

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.

Page: 1 Document Name: unt led

{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 REFRESHED: 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

Date: 11/9/2006 Time: 7:56:56 AM

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.

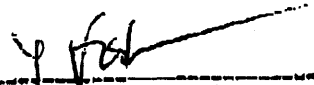
This amendment is an integral part of the original credit.
All other terms and conditions of the letter of credit including
previous amendments remain unchanged.

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

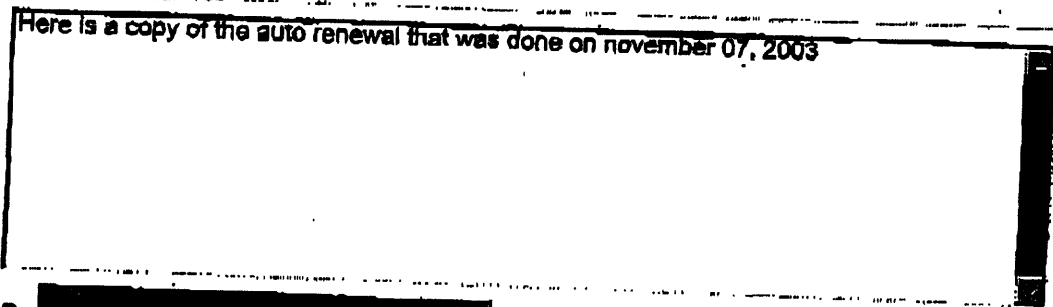
Return to Previous Page

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. ST120510PLACE 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

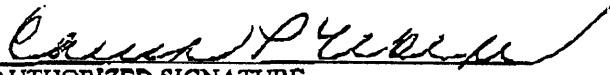
SPECIAL CONDITIONS:

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 ____

Revised 08/02

(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