverage for its activities conducted on the Thayn Lands consistent with coverages customary for the coal industry and in compliance with all applicable regulatory requirements and shall provide Thayn with a copy of all insurance certificates naming Thayn as an additional insured against CFC's operations conducted pursuant to this Agreement.
- (g) As required by and in conformance with applicable law, CFC shall replace any water supply owned and beneficially used by Thayn for

domestic, agricultural, or other legitimate use from an underground or surface source where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from CFC's mining operations.

5. Term.

- (a) This Agreement shall be for a term of years beginning on the Effective Date and continuing for a period for the life of the Mines plus two (2) years, but in no event longer than twenty (20) years. For purposes of this Agreement, the life of the Mines shall end upon permanent closure of the Mines and cessation of all operations for the production and sale of coal from the Mines.
- (b) CFC shall have no obligation to make any rental or other payment to maintain this Agreement in full force and effect. The parties acknowledge and agree that the Lease Agreement shall constitute full and fair consideration for this Agreement. In the event the Lease Agreement terminates or expires as provided therein prior to a date twenty (20) years from the Effective Date, CFC shall pay to Thayn the sum of \$5,000 annually on the anniversary date for the remaining term of this Agreement in lieu of the rights granted under the Lease Agreement ("Rental Payment").
- (c) The monetary payment terms set forth in Sections 3 and 5(b) of this Agreement ("Payment Terms") shall be adjusted for inflation on the seventh (7th) and fourteenth (14th) annual anniversaries after the Effective Date based on the cumulative changes in the Consumer Price Index (CPI), or other generally-recognized economic pricing index, for the preceding seven-year period. The proposed adjustments shall be calculated by CFC and communicated to Thayn in writing within thirty (30) days after the seventh and fourteenth anniversaries. All adjustments to Payment Terms shall be effective as of the seventh and fourteenth anniversary dates and shall otherwise apply prospectively and shall not apply to payments previously made under this Agreement. All other claims for adjustment of non-monetary terms of this Agreement, including allegations of non-compliance with any express term, shall be subject to the provisions of Section 7.

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(d) Nothing in this Section 5 shall, nor shall it be interpreted to, amend, modify or waive any term or provision of Section 2 that grants rights to CFC to the Thayn Lands. Thayn shall have no right to claim a default of or to terminate this Agreement based on the Payment Terms readjustment provisions of this Section 5.

6. Title. Thayn warrants generally the title to the surface of the Thayn Lands and represents that Thayn has all necessary right and authority to grant to CFC the property rights and privileges conveyed hereunder.
7. Breach of Obligations. If either party believes that the other party has not complied with any express term, obligation or covenant of this Agreement, then in such event such party shall notify the other party in writing setting out specifically the details regarding the alleged breach or default. The party in default shall have thirty (30) days after receipt of the notice within which to cure or commence to cure all or any part of the breach or default alleged by the other party. If the defaulting party fails to cure or commence to cure the alleged default or breach as required, then the non-defaulting party shall have the option, but not the obligation, to submit the matter to binding arbitration as provided in this Agreement.
8. Arbitration. Disputes arising under this Agreement between the parties based upon any alleged breach of any of the obligations hereunder, which the parties are unable to resolve, shall be finally settled in accordance with the provisions of the Utah Arbitration Act by a single arbitrator. The arbitrator shall have broad power to grant relief for any dispute submitted pursuant to this Section 8, including without limitation termination of this Agreement. The arbitration proceedings shall be conducted in Price, Utah. CFC shall be responsible for all costs incurred in arbitration, including all fees and expenses of the arbitrator. Either party may enforce any arbitration award by instituting an action in the appropriate state or federal district court.
9. Indemnification. CFC shall indemnify, defend and hold harmless Thayn from and against all claims, costs, losses and expenses of any and every kind or character (including without limitation, mechanic liens and additional taxes) that are caused by or arise out of CFC's operations conducted on the Thayn Lands pursuant to this Agreement, provided that Thayn shall not be indemnified for matters expressly covered by this

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Agreement, including without limitation the grant to CFC to subside the surface as a result of its underground mining operations.

10. Assignment. CFC's rights under this Agreement may not be assigned or sublet without the prior written consent of Thayn, which consent shall not be unreasonably withheld, provided that CFC may assign or sublease its interest hereunder without consent if such assignment or sublease is to an affiliate, parent or subsidiary of CFC, or to a party which acquires all or substantially all of the assets of CFC or the Mines.
11. Notices. All notices shall be in writing and addressed as follows:

If to Canyon Fuel Company:

President
Ark Land Company
CityPlace One
Suite 300
St. Louis, MO 63141-7056
(314) 994-2700

With a copy to:

Canyon Fuel Company, L.L.C.
Soldier Canyon Mine
P.O. Box 1029
Wellington, UT 84542
Attn: David G. Spillman
(435) 636-2872

If to Thayn:

Milton and Ardith Thayn Trust
7730 East Hwy 6
Price, UT 84501
Attn: David Thayn
(435) 472-4251

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Notices are sufficient if delivered by hand, sent by facsimile transmission or deposited in the United States mail, postage prepaid and addressed to the appropriate addresses.

- 12. CFC Permits. Thayn expressly agrees to not oppose CFC's application for or issuance of the Mine Permits or for such other permits or approvals necessary or required to conduct coal mining operations at the Mines that may relate to or involve the Thayn Lands. In the event that CFC's Mine Permits are materially revised to require access or use of the Thayn Lands not granted by this Agreement, the parties shall use their respective best good faith efforts to negotiate such required access or use.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CANYON FUEL COMPANY L.L.C.

By James E. Floyd
Its VP & Treasurer

Milton and Ardith Thayn Trust

By Milton Thayn
Its Trustee

Missouri
STATE OF UTAH)
City)ss:
COUNTY OF St. Louis

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The foregoing instrument was acknowledged before me this 2nd day of November, by James E. Floyd who being by me duly sworn did say that he is the VP & Treasurer of Canyon Fuel Company, L.L.C.,

EXHIBIT "A"
to
Surface Use Agreement

Thavn Lands

T13S, R12 E, Salt Lake Meridian, Utah

Sec. 12: E/2 SE/4;

Sec. 13: E/2; SE/4 NW/4; E2 SW/4; NW/4 SW/4;

Sec. 24: All;

Sec. 25: NW/4.

T13S, R13 E, Salt Lake Meridian, Utah

Sec. 7: S/2SW/4, NW/4SW/4;

Sec. 18: S/2, NW/4, S/2NE/4, NW/4NE/4;

Sec. 17: SW/4, S/2SE/4, NW/4SE/4;

Sec. 19: All Except Lot 4;

Sec. 20: All;

Sec. 21: S/2, S/2N/2, NW/4NW/4;

Sec. 22: SW/4, S/2NW/4;

Sec. 27: W/2;

Sec. 28: All;

Sec. 29: All;

Sec. 30: All Except Lots 1 and 2;

Sec. 33: N/2N/2.

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EXHIBIT "B"
to
Surface Use Agreement

CLARK VALLEY LEASE LANDS

(approximately 4,461 acres):

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Description</u>
14 South	12 East	3	S½SE¼; S½SW¼
"	"	5	S½SE¼
"	"	8	NE¼NE¼; W½NE¼; SW¼; E½NW¼
"	"	9	SE¼
"	"	10	E½; SW¼; E½NW¼; SW¼NW¼
"	"	11	SE¼; NE¼; E½SE¼; SW¼SE¼; W½
"	"	13	W½; SW¼; S½NW¼; NE¼SW¼
"	"	14	All
"	"	15	E½; SW¼; E½NW¼
"	"	17	NW¼; SE¼; E½SW¼; NW¼SW¼
"	"	18	E½NE¼
"	"	20	N½NE¼
"	"	21	NE¼NW¼; W½NW¼; SE¼NE¼
"	"	22	NW¼

CLARK VALLEY WATER RIGHTS

**Water Right No.
(Irrigation &
Stockwatering)**

91-23
91-85
91-86
91-409

**Water Right No.
(Stockwatering)**

91-410 91-447
91-411 91-448
91-412 91-449
91-413 91-450

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**Exhibit B
to Surface Use Agreement**

Water Right No.
(Irrigation &
Stockwatering)

Water Right No.
(Stockwatering)

91-457	91-414	91-451
91-491	91-415	91-452
91-492	91-416	91-453
91-493	91-417	91-456
91-494	91-418	91-458
91-495	91-419	91-459
91-604	91-420	91-460
91-605	91-421	91-461
91-606	91-422	91-465
91-607	91-426	91-466
	91-427	91-467
	91-428	91-468
	91-429	91-469
	91-430	91-470
	91-443	91-591
	91-444	91-3729
	91-445	91-3730
	91-446	

GRAZING RIGHTS

BLM Grazing Allotment #4079 (North Clark Valley) Approx. (Acreage 9,480)
Period of Use - March 20th-June 5th

State Grazing Permit #21722 (Approx. Acreage 680)

WATER SHARES

50 Shares of water stock in The Wellington Canal Company from Certificate No. 881

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EXHIBIT "C"
to
Surface Use Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of November ____, 1999 ("Effective Date"), by and between CANYON FUEL COMPANY, L.L.C. ("Lessor"), and MILTON AND ARDITH THAYN TRUST ("Lessee").

Recitals

- A. Lessor is the owner of certain lands and water and grazing rights located in Carbon County, Utah, and more particularly described in Exhibit "A" attached hereto: (1) lands located in Clark Valley ("Clark Valley Lease Lands"); (2) water rights appurtenant to the Clark Valley Lease Lands ("Clark Valley Water Rights"); (3) state and federal grazing rights related to the Clark Valley Lease Lands ("Grazing Rights"); and (4) water rights represented by 50 shares of water stock in the Wellington Canal Company ("Water Shares"). The Clark Valley Lease Lands, the Clark Valley Water Rights, the Grazing Rights and the Water Shares are collectively referred to as the "Lease Interests."
- B. The parties have entered into that certain Surface Use Agreement dated _____ ("Surface Use Agreement") whereby Lessee grants to Lessor rights to use the surface of Lessee's lands to facilitate Lessor's coal mining operations in exchange for this Lease, Lessee desires to lease from Lessor and Lessor and other consideration.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and obligations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor hereby leases to Lessee the Lease Interests subject to and conditioned upon the following agreement between the parties:

ARTICLE I
AGREEMENT FOR WATER RIGHTS

1.1 Lessor's Right to Use Clark Valley Water Rights and Water Shares. Lessee shall have the right to use part or all of the Clark Valley Water Rights and the water represented by the Water Shares (collectively, the "Leased Water Rights") for the sole purposes of irrigation or stock watering on or for the benefit of the Clark Valley Lease Lands, or such additional uses

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expressly allocated to the Leased Water Rights, upon the condition that Lessee notifies Lessor of its intention to use the Leased Water Rights at least one (1) month prior to the date of use by Lessee. Notwithstanding Lessee's exercise of its right granted hereunder, Lessee shall make beneficial use of the Leased Water Rights during the term of this Lease and shall take all necessary and reasonable actions so as to preserve the validity of the Leased Water Rights and prevent any reversion back to the State of Utah. Lessee's promise to make beneficial use of the Leased Water Rights provides an essential portion of the consideration given by Lessee to cause Lessor to enter into this Lease.

1.2 Interest in Clark Valley Water Rights. Lessor and Lessee expressly acknowledge that the interest of Lessee in the Leased Water Rights is that of a tenant, that Lessee shall acquire no ownership interest in the Leased Water Rights, and that Lessee shall have no right, title, or interest in the Leased Water Rights from and after the termination of this Lease. Lessee shall not in any way, intentionally or otherwise, directly or indirectly, take or encourage others to take any action which is inconsistent with or which will or may jeopardize the interests of Lessor in the Leased Water Rights.

1.3 Change of Diversion or Use. Without the prior written consent of Lessor, Lessee shall not file any change application or exchange application with the Utah State Engineer for purposes of changing the nature, point of diversion or use of the Leased Water Rights.

1.4 Voting Rights. Lessee shall have no right to vote the Water Shares and nothing contained in this Lease shall, nor shall it be interpreted to, grant to Lessee any rights to participate in meeting of the Wellington Canal Company or to act for or on behalf of Lessor as the record title owner of the Shares.

ARTICLE II
AGREEMENT FOR GRAZING RIGHTS

2.1 Conditions. Lessor shall have the right to use the Grazing Rights shall be subject to the following conditions:

- (a) Lessee shall comply with all applicable statutes and regulations and the terms and conditions of the Grazing Rights and shall perform all other duties or tasks necessary to preserve the Grazing Rights in good standing and prevent any cancellation or other loss of the Grazing Rights. Lessee shall preserve and protect the interest of the Lessor therein and shall not take any action which is inconsistent with or will jeopardize the interest of Lessor in the Grazing Rights. Lessee shall promptly provide Lessor with a copy of any notice of violation, cancellation, inquiry or rental requirement received by Lessee relating to the Grazing Rights and shall undertake all necessary and reasonable actions to

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remedy, cure or otherwise remove the basis for the notice. Lessee shall fully cooperate with Lessor to perform such actions as are necessary and advisable to preserve in full force and effect the Grazing Rights.

- (b) Lessor shall remain responsible for and shall pay directly to the BLM and/or State, as appropriate, all fees, rents, costs, or other charges required by statute, regulation, or agreement to keep the Grazing Rights in good standing.
- (c) Lessee hereby expressly waives any right or claim that it may have pursuant to 43 C.F.R. Part 4100 as now enacted or as hereinafter amended to receive compensation for any interests lessee may have in authorized range improvements on the Grazing Rights; and Lessee expressly acknowledges that the mutual promises and obligations of Lessor as specified in this Lease shall be deemed to be adequate compensation for any interests that Lessee may have in authorized range improvements on the Grazing Rights.
- (d) The general terms and conditions of this Lease shall apply to Lessee's right to use the Grazing Rights and the lands governed thereby as though included within the Clark Valley Lease Lands. Any breach or failure by Lessee to satisfy the covenants or conditions relative to the Grazing Rights shall constitute a breach of this Lease.

2.2 Lessee's Cattle. At all times during the term of this Lease, Lessee shall own a minimum of forty percent (40%) of the cattle actively grazing on or using the Clark Valley Lease Lands. Lessee shall not permit grazing of third party livestock on the Clark Valley Lease Lands that would result in a breach of this provision.

ARTICLE III GENERAL TERMS AND CONDITIONS

3.1 Term. The term of this Lease shall commence upon the Effective Date and continue for a primary term five (5) years or the equivalent of sixty (60) calendar months. Lessee at its option shall have the right to renew this Lease for three (3) additional extended terms of five (5) years each by giving Lessor written notice of Lessee's election to renew 60-days prior to the termination of the then effective term. Unless otherwise terminated, this Lease shall terminate at the end of the last extended term which termination in no event shall occur later than 20 years after the Effective Date.

3.2 Consideration.

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- (a) Lessee shall have no obligation to pay any rental to maintain this Lease in full force and effect for the term hereof, the consideration for this Lease being represented by the covenants and obligations set forth in the Surface Use Agreement.
- (b) In the event that this Lease is terminated or expires prior to a date twenty (20) years from the Effective Date, Lessor shall pay to Lessee as continuing consideration for the Surface Use Agreement the sum of \$5,000 annually ("Rental Payment") in lieu of this Agreement, payable on the anniversary date of the Effective Date each year for twenty (20) years from the Effective Date, or until the Surface Use Agreement terminates as provided therein.

3.3 Use and Occupancy by Lessee. Lessee shall use the Clark Valley Lease Lands, Leased Water Rights the Grazing Rights and the water attributable to the Water Shares exclusively for the grazing of cattle and for the raising of forage for the feeding of livestock. Lessee shall not authorize or conduct mining, drilling operations or hunting on the Clark Valley Lease Lands or remove sand, gravel, dirt, minerals, water, or associated substances from the Clark Valley Lease Lands; shall not commit any waste upon the Clark Valley Lease Lands; and shall not conduct or allow any business, activity, or thing on the Clark Valley Lease Lands which is or becomes unlawful, prohibited, or a nuisance, or which may cause damage to lessor, to occupants of the vicinity, or to other third parties. Lessee shall comply with and abide by all laws, ordinances, and regulations of all municipal, county, state and Federal authorities which are now in force or which may hereinafter become effective with respect to the use and occupancy of the Clark Valley Lease Lands, the Leased Water Rights and the Grazing Rights. Lessee shall conduct operations of the Clark Valley Lease Lands in accordance with good grazing and range or husbandry practices with reference to practices of others in the geographic vicinity of the Clark Valley Lease Lands and in compliance with applicable law. Lessee shall not overgraze the Clark Valley Lease Lands. Lessee shall ensure that all main entrance gates are kept locked with locks provided by Lessor.

3.4 Use by Lessor. Use of the Clark Valley Lease Lands by Lessee shall be nonexclusive. Lessor shall be entitled, without compensation to Lessee, to use the Clark Valley Lease Lands or grant other parties the right to use the Clark Valley Lease Lands, including but not limited to rights for easements, licenses, and leases, but Lessor shall not grant rights for grazing or agricultural use of the Clark Valley Lease Lands to third parties or make use of the Clark Valley Lease Lands itself for such purposes. However, Lessor shall reimburse Lessee for any damages done to Lessee's crops as a result of the use of the Clark Valley Lease Lands by Lessor.

3.5 Improvements. Lessee shall not construct any permanent building on the Clark Valley Lease Lands and shall not construct any temporary building or advertising sign on the Clark Valley Lease Lands without the prior written consent of Lessor. Lessee shall provide

and/or pay for the labor, material, and equipment for any fences, gates, cattle guards, ditches, ponds, reservoirs, or other improvements for Lessee to make use of the Clark Valley Lease Lands, the Grazing Rights, or to make beneficial use of the Leased Water Rights. Unless otherwise agreed in writing, any improvements which Lessee shall make to the Clark Valley Lease Lands shall be made at no expense to Lessor and shall not be removed and shall remain on the Clark Valley Lease Lands upon the termination of this Lease unless otherwise directed by Lessor. Lessee may use whatever fences, gates, cattle guards, ditches, ponds, reservoirs, and other improvements which now exist on the Clark Valley Lease Lands.

3.6 Representation of Lessee. Lessee represents as follows:

- (a) Lessee is experienced in farming methods, farm equipment, and irrigation methods generally used in Carbon County Lessee shall cultivate grazing pastures and make beneficial use of the Clark Valley Water Rights and otherwise exercise Lessee's rights and privileges under this Lease.
- (b) Lessee has sufficient farming and construction equipment available for its use and shall continue to have such equipment available for its use during the term of this Lease for the construction and maintenance of ditches, roads, ponds, fences, and the performance of other tasks which may be needed to satisfy Lessee's obligations under this Lease.
- (c) Lessee has knowledge of the requirements necessary to preserve the Leased Water Rights in good standing and prevent any loss of nonuse or other reversion back to the State of Utah.

3.7 Right of Entry. At any time throughout the term of the Lease, Lessor shall have the right to enter upon the Clark Valley Lease Lands or any portion thereof for purposes of inspecting the same, determining whether Lessee is performing its obligations under the Lease, including but not limited to the obligation to make beneficial use of the Leased Water Rights, taking any action necessary or desirable to remedy any default by lessee in any of Lessee's obligations hereunder, showing or exhibiting the Clark Valley Lease Lands to existing or prospective mortgage lenders, purchasers, or lessees, placing "for sale" or "for lease" signs on the Clark Valley Lease Lands, performing environmental or analytical studies, or for any other purpose whatsoever.

3.8 Insurance. At all times during the term hereof, Lessee shall secure and maintain public liability insurance providing coverage against damage to persons or property resulting from acts or omissions of Lessor or Lessee respecting the Clark Valley Lease Lands, with limits of liability in such amounts as lessor may determine. All insurance required or permitted hereunder shall be written by reputable, responsible companies licensed in the State of Utah and shall name Lessor as insured. Lessor shall be furnished with copies of the insurance policies then

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in force pursuant to this section, together with evidence that the premiums therefor have been paid.

3.9 Taxes. Throughout the term hereof Lessor shall pay all real property taxes, assessments, and special assessments, (all of which are hereinafter collectively referred to as "Taxes"), which are levied against or which apply with respect to the Clark Valley Lease Lands, the Grazing Rights or the Water Rights. Lessee shall pay all taxes, assessments, charges and fees which during the term hereof may be imposed, assessed, or levied by any governmental or public authority against or upon Lessee's use of the Clark Valley Lease Lands or any personal property, equipment, or fixtures kept or installed therein by Lessee.

3.10 Assignment and Subletting.

- (a) Lessee shall have the right to assign or sublet a portion of this Lease with the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided, however, that such assignment or sublease shall expressly provide and require that Lessee own and maintain a minimum of forty percent (40%) of the cattle actively grazing on or using the Clark Valley Lease Lands (as required under Section 2.2 of this Agreement) and that such assignment or sublease shall automatically terminate if at any time Lessee breaches the covenant under Section 2.2. In the event of any such assignment or sublease with the consent of the Lessor, Lessee shall remain liable on all of its covenants and obligations hereunder unless the instrument whereby Lessor consents to the assignment or subletting contains a provision in which Lessor specifically releases Lessee from such further liability. Any purported assignment without the written consent of the Lessor shall constitute a default hereunder and shall be void and of no effect.
- (b) Lessor shall have the right to assign its interests under this Lease without the consent of Lessee. In the event Lessor assigns such interests, Lessor shall, from and after the Effective Date (irrespective of when the assignment occurs), be relieved of any and all liability or obligation to Lessee hereunder, and all such liability and obligation shall, as of the time of such assignment or on the Effective Date, whichever is later, automatically pass to Lessor's assignee, whether or not specifically assumed by it.

3.11. Default and Remedies. In the event Lessee breaches or fails to perform any of its obligations hereunder and Lessee does not within sixty (60) days, unless a lesser time is required by applicable law for the Grazing Rights, after the giving of written notice by Lessor cure the default or begin action to cure the default and thereafter diligently prosecute such action to completion if the default cannot be reasonably cured within sixty (60) days, or as required by applicable law, Lessor shall have the right, at its option, to exercise any of the following rights and remedies:

(a) Lessor may itself perform or cause to be performed the obligation with respect to which Lessee is in default. In the event Lessor does so, its cost of such performance, including reasonable attorneys' fees and all expenses incurred by Lessor, plus interest thereon at the rate of eighteen percent (18%) per annum from the date of expenditure, shall be deemed to be additional rent and shall be immediately paid by Lessee.

(b) Lessor may terminate this Lease, immediately enter the Clark Valley Lease Lands, and take possession of the Clark Valley Lease Lands, the Leased Valley Water Rights and the Grazing Rights with or without process of law, and remove all persons and property from the Clark Valley Lease Lands. No such action by Lessor shall be considered or construed to be a forcible entry. By taking such action, Lessor shall incur no liability to Lessee or to any other persons occupying or using the Clark Valley Lease Lands or using the Leased Water Rights or the Grazing Rights for any damage caused or sustained by reason of such entry and removal of persons and property, and Lessee hereby covenants and agrees to indemnify and save harmless Lessor from all costs, loss, or damage arising from or occasioned by such action. In the event Lessor terminates this Lease pursuant to this Subsection (b), it shall also have the right to recover from lessee all other amounts necessary to compensate Lessor for all damages caused by Lessee's default or which would be likely to result from such default.

(c) Lessor may continue this Lease in effect and enforce all of its rights hereunder. If Lessor does so, it shall have the right to relet or sublet the Clark Valley Lease Lands, the Leased Water Rights, and the Grazing Rights or portions thereof, and any such reletting or subletting may be for a term which extends beyond the term of this Lease. Notwithstanding any election by Lessor to proceed under Subsections (a) or (b) above, so long as Lessee remains in default under this Lease, Lessor shall have the right at any time to terminate this Lease pursuant to Subsection (b) above and to exercise the rights therein provided. The remedies specified in this Section 3.11 are cumulative and are not intended to exclude any other remedy or means of redress to which Lessor may be entitled in the even of any default or threatened default by Lessee with respect to any of its obligations under this Lease.

3.12 Indemnification and Waiver. Lessee shall indemnify and shall hold harmless Lessor and all of Lessor's directors, partners, members, officers, agents, and employees, and each of them, from and against any and all obligations, debts, loss, damage, claims, demands, suits, controversies, costs, fees, liens, encumbrances, and liabilities whatsoever, including attorneys' fees, in any way resulting from or arising out of any failure by Lessee to abide by all of the terms of this Lease or any negligent or intentional act or omission by Lessee or any of its agents, employees, invitees, licensees, or contractors arising out of or in connection and occupancy of the

Clark Valley Lease Lands or use of the Leased Water Rights, or the Grazing Rights. Lessor shall not be responsible or liable for any loss or damage to Lessee or to Lessee's property or business that may be occasioned by or through the acts or omissions of persons occupying, using, or trespassing upon the Clark Valley Lease Lands. Lessee shall use the Clark Valley Lease Lands, the Leased Water Rights and the Grazing Rights at its own risk, and hereby releases Lessor, to the full extent permitted by law, from all claims of every kind or nature, including claims for loss of life, personal or bodily injury, or property damage.

3.13 Enforcement. If any action is brought to recover any rent under this Lease, or because of any breach of or to enforce or interpret any of the provisions of this Lease, or for recovery of possession of the Clark Valley Lease Lands, the party prevailing in such action shall be entitled to recover from the other party reasonable attorney's fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

3.14 Notices. Any notice required or permitted hereunder to be given or transmitted between the parties shall be either personally delivered or mailed, postage prepaid by certified or registered mail, addressed as follows:

TO LESSOR: President
 Ark Land Company
 CityPlace One
 Suite 300
 St. Louis, MO 63141-7056

With a copy to: Canyon Fuel Company, L.L.C.
 Soldier Canyon Mine
 P. O. Box 1029
 Wellington, UT 84542
 Attn: David G. Spillman
 (435) 636-2872

TO LESSEE: Milton and Ardith Thayn Trust
 7730 East Highway 6
 Price, Utah 84501
 Attn: David Thayn
 (435) 472-4751

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Any notice which is mailed shall be effective on receipt as evidenced by the registration certificate. Either party may, by notice to the other given as prescribed in this Section 3.14, change the above address for any future notices which are mailed under this Lease.

3.15 Liens and Encumbrances. Lessor shall keep the Clark Valley Lease Lands, Leased Water Rights, and Grazing Rights, free of all liens and encumbrances of every nature and kind arising after the Effective Date and shall proceed with all diligence to contest or discharge any lien or encumbrance that is filed or claimed.

3.16 Miscellaneous.

- (a) Neither this instrument nor any memorandum or notice concerning the same shall be recorded without the prior written consent of Lessor. Lessor may, at its option and at any time, file this Lease or a notice or short form concerning the same (which said notice or short form Lessee hereby agrees to execute upon Lessor's request) for record in Carbon County, Utah.
- (b) The captions which precede the sections of this Lease are for convenience only and shall in no way affect the manner in which any provision hereof is construed.
- (c) There are no representations or agreements between the parties except as set forth in this Lease, and this Lease supersedes any and all prior negotiations, agreements, or understandings between Lessor and Lessee in any way related to the subject matter hereof. None of the provisions of this Lease may be altered or modified except through an instrument in writing signed by both parties.
- (d) The liability of each person executing and delivering this Lease shall be joint and several. Each provision of this Lease to be performed by Lessee shall be construed to be both a covenant and a condition. To the extent permitted by the provisions hereof, all reservations, terms, conditions, and covenants herein contained shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.
- (e) Time is of the essence to the provisions of this Lease. Any waiver, either express or implied, by Lessor or any breach by Lessee of any promise, condition or term hereof shall not be construed or claimed to be a waiver of any other breach of any condition, promise, or term of this Lease.
- (f) Nothing in this Lease shall, nor shall it be interpreted to, amend, modify or waive any provision of the Surface Use Agreement. Except for the express provision to make the Rental Payments under Section 3.2(b), any default under or termination of this Lease shall not affect in any manner the terms, conditions or validity of the Surface Use Agreement, it being the intent and understanding of the parties that the Surface Use Agreement and this Lease shall constitute separate and independent legal agreements, enforceable in accordance with their respective terms.

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_____, the signer of the foregoing Lease, who duly acknowledged to me that he executed the same as Trustee of and for the benefit of the Milton and Ardith Thayne Trust.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

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EXHIBIT "A"
to
Lease Agreement

CLARK VALLEY LEASE LANDS

(approximately 4,461 acres):

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Description</u>
14 South	12 East	3	S½SE¼; S½SW¼
"	"	5	S½SE¼
"	"	8	NE¼NE¼; W½NE¼; SW¼; E½NW¼
"	"	9	SE¼
"	"	10	E½; SW¼; E½NW¼; SW¼NW¼
"	"	11	SE¼; NE¼; E½SE¼; SW¼SE¼; W½
"	"	13	W½; SW¼; S½NW¼; NE¼SW¼
"	"	14	All
"	"	15	E½; SW¼; E½NW¼
"	"	17	NW¼; SE¼; E½SW¼; NW¼SW¼
"	"	18	E½NE¼
"	"	20	N½NE¼
"	"	21	NE¼NW¼; W½NW¼; SE¼NE¼
"	"	22	NW¼

CLARK VALLEY WATER RIGHTS

**Water Right No.
(Irrigation &
Stockwatering)**

91-23
91-85
91-86
91-409
91-457

**Water Right No.
(Stockwatering)**

91-410 91-447
91-411 91-448
91-412 91-449
91-413 91-450
91-414 91-451

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**Exhibit A
to Lease Agreement**

**Water Right No.
(Irrigation &
Stockwatering)**

**Water Right No.
(Stockwatering)**

91-491	91-415	91-452
91-492	91-416	91-453
91-493	91-417	91-456
91-494	91-418	91-458
91-495	91-419	91-459
91-604	91-420	91-460
91-605	91-421	91-461
91-606	91-422	91-465
91-607	91-426	91-466
	91-427	91-467
	91-428	91-468
	91-429	91-469
	91-430	91-470
	91-443	91-591
	91-444	91-3729
	91-445	91-3730
	91-446	

GRAZING RIGHTS

BLM Grazing Allotment #4079 (North Clark Valley) Approx. (Acreage 9,480)
Period of Use - March 20th-June 5th

State Grazing Permit #22966 (Replacing Permit #21722) (Approx. Acreage 680)

WATER SHARES

50 Shares of water stock in The Wellington Canal Company from Certificate No. 881

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MAY 06 2005

DIV OF OIL GAS & MINING

Canyon Fuel Company LLC
6955 Union Park Center, Suite 540
Midvale, Utah 84047

RE: Soldier Canyon Mine
Dugout Canyon Mine

Gentlemen:

The Milton and Ardith Thayn Trust ("Trust") is the record title owner of the surface to the lands described below that cover or otherwise relate to coal leases Canyon Fuel Company now or in the future intends to develop ("Lands"):

T13S, R12 E, Salt Lake Meridian, Utah

Sec. 12: E/2 SE/4;

Sec. 13: E/2; SE/4 NW/4; E2 SW/4; NW/4 SW/4;

Sec. 24: All;

Sec. 25: NW/4.

T13S, R13 E, Salt Lake Meridian, Utah

Sec. 7: S/2SW/4, NW/4SW/4;

Sec. 18: S/2, NW/4, S/2NE/4, NW/4NE/4;

Sec. 17: SW/4, S/2SE/4, NW/4SE/4;

Sec. 19: All Except Lot 4;

Sec. 20: All;

Sec. 21: S/2, S/2N/2, NW/4NW/4;

Sec. 22: SW/4, S/2NW/4;

Sec. 27: W/2;

Sec. 28: All;

Sec. 29: All;

Sec. 30: All Except Lots 1 and 2;

Sec. 33: N/2N/2.

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Subject to the Surface Use Agreement dated effective November 23, 1999, between the parties, the Trust hereby consents to Canyon Fuel's underground mining activities below the Lands and access to the surface to repair subsidence.

Very truly yours,

Milton and Ardith Thayn Trust

By: Milton Thayn

FIRST AMENDMENT TO SURFACE USE AGREEMENT

THIS FIRST AMENDMENT TO SURFACE USE AGREEMENT ("Amendment"), dated effective as of 13 August, 2001, is by and between Canyon Fuel Company, L.L.C. ("CFC") and Milton and Ardith Thayn Trust ("Thayn").

Recitals

A. The parties have entered into that certain Surface Use Agreement dated as of November 22, 1999, between CFC and Thayn ("Surface Use Agreement"). All capitalized terms used in this Amendment, unless otherwise defined herein, shall have the meanings assigned to them in the Surface Use Agreement

B. The parties now desire to amend the Surface Use Agreement consistent with the terms of this Amendment.

Amendment

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. The Surface Use Agreement is amended by addition of the following provisions:

a. Water Purchases. CFC may, at its option any time during the term of the Surface Use Agreement, purchase water from Thayn, for which Thayn holds beneficial use rights or otherwise controls, to conduct any of the activities permitted by the Surface Use Agreement on the Thayn Lands. CFC and Thayn will cooperate to make necessary filings with the Utah State Engineer to facilitate such water uses. The purchase price for the water is \$.0125/ gallon and will be adjusted as provided in subparagraph (d) below. Thayn may determine at its discretion when water is available for purchase by CFC and CFC will be responsible for all costs and expenses to deliver the water to the location of usage. The purchase price for the water shall have no bearing on future determinations of the value of the Thayn water rights or water used on the Thayn Lands.

b. Interference with Hunting Activities.

(i) CFC will reimburse Thayn in an amount not to exceed \$10,000 annually for the loss of any revenue incurred by Thayn as a result of interference with, or the inability to conduct, deer and elk hunting and guide services on the Thayn Lands by Thayn's outfitters due to exploration or production drilling conducted by or on behalf of CFC on the Thayn Lands. For purposes of this provision, the deer hunting season includes the muzzle load, archery and rifle hunts. Thayn will provide CFC with a written claim for lost revenue describing the basis for the claim no later than 30 days after the end of a hunting season. The parties agree that the actual presence and ongoing operation of a drilling rig on the Thayn Lands during the elk or the deer hunting seasons will automatically constitute interference with hunting activities. In such event, upon written notice from Thayn, Arch will pay to Thayn \$3750 for the deer hunt season and \$3750 for the elk hunt season respectively impacted by the presence and operation of a drilling rig. Arch's maximum liability under this provision for each hunting season shall not

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exceed \$5,000 for the elk hunt and \$5,000 for the deer hunt. The reimbursement payment will be readjusted as provided in subparagraph (d) below. Thayn acknowledges that the payment provided represents fair and reasonable compensation and Thayn waives any and all other claims against CFC for alleged damages arising out of interference with deer and elk hunting and guide services on the Thayn Lands.

(ii) CFC and Thayn have jointly established a 100-yard non-hunting buffer zone surrounding any drilling rig or active drilling operations. Thayn will inform hunters on the Thayn Lands of actual drilling locations and operations in an effort to create a safe operations buffer zone. CFC will prohibit its employees and employees of its contractors from carrying firearms, including muzzle loaders, archery equipment and rifles during the hunting seasons. Only road use necessary to conduct Arch's operations and activities under the Surface Use Agreement will be allowed during the elk and deer hunting seasons on the Thayn Lands in an effort to maintain a quality hunting environment.

c. Rezoning. Thayn will support and not oppose any rezoning of the Thayn Lands that is required by or results from mining or oil and gas operations conducted on the Thayn Lands, provided, however, that CFC will reimburse Thayn for all additional taxes, or other costs and expenses, incurred by Thayn as a result of such rezoning.

d. Adjustments to Payments.

(i) The purchase price for the water described in subparagraph (a) will be adjusted for inflation on the fifth annual anniversary date after the Effective Date, and every five years thereafter on the anniversary of the Effective Date based on the cumulative changes in the Consumer Price Index (CPI), or other generally-recognized economic pricing index, for the preceding five-year period.

(ii) The reimbursement payment described in subparagraph (b) will be adjusted for inflation on the fourth annual anniversary date after the Effective Date, and every four years thereafter on the anniversary of the Effective Date based on the then current fee arrangement with Thayn or on a written bona fide offer from a hunting outfitter who, if required by state law, is licensed. Allocation of the reimbursement payment between the deer and elk hunts shall be based on the terms of the offer.

(iii) The proposed adjustment shall be calculated by CFC and communicated to Thayn in writing within thirty (30) days after the applicable anniversary date. All adjustments shall be effective as of the then applicable anniversary date and shall otherwise apply prospectively and shall not apply to payments previously made under this Amendment.

2. Except as expressly provided in this Amendment, nothing herein shall, nor be interpreted to, amend, modify or waive any provision of the Surface Use Agreement. The parties acknowledge that the Surface Use Agreement is in full force and effect and currently in good standing. This Amendment may be executed in counterparts by the parties.

Executed and dated as of the Effective Date.

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Canyon Fuel Company, L.L.C.

Milton and Ardith Thayn Trust

By: _____
Its: _____

By: George M Thayn

SECOND AMENDMENT TO SURFACE USE AGREEMENT

THIS SECOND AMENDMENT TO SURFACE USE AGREEMENT ("Second Amendment"), dated effective as of September 1, 2004 ("Effective Date"), is by and between Ark Land Company, ("Ark Land"), whose mailing address is One CityPlace Drive, Suite 300, St. Louis, MO 63141, and Milton and Ardith Thayn Trust ("Thayn"), whose mailing address is 7730 East Hwy 6, Pricc, Utah 84501.

Recitals

A. Canyon Fuel Company, L.L.C. ("CFC"), an affiliate of Ark Land, and Thayn entered into a Surface Use Agreement dated as of November 22, 1999 ("Agreement"). The Agreement was amended by a First Amendment to Surface Use Agreement dated effective as of August 13 2001. All capitalized terms used in this Second Amendment, unless otherwise defined herein, shall have the meanings assigned to them in the Agreement, as amended.

B. By Assignment dated as of the Effective Date, CFC assigned to Ark Land all right, title and interest in, to and under the Agreement.

C. The parties now desire to amend the Agreement consistent with and as set forth in this Second Amendment.

Amendment

NOW, THEREFORE, for and in consideration of Ten Dollars and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. The Agreement is hereby amended by adding the following provisions:

a. Vent Fan Easement.

(i) In addition to the surface use grant in favor of Ark Land under Section 2 of the Agreement, Thayn hereby grants to Ark Land an exclusive easement on, over, across, under and through the Thayn Lands, as more specifically described on the plat map attached hereto as Exhibit A ("Easement"), for access to construct, maintain, utilize, repair and reclaim a mine vent fan and all surface structures related to a mine vent fan and an associated air intake (collectively "Vent Fan") to be located on lands adjacent to the Thayn Lands and for access to provide water, power and communication facilities to, in association with and for the benefit of the Vent Fan ("Vent Fan Facilities"). Third Parties providing services for Vent Fan Facilities shall have the non-exclusive right to use the Easement under the same terms and conditions as Ark Land's designation. The Easement shall have a term that runs concurrent with the term of the Agreement, provided, however, that upon termination of the Agreement, Ark Land, at its sole option, may elect to extend the term of the Easement for an additional five (5) year period upon 30-days prior written notice to Thayn. In such event, Thayn shall execute an independent instrument susceptible to recording in the records of the Carbon County Recorder evidencing the Easement under the extended term.

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(ii) Upon execution of this Second Amendment, and thereafter on or before the anniversary of the Effective Date hereof and so long as the Easement remains in effect, Ark Land shall pay to Thayn the sum of Thirty Thousand Dollars (\$30,000) ("Easement Payment"). Thayn acknowledges that the Easement Payment represents full and fair compensation for the grant of the Easement, placement of the Vent Fan adjacent to the Thayn Lands, and placement of the Vent Fan Facilities on, over, across, under or through the Easement. Thayn disclaims and hereby waives any and all further claims and causes of action for compensation or damages arising out of or relating to use of the Easement and the placement, use, operation, repair and reclamation of the Vent Fan and the Vent Fan Facilities, including, without limitation, claims based on alleged noise, visual or environmental pollution or nuisance. In particular, without limitation, the placement, use, operation, repair and reclamation of the Vent Fan and the Vent Fan Facilities shall not constitute the basis for any claim for interference with the use and enjoyment of the Thayn Lands including hunting activities described in the First Amendment.

(iii) Thayn hereby concurs with, joins in and ratifies, and shall provide such further assurances as necessary for, any and all permits and authorizations necessary or required by applicable regulatory authority to permit the construction, repair, use and reclamation of the Vent Fan and Vent Fan Facilities. Thayn shall not oppose any permit, application or plan involving the Vent Fan or Vent Fan Facilities.

2. Thayn consents to the assignment from CFC to Ark Land and fully recognizes Ark Land as the legal successor to CFC under the Agreement. Thayn represents that the Agreement is in full force and effect and in good standing, is not subject to any defaults or activities or events of which Thayn is aware which could result in a default, and that all payments due under the Agreement have been timely and properly made.

3. Except as expressly provided in this Second Amendment, nothing herein shall, nor shall it be interpreted to, amend, modify or waive any provision of the Agreement.

4. This Second Amendment may be executed in counterparts by the parties.

Executed and dated as of the Effective Date.

INCORPORATED

MAY 06 2005

ARK LAND COMPANY

DIV OF OIL GAS & MINING

By:

Its:

Cynthia Downing
Oil Dept

MILTON AND ARDITH THAYN TRUST

By:

Name:

Milton Thayne
Milton and Ardith Thayne Trust

STATE OF Missouri
COUNTY OF St. Louis)ss.

The foregoing instrument was acknowledged before me by Douglas Downing
the Vice President of Ark Land Company.

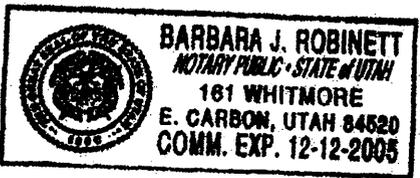


MARY C. HAMILTON
St. Louis City
My Commission Expires
September 14, 2007

Mary C. Hamilton
Notary Public

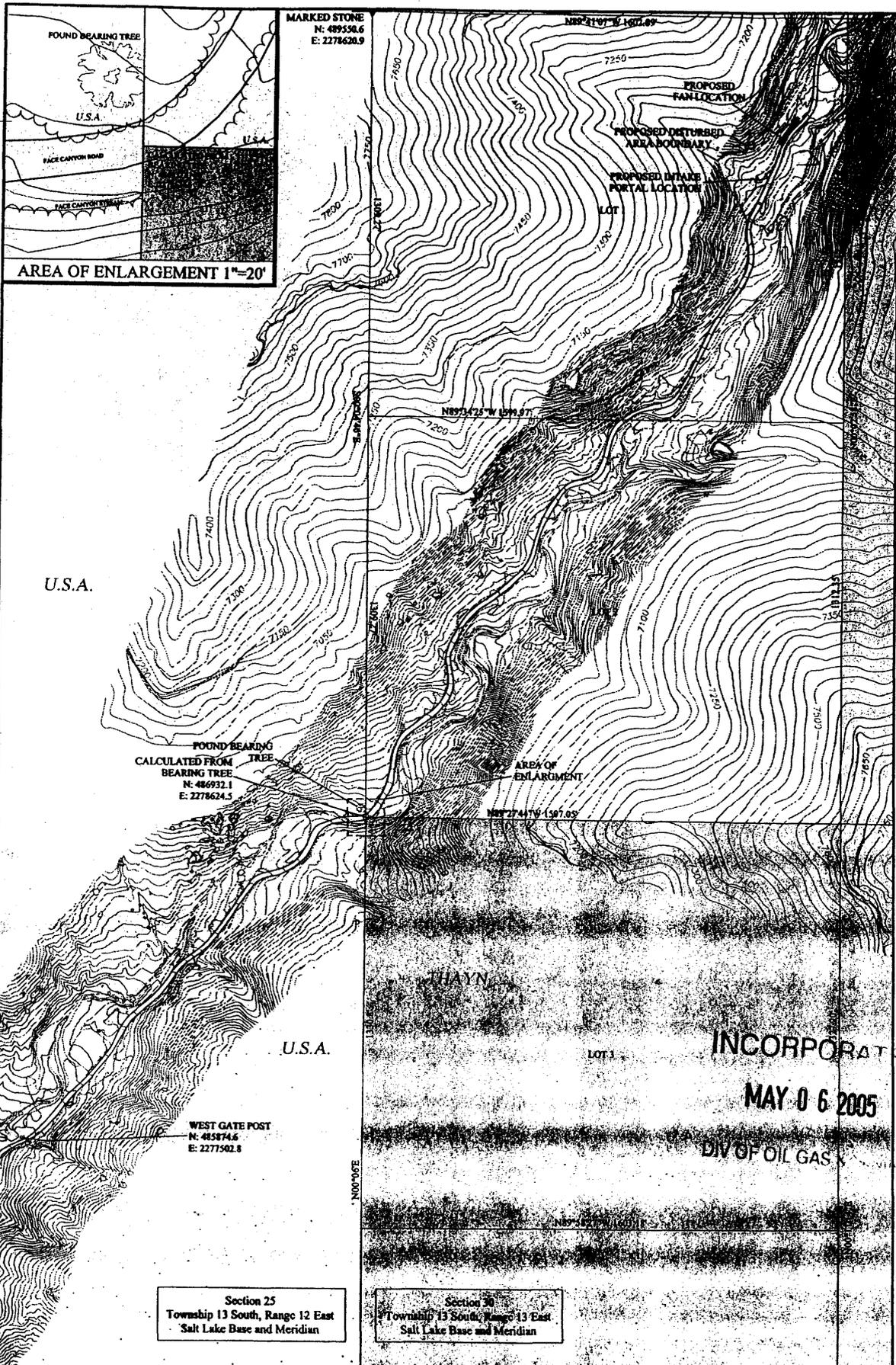
STATE OF Utah)
COUNTY OF Carbon)ss.

The foregoing instrument was acknowledged before me by Milton Thayne as
Representative of the Milton and Ardith Thayne Trust.



Barbara J. Robinett
Notary Public

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DIV OF OIL GAS & MINING



LEGEND

	UNITED STATES OF AMERICA
	MELTON AND ARDITH THAYN TRUST
	FOUND MONUMENT
	SEARCHED FOR & NOT FOUND
	NO SEARCH MADE

NOTES:

SURVEYING COMPLETED BY WARE SURVEYING & ENGINEERING, LLC.

BOUNDARIES & BEARINGS SHOWN ARE CALCULATED FROM B.L.M. NOTES AND HAVE BEEN NOTATED IF CLOSE TO THE CORNER OF SECTION 19 AND THE NORTHWEST CORNER OF SECTION 21, T13S, R13E, S13E, B.L.M.

COORDINATES SHOWN ARE NAD 1983, ADJUSTED TO GROUND, C.A.F. = 1.0001362

REVISIONS OR UP-DATES		DATE
NO.	DATE	BY

DATE: 11/05/04
 DESIGNED BY: JMS
 CHECKED BY: DS
 SCALE: 1"=150'

CF Canyon Fuel Company, LLC
Dugout Canyon Mine

EXHIBIT A
SECOND AMENDMENT TO SURFACE USE AGREEMENT

2005 BOX 1029
WELLINGTON, UTAH 84542

DRAWING BY: MAP NUMBER: EXHIBIT A.DWG