

0032



Fax cover sheet

Date/time: November 7, 2007

No. of pages including this cover sheet: 1 of 18

*Fireproy  
Income of  
e/007/0011*

Deliver to:

Sent from:

Name: Pam

Name: Cally Johnson

Telephone Number: 538-5340

Telephone Number: 801-481-5531

Fax Number: 359-3940

Fax Number: 801-481-5351

Message:

We have changed systems so the number of the letter of credit has changed to accommodate our systems. This letter of credit started out originally in the name of Hiawatha Coal Company, Letter of Credit #S005519. We replaced it with a new letter of credit in the name of M.B.S.C., L.L.C. December 2002, Letter of Credit #ST120510, the number changed November 2003 to 00336176, and then changed to S-629378.

I have attached the documentation. Please call with any questions. Our deadline is today to get this handled before my international department will send out the cancellation notice. Thanks for all your help.

RECEIVED

NOV 07 2007

DIV. OF OIL, GAS & MINING

Confidentiality Notice: This transmission is intended for the use of the individual or entity to which it is addressed. This transmission may contain information that is confidential or privileged under law. If you are not the intended recipient, you have received this in error and you are hereby notified that retention, dissemination, distribution, copying, or use of the information contained in this transmission (including any reliance thereon) is strictly prohibited. If you received this transmission in error, please notify the sender immediately by telephone and destroy the original. Thank you.

{LC-APPROVE/CICSMGP2} STANDBY AMENDMENT {11/09/06 9:56:53-AM}  
 STATUS--> PARTIAL EVERGREEN RECEIVED: 08/25/06 06:00 GTS  
 ACCT NBR: 555-013659 RFRESHED: 11/09/06 09:49  
 ACCT NME: M B S C LLC ON BEHALF OF HIWAT MDY: COLL: N EAC 01-070952  
 GEO LOC : UTAH GEO: 544 GUAR: N OFF: 121699  
 COMM: YES RUSH: NO

-----  
 BENEFICIY: STATE OF UTAH, DEPT. OF NATURAL LOC: UTAH GEO : 544  
 -----

LC NBR : S-629378 -006 EXPIR DATE: 12/18/06 AMEND TP: EE EV  
 TRAN AMT: 0.00 EXPIR NEW : 12/18/07 REOPENED: 00/00/00  
 LIAB NEW: 2,838,000.00 CASH COLL : 0.00  
 FOREIGN : 0.00 CURR CODE : UNITED STA EXPR LOC: DOMESTIC  
 AUTO REJ: 11/10/06 FINAL EXPR: 00/00/00 PART SOLD: N  
 TAX XMPT: N PURP. CODE: 850 BKUP FAC : N

-----  
 FACILITY: 2,838,000 EXPIR DATE: 12/18/2007 OBLG GDE: 5 EAC 18-070952  
 FAC OUT : 2,838,000 FAC ID : 100693619 CRED GDE: 3- GUAR: 000  
 FAC AVAL: 0 FAC DESC : SNG TR SBLC SHR : NO  
 -----  
 APPRV AMT : 0.00 AGENT +:

JOINERS : A4 (JOHNSON 11/09)  
 FA,CO,GU JOHNSON 110906 09:56  
 GR,AD,PS

ACTN: A LETTER OF CREDIT TRANSACTION PARTIALLY APPROVED CLEAR TO PREV

RECEIVED  
 NOV 07 2007  
 DIV. OF OIL, GAS & MINING

NOV 07 2004 11:36 FR BANK ONE STANDBY

3129545986 TO 918014815351

P.02/02

November 5, 2004

INVENT.

MAIL

STATE OF UTAH, DEPT. OF NATURAL  
RESOURCES - DIVISION OF OIL, GAS  
MINING  
4 WEST NORTH TEMPLE, STE 1210  
SALT LAKE CITY, UT 84114

Drafts drawn must be marked  
00556176  
Opener's Reference No:  
STI20510

Attention:

You are instructed by:

15 C LLC ON BEHALF OF HIMAT  
12 SOUTH STATE STREET  
SALT LAKE CITY, UT 84105

To amend credit STI20510 as issued in your favor.

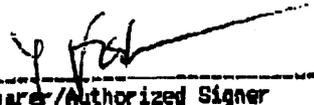
This amendment is an integral part of the original credit.  
All other terms and conditions of the letter of credit including  
previous amendments remain unchanged.

Amended terms:

Expiration date: December 18, 2005

HOUSE AMENDMENT TO AUTO EXTEND L/C TO 12-18-05

Yours very truly

  
\_\_\_\_\_  
Preparer/Authorized Signer

\_\_\_\_\_  
Authorized Signer

~~AMENDMENT/LC~~

DATE: November 7, 2003

MAIL

STATE OF UTAH, DEPT. OF NATURAL  
RESOURCES - DIVISION OF OIL, GAS  
AND MINING  
1594 WEST NORTH TEMPLE, STE 1210  
SALT LAKE CITY, UT 84114

Drafts drawn must be marked:  
00336176  
Opener's Reference No:  
ST120510

Gentlemen:

We are instructed by :

M B B C LLC ON BEHALF OF MINAT  
3212 SOUTH STATE STREET  
SALT LAKE CITY, UT 84105

to amend credit ST120510 as issued in your favor.

This amendment is an integral part of the original credit.  
All other terms and conditions of the letter of credit including  
previous amendments remain unchanged.

Amended terms:

Expiration date: December 18, 2004

IN HOUSE TO EXTEND THIS L/C 00336176 TO DECEMBER 18, 2004

VALERIE WHITE

Yours very truly



Preparer/Authorized Signer

Authorized Signer

BANK ONE Fax Cover Sheet

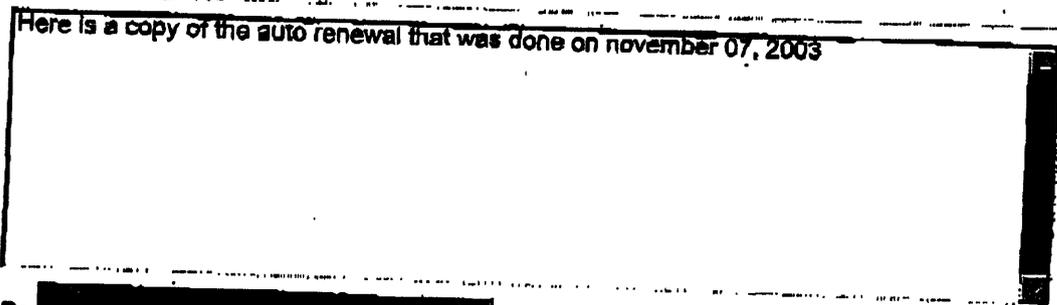
Return to Previous Page

# Create a Fax Cover Sheet

**Step 1: Complete the form below**

To:	<i>Cally Johnson</i>	From:	<i>VALERIE WHITEJ</i>
Attn:		Fax:	<i>312-954-6163</i>
Fax:	<i>801-481-5351</i>	Phone:	<i>312-954-1923</i>
cc:		Page 1 of	<i>1</i>
Date:	<i>November 18, 2003</i>	Re:	

Here is a copy of the auto renewal that was done on november 07, 2003



**Step 2:**

Your fax cover sheet will open in a new browser window. Print that page for your fax cover sheet. Once you have finished printing, close the new window to return to this page.

NOTIFICATION FOR AUTO-RENEWAL LETTER OF CREDIT  
IMMEDIATE ATTENTION REQUIRED

RESPOND TO: CHICAGO STANDBY L/C UNIT IL1-0236 / ANB STANDBY L/C UNIT IL1-0809  
DALLAS STANDBY L/C UNIT TX1-2490

RESPONSE REQUIRED BY 11/03/03

Applicant: M B S C LLC ON BEHALF OF HIWAT

L/C #:

Beneficiary: STATE OF UTAH, DEPT. OF NATURAL

Amount: 2,838,000.00

Current Expiration Date: 12/18/03

The above referenced letter of credit contains an automatic renewal (evergreen) provision that requires notification to the beneficiary, if the bank chooses not to extend the credit for an additional period.

Unless the beneficiary receives notification of non-renewal, this credit will automatically extend to 12/18/2004.

In order to extend the letter of credit, the following must be received by Global Trade Services, Standby Letter of Credit Unit, NO LATER THAN 11/03/03.

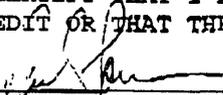
- a) This notification memo signed below by an individual whose signature certifies that the extension has been approved by the proper loan authority.
- b) For L/Cs serviced in Chicago, other information/documentation which details any change to the pricing or to the reporting of bank exposure, (such as obligor no., obligation no., facility numbers, final usage date etc.). A properly signed CAP/CAF or memo is acceptable.
- c) For L/Cs serviced in Dallas, a completed Letter of Credit Addendum is required, signed by an individual certifying that the proper loan authority has approved the extension.

SHOULD THE REQUIRED APPROVAL DOCUMENTATION NOT BE RECEIVED by the above referenced 'response required' date, A NON-RENEWAL NOTICE WILL BE SENT TO THE BENEFICIARY. Upon receipt of the non-renewal notice, there is a possibility that the beneficiary will draw upon the letter of credit if our customer has not yet satisfied their obligations.

If you have any questions please call Global Trade Services:

- Client Services-Chicago/ANB at 1-800-634-1969; Fax responses to (312)954-0203
- Client Services-Dallas at 1-800-924-5435; Fax responses to (214)290-2565

I CERTIFY THAT I HAVE THE PROPER AUTHORITY TO APPROVE THIS EXTENSION OF CREDIT OR THAT THE PROPER LOAN AUTHORITY HAS APPROVED IT.

  
\_\_\_\_\_  
Officers Signature

Paul Sommer  
\_\_\_\_\_  
Print Name

11-7-03 / 801-481-5529  
\_\_\_\_\_  
Date / Telephone number

\_\_\_\_\_  
Approval Code, if applicable



BANK ONE, NA - 1717 MAIN STREET, 11TH FLOOR, DALLAS, TEXAS 75201  
TELEPHONE 1-888-525-9395

AMENDMENT TO LETTER OF CREDIT NUMBER STI20510

DATE: APRIL 23, 2003

APPLICANT:

M.B.S.C., L.L.C. ON BEHALF OF HIAWATHA COAL COMPANY, INC.  
3212 SOUTH STATE STREET  
SALT LAKE CITY, UTAH 84105

BENEFICIARY:

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING  
1594 WEST NORTH TEMPLE, SUITE 1210  
SALT LAKE CITY, UTAH 84114

AMENDMENT NUMBER ONE (1)

GENTLEMEN:

PLEASE BE ADVISED THAT THE SUBJECT LETTER OF CREDIT HAS BEEN AMENDED AS FOLLOWS:

- **APPLICANT'S NAME IS AMENDED TO:**  
M.B.S.C., L.L.C. ON BEHALF OF HIAWATHA COAL COMPANY, INC.
- **INSERT EVERGREEN LANGUAGE AS FOLLOWS:**  
IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT, FOR ADDITIONAL ONE-YEAR PERIODS FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE, UNLESS WE NOTIFY YOU IN WRITING BY REGISTERED MAIL OR OVERNIGHT COURIER, AT LEAST THIRTY (30) DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR AN ADDITIONAL ONE-YEAR PERIOD.

THIS AMENDMENT IS TO BE CONSIDERED AS PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

ALL OTHER TERMS AND CONDITIONS OF THE CREDIT REMAIN UNCHANGED.

BANK ONE, NA

AUTHORIZED SIGNATURE

SS:

**BANK ONE**

BANK ONE, NA - 1717 MAIN STREET, 11TH FLOOR, DALLAS, TEXAS 75201

TELEPHONE: 1-888-525-9395

**IRREVOCABLE STANDBY LETTER OF CREDIT NO. ST120510**PLACE AND DATE OF ISSUE:  
DALLAS, TEXAS 12/23/2002DATE AND PLACE OF EXPIRY:  
12/18/2003 IN DALLAS, TEXASAPPLICANT:  
M.B.S.C., LLC.  
3212 SOUTH STATE STREET  
SALT LAKE CITY, UTAH 84105ADVISING BANK:  
NOT APPLICABLEBENEFICIARY:  
STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING  
1594 WEST NORTH TEMPLE, SUITE 1210  
SALT LAKE CITY, UTAH 84114AMOUNT: USD2,838,000.00  
TWO MILLION EIGHT HUNDRED  
THIRTY EIGHT THOUSAND AND  
NO/100 U.S. DOLLARS

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR AVAILABLE BY BENEFICIARY'S SIGHT DRAFT(S) DRAWN ON BANK ONE, NA WHEN ACCOMPANIED BY THE ORIGINAL OF THIS CREDIT AND THE FOLLOWING DOCUMENT(S):

- BENEFICIARY'S SIGNED AND DATED STATEMENT STATING THAT: QUOTE - PURSUANT TO R645-301-880,900, HIAWATHA COAL COMPANY, INC. IS IN VIOLATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT THE REGULATORY SYSTEM, THE PERMIT AND THE RECLAMATION PLAN. - UNQUOTE

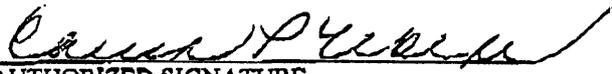
**SPECIAL CONDITIONS:**

PARTIAL DRAWINGS ARE PROHIBITED.

DRAFTS MUST BE MARKED: " DRAWN UNDER BANK ONE, NA CREDIT NO. ST120510. "

WE HEREBY ENGAGE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH ALL THE TERMS AND CONDITIONS OF THIS CREDIT WILL BE DULY HONORED IF DRAWN AND PRESENTED FOR PAYMENT TO BANK ONE, NA, ATTN: STANDBY LETTER OF CREDIT DEPARTMENT, AT 1717 MAIN STREET, 11TH FLOOR, DALLAS, TEXAS 75201 ON OR BEFORE THE EXPIRATION OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.


  
 AUTHORIZED SIGNATURE  
 BANK ONE, NA  
 SS:

# Application and Agreement for Irrevocable Standby Letter of Credit



To: Bank One, NA and/or its subsidiaries and/or affiliates.

Date: December 18, 2002

Please issue an Irrevocable Standby Letter of Credit as set forth below and forward same to your Correspondent for delivery to the Beneficiary or, at your option, forward same directly to the Beneficiary as indicated below (by check "X").

Transmit by:

 Courier  Air mail  Full Telex/SWIFT  Other (specify in detail)

Advising Bank (Name and Address): (Issuer use only unless Applicant designates advising bank)	For account of Applicant(s) (Name and Address):  M.B.S.C., L.L.C. 3212 South State Street Salt Lake City, Utah 84105  Phone No. (801) 484-6988 Fax No. (801) 487-3971
To Beneficiary (Name and Address):  State of Utah Department of Natural Resources Division of Oil, Gas and Mining 1594 West North Temple, Suite 1210 Salt Lake City, Utah 84114	Amount (Numeric) <u>\$2,838,000.00</u> (Amount Written) <u>Two Million Eight Hundred Thirty Eight Thousand and 00/100</u> <input type="checkbox"/> +/- ____%  Expiry Date: <u>December 18, 2003</u> At the counters of the Nominated/Issuing Bank

Available against Beneficiary's draft(s) at sight drawn on issuer and accompanied by the following document(s).

Beneficiary's signed and dated statement stating that: Pursuant to R645-301-880,900, Hiawatha Coal Company, Inc. is in violation of the Surface Mining Control and Reclamation Act, the regulatory system, the permit and the reclamation plan.

Automatically renewable for \_\_\_\_ months or for \_\_\_\_ days with a final expiration date of

Copy(ies) of Beneficiary's commercial invoice(s) marked "unpaid":

Other:

Special Conditions:

Complete only when the Beneficiary's bank or correspondent is to issue its guarantee or undertaking based on the issued Standby Letter of Credit.

Request Beneficiary's bank to issue and deliver their  
(Specify type of bid or performance bond, guarantee, undertaking, or other)

In favor of: Name(s) & Attention

Address/Street

Address/City

State \_\_\_\_ Country

Telephone (\_\_\_\_) \_\_\_\_ Fax Number (\_\_\_\_)

For an amount not exceeding that specified above, effective immediately and expiring at their office on \_\_\_\_  
(At least 30 days prior to Expiry Date above)

covering \_\_\_\_

(specify number or bid or performance br etc.)

Drawings (Check where applicable):  Partial drawings prohibited  Multiple drawings prohibited  Tele-facsimile drawings permitted

Charges: (Unless specified, all charges will be for Applicant's account) All banking charges other than the Issuer's are for  Beneficiary  Applicant.

Please include a brief description as to the purpose of the Standby Letter of Credit: issuance of a standby letter of credit required by the State of Utah for reclamation of a coal mine once operations cease.

Applicant represents and warrants to Issuer that applicant is (choose one) A corporation organized under the laws of the State of \_\_\_\_\_;  
A limited liability company, organized under the laws of Utah; or an individual residing at \_\_\_\_\_.

Please issue Letter of Credit subject to (check one)  ISP98 OR  UCP 500. If no selection is made, the Letter of Credit shall be subject to the UCP 500.

We hereby authorize you to issue this Letter of Credit with such variations from the above terms as you may, in your discretion, determine are necessary and are not materially inconsistent with this Application. The opening of this Letter of Credit and the Applicant's responsibilities with respect thereto are subject to ISP98 or UCP 500 as indicated above and the terms and conditions set forth in the Application and Agreement for Irrevocable Standby Letter of Credit ("Agreement") entered by ourselves and the Issuer. By signing this Application and Agreement at the place provided, the Applicant agrees to the terms and conditions of the Agreement and hereby confirms its applicability to this Application and the Letter of Credit.

Any and all attachments form an integral part of this application.  
Please  Check If Attachments Are Included

## AGREEMENT FOR IRREVOCABLE STANDBY LETTER OF CREDIT

The undersigned ("Applicant") agrees with Issuer that each irrevocable letter of credit or other independent undertaking within the scope of applicable law (each such letter of credit or undertaking a "Credit") issued by one or more of Bank One, NA (Main Office Chicago) and/or any domestic or foreign Bank One Affiliate (each of such entities issuing a Credit, the "Issuer" with respect to such Credit and all of such entities collectively the "Issuers") at the request of Applicant shall be governed by the following terms and conditions, unless they are expressly changed in any Credit, as approved in writing by Issuer, and, with regard to the provisions of Sections 6 and 7 herein, regardless of whether or not such Credit provides otherwise:

1. **REIMBURSEMENTS.** Applicant agrees to pay on demand, in U.S. dollars, to Issuer at such place as Issuer may specify, the amount of each draft drawn under or purporting to be drawn under a Credit. Demand may be made in advance of payment at the request of Issuer. If a Credit provides for presentation of drafts in a currency other than U.S. dollars, Applicant shall, at Issuer's sole option, make payments to Issuer with respect to such drafts either (a) in such other currency at such place as Issuer may direct, or (b) in U.S. dollars at the rate of exchange determined by the Issuer to be the rate in effect in Chicago, Illinois at the time of payment of the draft or, if the Issuer determines that there is no such rate of exchange, Applicant shall pay Issuer an amount which in the sole judgment of Issuer shall be sufficient to meet Issuer's obligations hereunder.
2. **FEES AND INTEREST.** Applicant agrees to pay Issuer:
  - (a) On demand, Issuer's customary commissions and fees in effect from time to time and all costs and expenses, including reasonable attorneys' fees, including fees of attorneys who may be Issuer's employees, paid or incurred by Issuer in connection with the administration or enforcement of this Agreement or any Credit, and any adviser, a confirming institution or entity or other nominated person's fees and costs that are chargeable to or paid by Issuer;
  - (b) Interest on all sums advanced by Issuer without reimbursement by Applicant at the per annum rate equal to the lesser of:
    - (i) the rate customarily charged by Issuer; or
    - (ii) the Prime Rate on the date of advance by the Issuer, provided that such rate of interest shall not exceed the maximum rate of interest which may be charged under applicable law. The "Prime Rate" shall mean the rate of interest announced by the Issuer or its parent from time to time as its prime rate for interest rate determinations (which may or may not be the lowest interest rate charged by such bank), to be computed for actual days unpaid on a 360-day year basis; and
  - (c) In the event any change in any law or regulation, or in any interpretation by court or administrative or governmental authority charged with the administration thereof shall either:
    - (i) impose, modify or make applicable any reserve, special deposit, or similar requirement against letters of credit issued by the Issuer; or
    - (ii) impose on Issuer any other condition regarding this Agreement or any Credit; and the result of any event referred to above shall be to increase the cost to Issuer of issuing or maintaining a Credit, then upon demand by Issuer, Applicant shall immediately pay to Issuer, such additional amounts as shall, in the judgment of Issuer, be sufficient to compensate Issuer for such increased cost, together with interest on each such amount from the date demanded until payment in full at the rate provided in subsection (b) above.

Issuer may assess fees even if incurred after the Credit expires at such rate as may be determined by Issuer.
3. **PAYMENTS.**
  - (a) Payments due from Applicant hereunder shall be made without withholding, deduction or set-off and shall be made free and clear of any taxes other than taxes directly imposed on Issuer.
  - (b) To effect any payment due hereunder, Applicant authorizes Issuer to debit any account that Applicant may have with Issuer or any direct or indirect subsidiary and/or affiliate of BANK ONE CORPORATION (each such subsidiary and/or affiliate referred to herein as a "Bank One Affiliate").
4. **REPRESENTATIONS AND WARRANTIES.** In order to induce Issuer to issue each Credit, Applicant:
  - (a) Represents and warrants to Issuer that each financial statement of Applicant furnished to Issuer was correct and complete and truly presented the financial condition of Applicant as of the date thereof and, since the date of the last such financial statement, there has been no material adverse change in the financial condition of Applicant; and
  - (b) Makes to Issuer the following representations and warranties:
    - (i) Applicant has the power and is duly authorized to execute and deliver this Agreement and is and will be duly authorized to execute and deliver each Application for a Credit and each collateral document furnished to Issuer in connection with a Credit or in the Application for a Credit. This Agreement, each Application for a Credit and each document creating or granting a security interest in Collateral (as hereinafter defined), when executed and delivered, will constitute the valid and binding obligations of Applicant, enforceable in accordance with their terms, except as limited by bankruptcy, insolvency or similar laws of general application affecting the enforcement of creditors' rights generally and except to the extent that general principles of equity might affect the specific enforcement of this Agreement or such collateral documents.
    - (ii) There is no litigation or administrative proceeding pending or threatened against Applicant, which might, if adversely determined, materially affect Applicant's ability to perform its obligations under this Agreement.
    - (iii) No default exists, nor has any event, act or omission occurred which, with the giving of notice or the passage of time, would constitute a default under any instrument or agreement evidencing or securing any indebtedness or liability of Applicant to any person.
    - (iv) Applicant has no indebtedness for borrowed money, nor any obligation contingent or otherwise, directly or indirectly guaranteeing or in any manner providing for the payment of the indebtedness of another, except those disclosed on the most recent financial statements of Applicant furnished to Issuer and except for endorsements for collection or deposit in the ordinary course of business.
    - (v) Applicant has good and marketable title to all of the Collateral (as hereinafter defined), subject to no lien, security interest, mortgage, encumbrance or charge of any kind except as provided herein.
5. **COVENANTS.** Applicant agrees that so long as drawing is available under any Credit, and until Issuer has been reimbursed for all drafts honored by it under any Credit, Applicant will comply in a timely manner with:
  - (a) Its obligations hereunder and under all security agreements, mortgages, deeds of trust or assignments securing the Obligations as defined in Section 8, herein; and
  - (b) The following covenants:
    - (i) Applicant shall furnish to Issuer such financial information regarding Applicant as Issuer may from time to time reasonably request and shall permit representatives of Issuer to visit and inspect the properties and books and records of Applicant at any reasonable time and as often as may reasonably be desired.
    - (ii) Applicant shall pay all lawful taxes, assessments and governmental charges upon it or against its properties prior to the date on which penalties attach, unless and to the extent only that the same shall be contested in good faith and by appropriate proceedings.
    - (iii) Applicant shall not sell, lease, transfer or otherwise dispose of all or a substantial part of its assets (other than sales made in the ordinary course of business).
    - (iv) If Applicant is a corporation, Applicant shall maintain its corporate existence and not merge or consolidate with or into any other corporation.
    - (v) If Applicant is a limited liability company or partnership, Applicant shall maintain its existence as a limited liability company or partnership and not merge or consolidate with or into any other limited liability company or partnership or corporation.

(vi) If Applicant is a partnership, Applicant shall not liquidate, terminate or dissolve.

#### 6. RESPONSIBILITY OF ISSUER.

- (a) Delivery to Issuer or any of its Correspondents ("Correspondent" shall mean a bank or other financial institution or entity with which the Issuer usually maintains an account relationship) of any documents purporting to comply with the requirements of a Credit shall be sufficient evidence of the validity, genuineness and sufficiency thereof and of the good faith and proper performance of drawers and users of a Credit, their agents and assignees, and issuer and its Correspondents may rely thereon without liability or responsibility with respect thereto, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged.
- (b) Issuer is expressly authorized and directed to honor any request for payment which is made under and in compliance with the terms and conditions of a Credit without regard to, and without any duty on Issuer's part to inquire into, the existence of any disputes or controversies between Applicant, any beneficiary of a Credit or any other person, firm or corporation or the rights, duties or liabilities of any of them.
- (c) Neither Issuer nor any Bank One Affiliate shall be liable to Applicant or any third party for:
- (i) the use which may be made of any Credit or for any act or omission of any beneficiary thereof,
  - (ii) any delay in giving or failing to give any notice,
  - (iii) any error, neglect or default of any of its Correspondents,
  - (iv) the validity, sufficiency or genuineness of any document assigning or purporting to assign a Credit or any benefits thereunder or any act in reliance thereon,
  - (v) errors in translation or in the interpretation of any of the terms and conditions of a Credit, or
  - (vi) errors, delays, misdeliveries or losses in the transmission of notices and communications by means of SWIFT, electronic mail, telex, telecopy, telefax, courier, mail or computer generated telecommunications or documents or items forwarded in connection with a Credit or any relevant draft.
- (d) Any action taken or omitted by Issuer or its Correspondents or any Bank One Affiliate in connection with a Credit, any instructions of Applicant or any drafts, documents or merchandise relative thereto shall, if in good faith, be conclusively deemed authorized by Applicant, whether expressly so or not.
- (e) If a Credit shall have been requested by Applicant for the accommodation of a third party, any instruction, consent, approval and other action or inaction of such third party with respect to a Credit or transactions thereunder shall be deemed to be the act or omission of Applicant for all purposes hereof, and Issuer shall be entitled to rely thereon.

#### 7. LIMITATION ON LIABILITY. Specifically, but without limitation, Issuer shall not be responsible to Applicant for, and Issuer's rights and remedies against Applicant shall not be impaired by:

##### (a) Action or inaction required or permitted under:

- (i) the Uniform Commercial Code, the Uniform Customs and Practices (UCP) or the International Standby Practices (ISP98), as applicable and in effect from time to time;
  - (ii) the law or published practice rules to which the Credit is subject;
  - (iii) an applicable standard practice of banks that regularly issue letters of credit;
  - (iv) an applicable order, ruling or regulation of any court, arbitrator or government agency;
  - (v) a published statement or interpretation on a matter of applicable standard bank practice; or
  - (vi) an opinion received from Issuer's legal counsel on a matter of law or from an expert engaged by Issuer on a matter of practice;
- (b) Honor of any presentation that substantially or reasonably complies with the terms and conditions of the Credit, even if the Credit requires strict or literal compliance by the beneficiary;
- (c) Honor of a non-negotiable or informal or unmarked demand or of a demand by the beneficiary presented electronically, even if the Credit requires that the beneficiary's demand be in the form of a draft and states that it is drawn under the Credit;
- (d) Honor of documents signed or presented by or on behalf of, or requesting payment to, the beneficiary's purported successor by operation of law;
- (e) Honor of a presentation without regard to any non-documentary condition(s) in the Credit;
- (f) Honor or other recognition of a presentation or other demand that later is determined to have included invalid, forged or fraudulent documents or that was otherwise affected by the fraudulent, bad faith or illegal conduct of the beneficiary or other person (excluding Issuer's employees), including payment to a person who later is determined to have forged the signature of a beneficiary, nominated bank or assignee of letter of credit proceeds;
- (g) Honor of a presentation up to the amount available under the Credit against a draft or other documents claiming amount(s) in excess of the amount available;
- (h) Reimbursement of a nominated bank that does not give value or that misrepresents the basis on which it claims reimbursement;
- (i) Dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor;
- (j) The use which may be made of the Credit or any acts or omissions of the users of the Credit;
- (k) Honor of any presentation without regard to particular conditions stipulated in the documents or superimposed thereon;
- (l) Any breach of contract between the beneficiary and Applicant or any of the parties to any underlying transaction;
- (m) The failure of any instrument to bear any reference or adequate reference to the Credit, or the failure of any draft to be endorsed by the payee or accompanied by documents at negotiation, or the failure of any negotiating bank to endorse any draft or other instrument in connection with the Credit or the failure of any person to note the amount of any draft on the reverse of the Credit or to surrender or take up the Credit or to send forward documents apart from drafts as required by the terms and conditions of the Credit (each of which provisions, if contained in the Credit itself, it is agreed may be waived by Issuer);
- (n) Any error, omission, interruption or delay in transmission or delivery of any message or advice in connection with the Credit whether transmitted by courier, mail, telex or any other telecommunication or otherwise and despite any cipher or code which may be employed.

The happening of any one or more of the contingencies referred to in the preceding paragraph shall not affect, impair or prevent the vesting of any of Issuer's rights or powers hereunder or Applicant's obligation to make reimbursement. In furtherance and extension thereof and not in limitation of the specific provisions hereinabove set forth, Applicant agrees that any action, inaction or omission by Issuer or any of Issuer's branches, affiliates (which shall also include Bank One Affiliates for all purposes of this section) and/or and/or Correspondents under or in connection with the Credit or the related drafts, documents or property, if taken in good faith, shall be binding on Applicant and shall not put Issuer or any of Issuer's branches, affiliates or Correspondents under any resulting liability to Applicant. Issuer shall not be responsible for any act, error, neglect, default, omission, insolvency or failure in the business of any of Issuer's branches, affiliates or Correspondents or for any refusal by Issuer or any of Issuer's branches, affiliates or Correspondents to pay or honor drafts drawn under the Credit because of any United States or foreign laws or regulations now or hereafter in force or for any other matter beyond Issuer's control. Applicant shall indemnify Issuer and hold Issuer harmless from any cost, loss or expense which may be incurred by Issuer if, at Applicant's request, the law of a foreign country governs the Credit.

#### 8. SECURITY INTEREST. As security for the prompt and unconditional payment of all obligations and liabilities of Applicant to Issuer and all Issuer's claims against Applicant, whether arising or incurred under this Agreement or otherwise, whether now existing or hereafter incurred, and whether now or hereafter owing to or acquired in any manner by Issuer ("Obligations"), Applicant hereby grants to Issuer a first priority security interest in Applicant's present and future rights in all of the following property:

- (a) Any and all property of Applicant in Issuer's or any Bank One Affiliate's actual or constructive possession or in transit to Issuer or any Bank One Affiliate or Issuer's Correspondents from or for Applicant, whether for collection or otherwise, and the proceeds thereof;
- (b) All deposits (general and special) and credits of Applicant with Issuer or any Bank One Affiliate (including, without limitation, any deposit made pursuant to Section 11 hereof), including items in safekeeping with Issuer's agent or bailee, and any claims by Applicant against Issuer at any time existing; and

- (c) Any additional property in which Applicant has conveyed a security interest to Issuer or which Applicant agrees to convey upon demand of Issuer (all of which, together with additions, accessions or substitutions, is hereafter collectively called the "Collateral") until such time as all the Obligations have been fully discharged.

Applicant agrees to sign and/or deliver to Issuer, upon Issuer's request, such security agreements, mortgages, deeds of trust, assignments, documents, instruments or financing statements as Issuer may require to perfect, register or record a security interest in any item of Collateral or to foreclose upon any such item and to reimburse Issuer for all costs relating thereto.

Issuer may, at its option, require Applicant to provide additional security for the Obligations, whether caused by a decline in the value of the existing Collateral or any other reason. The Obligations of Applicant are secured by all Collateral provided for under this Agreement as well as any additional security furnished to Issuer now or hereafter pursuant to any and all security agreements, mortgages and assignments executed by Applicant in favor of Issuer.

Upon the occurrence of any Event of Default, as hereinafter defined, Issuer may, upon ten calendar days prior written notice where notice is required by law, sell or in any other way collect or realize upon any part of the Collateral. Any such sale may be public or private and at any such sale Issuer may be the purchaser of the property sold. Applicant shall remain liable to Issuer for any deficiency of the net proceeds in meeting the Obligations. Applicant further agrees to reimburse Issuer for all expenses (including attorneys' fees) incurred by Issuer in selling or otherwise realizing upon or attempting to sell or realize upon any item of Collateral.

For purposes of this Section 8, the term "Issuer" shall include Issuer and any Bank One Affiliate.

9. **COMPLIANCE WITH LAWS.** Applicant agrees to comply with and represents that the underlying transaction complies with all applicable foreign and domestic laws and regulations with respect to the transaction covered by a Credit.
10. **POWER OF ATTORNEY.** Applicant irrevocably appoints Issuer its attorney in fact to execute, file, register or record, in the name of Applicant, any document or instrument of any kind or description including, without limitation thereto, assignments and endorsements, which come into the possession of Issuer under a Credit or upon instructions of Applicant, and to perform such other acts as Applicant may be required to perform hereunder, upon failure of Applicant to so act.
11. **EVENTS OF DEFAULT.** If any one or more of the following Events of Default shall occur:
- Applicant fails to comply with any of the provisions of this Agreement or of any security documents referred to in Section 8; or
  - Applicant dies, ceases to exist, becomes insolvent or is the subject of bankruptcy or insolvency proceedings; or
  - Any representation by Applicant in this Agreement or otherwise, made to induce Issuer to issue a Credit, is incorrect in any material respect when made; or
  - Applicant defaults in any other obligation owing to Issuer or to any Bank One Affiliate; or
  - Any other event occurs which causes Issuer, in good faith, to deem itself insecure; then, all of the Obligations shall, at Issuer's option and without notice or demand, mature and become immediately due and payable, with interest at the per annum rate which is three percentage points in excess of the Prime Rate as herein defined (provided such interest rate does not exceed the maximum rate of interest which may be charged under applicable law), and Issuer shall have all rights and remedies for default provided in the security documents described in Section 8, as well as applicable law. In addition to the foregoing, and not by way of limitation, upon the occurrence of an Event of Default, Issuer may require Applicant to deposit funds in an account held at any Bank One Affiliate in an amount equal to the undrawn amount of a Credit, such funds to be held as cash collateral by Issuer against future draws under any Credit.
12. **INDEMNITY.** Applicant hereby agrees to indemnify Issuer and each Bank One affiliate for any loss, cost, damage, expense (including any reasonable charges for legal services) and/or liability whatsoever which they, or any of them, may sustain or incur on account of issuance of a Credit, payment or acceptance of any draft relative thereto, refusal or failure to pay or accept any such draft, any action or inaction respecting a Credit, instructions of Applicant or an accommodated party, drafts, documents or merchandise relative to a Credit or any action or inaction in reliance on the provisions hereof, except that Applicant shall have a claim against Issuer, and Issuer shall be liable to Applicant, to the extent, but only to the extent of any direct, as opposed to consequential, damages suffered by Applicant which Applicant proves were caused by:
- Issuer's willful misconduct or gross negligence in determining whether documents presented under a Credit comply with the terms of a Credit, or
  - Issuer's willful and unlawful failure to pay under a Credit after the presentation to it by the beneficiary of a Credit of a draft and documentation strictly complying with the terms and conditions of a Credit.
- Additionally, Applicant agrees to indemnify the Issuer against all claims, obligations, and responsibilities (including attorney's fees) arising out of:
- The imposition of law or practice other than that chosen in the Credit or applicable at the place of issuance;
  - The fraud, forgery or illegal action of others; or
  - The Issuer's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation.
13. **WAIVER.** TO THE EXTENT THE PREVIOUS SECTION DOES NOT RESTRICT A PARTY'S ABILITY TO EMPLOY JUDICIAL REMEDIES, ISSUER, APPLICANT, CORRESPONDENT AND EACH GUARANTOR VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN THE PARTIES ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO A CREDIT, THIS APPLICATION AND/OR ANY DOCUMENT EVIDENCING AND/OR SECURING A CREDIT OR THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO ISSUER AGREEING TO ENTER INTO THIS AGREEMENT AND ISSUE CREDITS HEREUNDER.
14. **LIMITATION OF INTEREST AND OTHER CHARGES.** Applicant and Issuer intend to conform strictly to the applicable usury laws now or hereafter in force with respect to this Agreement. To such end:
- the aggregate of all interest and other charges constituting interest under such applicable usury laws and contracted for, chargeable or receivable under this Agreement shall never exceed the maximum amount of interest, nor produce a rate in excess of the maximum contract rate of interest, that Issuer is authorized to charge Applicant under such applicable usury laws;
  - if any excess interest is provided for, it shall be deemed a mistake, and the excess shall, at the option of Issuer, either be refunded to Applicant or credited on the unpaid principal balance of Issuer's reimbursement obligation, and this Agreement shall be automatically reformed to permit only the collection of the maximum legal contract rate and the maximum amount of interest; and
  - in determining the maximum amount of interest that Issuer may charge to Applicant, all interest shall be amortized, prorated, allocated and spread over the entire term of Applicant's reimbursement obligation (as extended, if applicable) to the full extent permitted by applicable usury laws. Reference herein to usury laws shall also include any applicable federal or state usury statutes or laws from time to time in effect to the extent the same may govern and control transactions covered hereunder.
15. **GUARANTORS.** If this Agreement contains the signature of a Guarantor, each Guarantor agrees as follows:
- Each Guarantor, jointly and severally, guarantees payment of all of Applicant's Obligations hereunder in accordance with the terms and conditions hereof.
  - Each Guarantor agrees that such Guarantor's guarantee of the Applicant's Obligations hereunder is absolute, unconditional and continuing, and no notice of the issuance of a Credit need be given to such Guarantor. Such obligations shall be unconditional irrespective of the genuineness, validity or enforceability of the Obligations of Applicant under this Agreement or, to the fullest extent permitted by applicable law, any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor.
  - Should Issuer seek to enforce the obligations of any Guarantor hereunder, each Guarantor hereby waives any requirement that Issuer first enforce any rights and remedies against Applicant, against any other Guarantor or against any Collateral which may have been given to secure the Applicant's Obligations hereunder.

- (d) Each Guarantor's obligations hereunder shall continue to be effective or be reinstated if at any time any payment or deposit by or for the account of Applicant is rescinded or must otherwise be returned by Issuer, including, without limitation, upon the insolvency, bankruptcy or reorganization of Applicant, as if such payment or deposit had not been made.
- (e) Each Guarantor authorizes Issuer and any Correspondent, or either of them, without notice to such Guarantor and without affecting such Guarantor's liability hereunder, to rearrange, extend, amend, waive defaults in, compromise or release the Obligations of Applicant, any other Guarantor or any other person (other than such Guarantor), including extensions, amendments, increases or reductions in any Credit; provided, however, without the written consent of such Guarantor, no action referred to above shall have the effect of increasing the amount of Guarantor's obligations hereunder.
16. **CORRESPONDENTS.** By signing this Agreement, Correspondent may request that Issuer issue a Credit on its behalf. If Issuer complies with such request by opening a Credit, Correspondent shall be subject to the terms of this Agreement and Correspondent and Applicant shall be jointly and severally liable to Issuer for all of Applicant's Obligations hereunder in accordance with the terms and conditions hereof. Without limitation on the foregoing, Correspondent authorizes Issuer to debit Correspondent's account shown below or any other accounts Correspondent may have with Issuer or any Bank One Affiliate, for any and all amounts for which Issuer is or may become liable under this Agreement or a Credit, together with Issuer's commissions, charges and expenses hereunder. Applicant hereby agrees that in the event Correspondent satisfies all obligations to Issuer under this Agreement, Correspondent shall have rights, remedies, security interests and other liens as are provided herein to Issuer to the same effect.
17. **NONWAIVER.** Issuer shall have no duty to exercise any rights hereunder or otherwise with respect to any documents or instruments relative to a Credit and shall not be liable for any failure or delay in doing so. Issuer shall not be deemed to have waived any of its rights hereunder unless Issuer shall have signed such waiver in writing.
18. **NOTICES AND COMMUNICATIONS.** Any notice or demand to either party given by the other party shall be deemed to have been delivered when deposited in the mail or transmitted by a telegraph, telex or facsimile to the last address of such party which has previously been furnished to such other party. Applicant acknowledges and agrees that, at the discretion of Issuer, Issuer may accept and/or transmit notices and communications under the Application and this Agreement (including issuance of a Credit) by means of SWIFT, electronic mail, telex, telecopy, telefax, courier, mail or computer generated telecommunications.
19. **MISCELLANEOUS.**
- (a) If this Agreement is signed by more than one party, "Applicant" shall be deemed to refer to all of the undersigned, all Obligations of Applicant hereunder shall be joint and several and the liabilities of each shall be absolute and unconditional, regardless of the liability of any other party hereto.
- (b) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS.** Except as otherwise expressly provided herein or in a Credit, Issuer may rely for interpretation of a Credit or instructions or documents related thereto or issued under or in purported compliance with the above, on the Uniform Customs and Practice for Documentary Credits, ICC Publication No. 500 or the International Standby Practices 1998, whichever is stated as the governing rules in the letter of credit.
- (c) The invalidity or unenforceability of any provision or portion of this Agreement or any instrument, document or agreement executed or made pursuant to or by virtue of this Agreement, shall not affect the validity or enforceability of any other provision or portion.
- (d) This Agreement may only be amended upon the written consent of all the parties hereto, except that it may be extended by any Issuer in the event of change of Issuer's name, Credit number, place of notice, presentation or drawing or other similar change at such Issuer's reasonable discretion.
- (e) Except as otherwise specifically set forth herein, this Agreement confers no right or benefit upon any person other than the parties to this Agreement and their respective successors and assigns.
- (f) Applicant agrees that in the event of any extension of the maturity or time for presentation of drafts, acceptances or documents, or any other modification of the terms of a Credit, or in the event of any increase in the amount of a Credit, this Agreement shall be binding upon Applicant with regard to a Credit so increased or otherwise modified, to drafts, documents and property covered thereby, and to any action taken by Issuer or any of its Correspondents in accordance with such extension, increase or other modification.
20. **DURATION AND EFFECT OF AGREEMENT.** This Agreement shall remain in full force and effect until such time as Applicant has discharged in full its Obligations hereunder. Notwithstanding the foregoing sentence, if a Credit is issued in favor of a sovereign or commercial entity which is to issue a guarantee or undertaking on Applicant's behalf in connection therewith, the Applicant shall remain liable on a Credit until Issuer is fully released in writing by such entity. This Agreement shall be binding upon Applicant, its personal representatives, successors and assigns and shall inure to the benefit of each Issuer, its successors and assigns. Issuer may grant participations in this Agreement and a Credit issued hereunder to one or more financial institutions. Applicant and/or Guarantor information may be transmitted to the participant.
21. **APPLICATIONS.** Applicant is authorized to present Applications for individual credits under this Agreement in writing or by means of SWIFT, electronic mail, telex, telecopy, telefax, courier, mail or computer generated telecommunications. If the Application is transmitted electronically, the terms and conditions of such Application shall be presented to the Issuer in a format acceptable to the Issuer, and Applicant shall follow such authentication procedures as reasonably established by Issuer, which may include the use of an encoded digital signature to be agreed upon in advance with Issuer. Any Application presented to the Issuer by electronic means (which may or may not include a digital signature) will have the same legal effect as an Application in writing and will be binding upon and enforceable against the Applicant.
22. **EFFECT OF OTHER AGREEMENT.** If Applicant is a party to another financial, credit or security agreement with any Issuer, and such other financial, credit or security agreement provides for the issuance of standby letters of credit on behalf of Applicant, then the provisions of such other financial, credit or security agreement as they relate to letters of credit and as they relate to the Collateral shall prevail over any inconsistent provisions of this Agreement.
23. **ELECTRONIC TRANSMISSIONS.** In the absence of written instructions to the contrary, Issuer is authorized to accept and process the Application and any amendments, transfers, assignments of proceeds and all documents relating to the Credit or the Application which are sent to Issuer by electronic transmission. Issuer may, but shall not be obligated to, require authentication of such electronic transmission or that Issuer receives original documents prior to acting on such electronic transmission. If it is a condition of the Credit that payment may be made upon receipt by Issuer of an electronic transmission advising negotiation, Applicant hereby agrees to reimburse Issuer on demand for the amount indicated in such electronic transmission advice, and further agrees to hold Issuer harmless if the documents fail to arrive, or if, upon the arrival of the documents, Issuer should determine that the documents do not comply with the terms and conditions of the Credit.
24. **TRANSFERS.** If, at Applicant's special request, the Credit is issued in transferable form, it is understood and agreed that Issuer is under no duty to determine the proper identity of anyone appearing in the transfer request or in the draft or documents as transferee, nor shall Issuer be charged with responsibility of any nature or character for the validity or correctness of any transfer or successive transfers; and payment by Issuer to any purported transferee(s) as determined by Issuer is hereby authorized and approved. Applicant further agrees to hold Issuer harmless and indemnified against any liability or claim in connection with or arising out of the foregoing.
25. **WAIVER OF DISCREPANCIES AND BINDING TERMS ON ISSUER'S DECISIONS.** Applicant agrees that Issuer's decision, in accordance with standard banking practice, whether the documents presented appear on their face to comply with the terms and conditions of the Credit shall be conclusive and binding on Applicant. If Issuer determines that any draft or document does not appear to comply with the terms and conditions of the Credit, Issuer using its sole judgement may approach Applicant for a waiver of the discrepancy(ies), but shall not be obligated to do so. If Issuer determines that a presentation appears to comply with the terms and conditions of the Credit, Issuer is authorized to pay the amount thereof regardless of receipt of notice from Applicant or another person that any required document is forged or materially fraudulent.

26. MISCELLANEOUS - OTHER

IF THE CREDIT IS ISSUED SUBJECT TO UCP 500, UNLESS OTHERWISE AGREED, (a) IN THE EVENT THAT ANY INSTALLMENT OF THE CREDIT IS NOT DRAWN WITHIN THE PERIOD ALLOWED FOR THAT INSTALLMENT, THE CREDIT WILL CONTINUE TO BE AVAILABLE FOR ANY SUBSEQUENT INSTALLMENTS NOTWITHSTANDING UCP ARTICLE 41; AND (b) ISSUER MAY PROCESS AND ACCEPT ANY TRANSPORT DOCUMENT NOTWITHSTANDING THE REQUIREMENTS OF UCP ARTICLE 43.

IF THE CREDIT PROVIDES FOR AUTOMATIC RENEWAL WITHOUT AMENDMENT, APPLICANT AGREES THAT IT WILL NOTIFY ISSUER IN WRITING AT LEAST SIXTY (60) DAYS PRIOR TO THE LAST DAY SPECIFIED IN THE CREDIT BY WHICH ISSUER MUST GIVE NOTICE OF NON-RENEWAL AS TO WHETHER OR NOT IT WISHES THE CREDIT TO BE RENEWED. ANY DECISION TO RENEW OR NOT RENEW THE CREDIT SHALL BE IN ISSUER'S SOLE DISCRETION AND JUDGMENT. APPLICANT HEREBY ACKNOWLEDGES THAT IN THE EVENT ISSUER NOTIFIES THE BENEFICIARY OF THE CREDIT THAT IT HAS ELECTED NOT TO RENEW THE CREDIT AND THE BENEFICIARY DRAWS ON THE CREDIT AFTER RECEIVING THE NOTICE OF NON-RENEWAL, THE APPLICANT ACKNOWLEDGES AND AGREES THAT APPLICANT SHALL HAVE NO CLAIM OR CAUSE OF ACTION AGAINST ISSUER OR DEFENSE AGAINST PAYMENT UNDER THE AGREEMENT FOR ISSUER'S DISCRETIONARY DECISION TO RENEW OR NOT RENEW THE CREDIT.

EXCEPT AS PROVIDED FOR HEREIN, THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO ITS SUBJECT MATTER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IF TWO OR MORE PARTIES SIGN THIS AGREEMENT, IT SHALL CONSTITUTE THE JOINT AND SEVERAL AGREEMENTS OF SUCH PARTIES.

<p><b>APPLICANT:</b></p> <p>PRINTED NAME OF APPLICANT: <u>M.B.S.C. LLC</u></p> <p><i>M.B.S.C. LLC</i> By: <i>Michael King</i> its manager By: <i>P. L. King</i> its President AUTHORIZED SIGNATURE / TITLE / DATE</p> <p>BY: _____ AUTHORIZED SIGNATURE / TITLE / DATE</p> <p>PHONE NUMBER: <u>801-484-6988</u></p> <p>FAX NUMBER: <u>801-487-3971</u></p> <p>BILLING CONTACT <u>RACHEL YOUNG</u> (IF DIFFERENT FROM ABOVE):</p> <p>PHONE NUMBER: <u>801-484-6988</u></p> <p>FAX NUMBER: <u>801-487-3971</u></p> <p>BILLING ADDRESS: <u>3212 SOUTH STATE STREET, SALT LAKE CITY, UTAH 84105</u></p>	<p><b>GUARANTOR OR CORRESPONDENT BANK:</b></p> <p>NAME(S): <u>None</u></p> <p>ADDRESS(ES): _____</p> <p>BY: _____ AUTHORIZED SIGNATURE / TITLE / DATE</p> <p>BY: _____ AUTHORIZED SIGNATURE / TITLE / DATE</p> <p>PHONE NUMBER: _____</p> <p>FAX NUMBER: _____</p>
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Revised 08/02

**ADDENDUM TO APPLICATION AND AGREEMENT FOR  
IRREVOCABLE STANDBY LETTER OF CREDIT**

This Addendum To Application and Agreement For Irrevocable Standby Letter Of Credit ("Addendum") is made and entered into this 18th day of Dec, 2002, and is apart of that certain Application and Agreement For Irrevocable Standby Letter Of Credit ("Agreement") of even date herewith, executed by Bank One, NA ("Issuer") and M.B.S.C., L.L.C., a Utah limited liability company ("Applicant").

In addition to the terms and conditions set forth in the Agreement, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the following paragraphs are added to the Agreement as if more fully set forth therein:

27. **Debt Service Coverage Ratio.** Permit, as of the end of each fiscal year, its ratio of (a) the net income plus depreciation, amortization and interest expense of the real property encumbered by the Deed of Trust for each twelve (12) month period ending 12/31 to (b) \$284,858,00, of not less than 1.25 to 1.00.

28. **Financial Statements.** Within one hundred and twenty (120) days after and as of the end of each fiscal year of M.B.S.C., L.L.C., a detailed financial statement of M.B.S.C., L.L.C., including a balance sheet and statements of income, cash flow and retained earnings, such financial statements, to be prepared internally and being in a form reasonably acceptable to the Bank

29. **Tax Returns.** Within thirty (30) days after timely filing, a dated and signed copy of the annual tax return(s), with all schedules and exhibits attached thereto, of M.B.S.C., L.L.C.

30. **Rent Rolls.** Within one hundred and twenty (120) days after the end of each year, M.B.S.C., L.L.C. shall provide to Lender a complete rent roll including income and expense information as of the end of the preceding twelve (12) month period, in each case in such form and containing such information as Lender may require.

Applicant:

M.B.S.C., L.L.C., a Utah limited liability company

By: meadow springs Inc. its manager

By: P. R. Kingston its President

Name: P. R. Kingston President Meadow Springs Inc its manager

Title: its Manager

Issuer:

BANK ONE, NA, a national banking association

By: Jennifer S. Christopoulos

Name: Jennifer S. Christopoulos

Title: Assistant Vice President

Bank One, Arizona, NA  
International Trade S  
AZI-1246  
PO Box 29529  
Phoenix AZ 85038 9529  
201 N Central Ave. 11th Floor  
Phoenix AZ 85004

SWIFT BOAZ US 55  
TELEX 873 4869



IRREVOCABLE STANDBY LETTER OF CREDIT NO.

ISSUED IN PHOENIX, ARIZONA on 03 DEC 1997

**BENEFICIARY:**

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING  
1594 WEST NORTH TEMPLE, SUITE 1210  
SALT LAKE CITY, UT 84114

**APPLICANT:**

HIAWATHA COAL COMPANY, INC.  
3212 SO. STATE ST.  
SALT LAKE CITY, UT

AMOUNT: USD \*\*\*2,838,000.00  
TWO MILLION EIGHT HUNDRED THIRTY  
EIGHT THOUSAND AND 00/100 UNITED  
STATES DOLLARS

**DATE AND PLACE OF EXPIRY:**

04 DEC 1998  
OUR COUNTERS

**CREDIT AVAILABLE WITH:**

BANK ONE, ARIZONA, NA  
PHOENIX, ARIZONA

BY: PAYMENT

**AVAILABLE BY DRAFTS AT SIGHT DRAWN ON:**

BANK ONE, ARIZONA, NA  
PHOENIX, ARIZONA

PERMIT NO. ACT-007-011

DRAFTS SUBMITTED MUST BE ACCOMPANIED BY THE FOLLOWING:  
BENEFICIARY'S SIGNED STATEMENT STATING THAT:

"PURSUANT TO R645-301-880,900, HIAWATHA COAL COMPANY, INC. IS IN VIOLATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT, THE REGULATORY PROGRAM, THE PERMIT AND THE RECLAMATION PLAN."

**OTHER OR SPECIAL CONDITIONS:**

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT, FOR ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO ANY SUCH DATE WE NOTIFY YOU IN WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

UPON RECEIPT BY YOU OF SUCH NOTICE, YOU MAY DRAW ON US AT SIGHT



Bank One, Arizona, NA  
 International Trade Services  
 AZI-1246  
 PO Box 29529  
 Phoenix AZ 85038 9529  
 201 N Central Ave, 11th Floor  
 Phoenix AZ 85004

SWIFT BOAZ US 35  
 TELEX 673 4369

**BANK ONE**

L/C #:  
 PAGE 2

FOR THE THEN AMOUNT OF THIS LETTER OF CREDIT BY PRESENTATION OF YOUR DRAFT, THE ORIGINAL OF THIS LETTER OF CREDIT AND AMENDMENTS, IF ANY, AND YOUR STATEMENT SIGNED BY A BOND APPROVING OFFICER INDICATING NAME AND TITLE STATING THAT: "THE AMOUNT BEING DRAWN UNDER THIS LETTER OF CREDIT REPRESENTS FUNDS DUE US BECAUSE HIAWATHA COAL COMPANY, INC. HAS FAILED TO REPLACE THIS LETTER OF CREDIT BY OTHER SUITABLE BOND PURSUANT TO R645-301-860.222 AND R645-301-870."

DRAFTS DRAWN UNDER THIS CREDIT MUST BE ENDORSED AND CONTAIN THE CLAUSE: "DRAWN UNDER THE BANK ONE, ARIZONA, NA, LETTER OF CREDIT NO. S005519 DATED DECEMBER 3, 1997."

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED ON PRESENTATION TO US ON OR BEFORE DECEMBER 4, 1998, UNLESS AUTOMATICALLY EXTENDED AS ABOVE STATED AT BANK ONE, ARIZONA, NA, INTERNATIONAL TRADE SERVICES DIVISION, 241 N. CENTRAL AVENUE; PHOENIX, ARIZONA 85004, TOGETHER WITH THIS LETTER OF CREDIT.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500.

*Jany Lee Tellez*  
 AUTHORIZED SIGNATURE (S)

*McKee*