



ENTERED  
02/25/2019

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	Chapter 11
WESTMORELAND COAL COMPANY, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-35672 (DRJ)
Debtors.	)	(Jointly Administered)

**STIPULATION AND AGREED ORDER AMONG  
(A) WESTMORELAND COAL COMPANY AND CERTAIN OF ITS  
SUBSIDIARIES, (B) CIBC BANK USA, AND (C) WILMINGTON  
SAVINGS FUND SOCIETY, FSB MODIFYING FINAL DIP ORDER**

(Docket No. 1408)

Westmoreland Coal Company and certain of its affiliates, as debtors and debtors-in-possession in the above-captioned cases (collectively, the “WLB Debtors”),<sup>2</sup> CIBC Bank USA (“CIBC”), and Wilmington Savings Fund Society, FSB, as the DIP Facility Agent<sup>3</sup> hereby stipulate and agree to the following terms and conditions (the “Stipulation and Agreed Order”):

WHEREAS, on November 15, 2018, the Court entered the Final DIP Order;

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<sup>1</sup> Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent in these chapter 11 cases at [www.donlinrecano.com/westmoreland](http://www.donlinrecano.com/westmoreland). Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

<sup>2</sup> The term “WLB Debtors” does not include Westmoreland Resources, GP, LLC, Westmoreland Resource Partners, LP, or their subsidiaries (collectively, the “WMLP Debtors”).

<sup>3</sup> Terms used but not otherwise defined herein have the meanings ascribed to them in the *Final Order (I) Authorizing Westmoreland Coal Company and Certain of Its Affiliates to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* [Docket No. 520] (the “Final DIP Order”).

WHEREAS, paragraph 48 of the Final DIP Order sets forth the terms and conditions pursuant to which the DIP Lenders have agreed to permit the WLB Debtors to utilize certain letters of credit provided by CIBC; and

WHEREAS, the WLB Debtors, CIBC, and the DIP Facility Agent have agreed to modify the terms of paragraph 48 of the Final DIP Order on the terms set forth herein.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE COURT OF THIS STIPULATION, IT IS SO ORDERED AS FOLLOWS:

1. The recitals above are incorporated here by reference.
2. Paragraph 48 of the Final DIP Order is replaced in its entirety with the following:

CIBC Letter of Credit Agreements. CIBC Bank USA (formerly known as The Private Bank) (“CIBC”) maintains the following Letters of Credit pursuant to a certain Master Letter Credit Agreement dated as of March 26, 2015 (“2015 Master LC Agreement”) between CIBC and the Debtors: (a) Zurich American Insurance Company as Beneficiary, Expiry Date June 15, 2019 in the amount of US \$500,000, LC Number 71242-145943 dated October 6, 2016, with Westmoreland Coal Company as Applicant; (b) Travelers Casualty and Surety Company of America as Beneficiary in the amount of US \$1,880,000, LC No. 39174-81294 dated June 10, 2014 with Western Energy as Applicant; and (c) Canadian National Railway Company as Beneficiary, Expiry Dated June 15, 2019, in the amount of CAD \$1,100,000, LC Number 71242-183588 dated December 10, 2018, with Prairie Mines & Royalty ULC, as Applicant; and the following Letters of Credit pursuant to a certain Amended and Restated Master Letter Credit Agreement dated as of

February [●], 2019 (“2019 Master LC Agreement”) between CIBC and the Debtors: (a) Ridley Terminals Inc., as Beneficiary, Expiry Date June 10, 2019, in the amount of CAD \$4,000,000, LC Number [●] dated February [●], 2019, with Prairie Mines & Royalty ULC as Applicant (the Letters of Credit under 2015 Master LC Agreement and 2019 Master LC Agreement, collectively, the “CIBC Letters of Credit”) (the 2015 Master LC Agreement, the 2019 Master LC Agreement, and CIBC Letters of Credit and other related agreements, collectively, with all amendments and extensions thereof, the “Letter of Credit Agreements”) and maintains cash collateral of 105% of the face amount of the CIBC Letters of Credit as security therefor in the amount of USD \$6,600,000 (“CIBC Collateral”). The Letter of Credit Agreements and CIBC Collateral shall continue to be maintained in accordance with the terms thereof, and CIBC shall be authorized to continue to charge such letter of credit fees and other expenses in accordance with the terms of such Letter of Credit Agreements.

3. A copy of the 2019 Master LC Agreement is attached hereto **Exhibit A**.

4. Except as otherwise expressly set forth herein, nothing in this Stipulation and Agreed Order is intended, or shall be construed, to modify the terms of the Final DIP Order or alter the respective rights and obligations of the parties thereunder, which shall remain in full force and effect.

5. This Stipulation and Agreed Order has been reviewed and agreed to by the WLB Debtors, CIBC, and the DIP Facility Agent and their respective counsel.

6. The Court shall retain jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Stipulation and Agreed Order.

7. Subject to Court approval, each Party represents that it possesses full power and authority to execute, deliver, and perform their respective obligations under this Stipulation and Agreed Order, and that each person executing this Stipulation and Agreed Order on its behalf is duly authorized to execute and deliver this Stipulation and Agreed Order.

8. This Stipulation and Agreed Order may be executed in identical counterparts, including by email, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

9. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of this Stipulation.

THE FOREGOING STIPULATION IS HEREBY APPROVED AND SO ORDERED.

**Signed: February 25, 2019.**

  
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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE

AGREED AS TO FORM AND CONTENT

Houston, Texas  
February 19, 2019

*/s/ Patricia B. Tomasco*

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*/s/ Geoffrey J. Lewis*

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*/s/ Andrew N. Goldman*

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*Counsel to DIP Facility Agent*

**Exhibit A**

**2019 Master LC Agreement**



## AMENDED AND RESTATED MASTER LETTER OF CREDIT AGREEMENT

*Dated as of February \_\_, 2019*

THIS AMENDED AND RESTATED MASTER LETTER OF CREDIT AGREEMENT (this "Agreement") is issued by the undersigned applicant (collectively, the "Applicant") in favor of CIBC Bank USA, f/k/a The PrivateBank and Trust Company (together with its affiliates as set forth in Section 11.8, the "Bank").

The Applicant may from time to time request that the Bank issue letters of credit for the account of the Applicant. The Applicant agrees that, except as provided below, any such letter of credit shall be subject to the terms and provisions of this Agreement, and the Applicant further agrees with and for the benefit of the Bank as follows:

**SECTION 1 CERTAIN DEFINITIONS.** When used herein the following terms shall have the following meanings (such definitions to be applicable to both the singular and plural forms of such terms); provided that terms not otherwise defined herein shall have the meanings set forth in the UCC:

**Application** means, at any time, an application (which shall be in writing, including by facsimile, or made by electronic transmission) for a letter of credit to be issued by the Bank, specifying (a) the requested issuance date, the amount, the beneficiary and the expiration date of such letter of credit, (b) the documentary requirements for drawing thereunder and (c) such other information as the Bank may reasonably request.

**Business Day** means any day on which the Bank is open for commercial banking business at its principal office in Chicago, Illinois.

**Event of Default** means any of the events described in Section 9.1.

**Item** means any draft, order, instrument, demand or other document drawn or presented, or to be drawn or presented, under any Letter of Credit.

**ISP** means at any time the most recent International Standby Practices issued by the Institute for International Banking Law & Practice, Inc.

**Letter of Credit** means (i) each letter of credit set forth on Schedule I attached hereto and (ii) any other letter of credit issued (including any letter of credit issued prior to the date hereof) by the Bank for the account of the Applicant (including any letter of credit issued jointly for the account of the Applicant and any other Person), in each case as amended or otherwise modified from time to time, but excluding any letter of credit that is issued pursuant to an Application which expressly provides that such letter of credit is not issued pursuant to this Agreement. A letter of credit issued by the Bank pursuant to an Application from the Applicant (either individually or together with any other Person) shall be a Letter of Credit hereunder even if another Person is named as the "Applicant" or "Account Party" in such letter of credit. Further, for all purposes of this Agreement, a Letter of Credit shall include any letter of credit issued by a third party bank at the request of the Bank, which letter of credit otherwise complies with the terms of the Application

submitted by or on behalf of the Applicant, and all obligations and liabilities of the Bank in connection therewith shall be deemed to be Liabilities of the Applicant to Bank under this Agreement.

**Liabilities** means all obligations of the Applicant to the Bank and its successors and assigns, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing or due or to become due, arising out of or in connection with this Agreement, any Letter of Credit, any Application, or any instrument or document delivered in connection herewith or therewith.

**Person** means any natural person, corporation, partnership, trust, limited liability company, association, governmental authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

**Prime Rate** means the rate per annum established by the Bank from time to time as its “Prime Rate” for commercial customers. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer.

**UCC** means at any time the Uniform Commercial Code as then in effect in the State of Illinois.

**UCP** means at any time the most recent Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce.

**Unmatured Event of Default** means any event which if it continues uncured will, with lapse of time or notice or both, constitute an Event of Default.

## **SECTION 2 LETTER OF CREDIT PROCEDURES.**

2.1 **Issuance of Letters of Credit**. Subject to the terms and conditions of this Agreement, the Bank may from time to time, in its sole and complete discretion, issue Letters of Credit for the account of the Applicant; provided (i) that the terms and provisions of each Letter of Credit and the Application therefor shall be satisfactory to the Bank in its discretion and (ii) the Applicant shall deliver and pledge to the Bank cash collateral equal to at least one hundred five percent (105%) of the United States dollar equivalent of each Letter of Credit issued by the Bank in favor of the Applicant (the “Cash Collateral”).

2.2 **Applications**. Not later than three Business Days prior to the date of the proposed issuance of a Letter of Credit (or such later date as the Bank shall agree), the Applicant shall deliver an Application for such Letter of Credit to the Bank. An Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the Bank, by personal delivery or by any other means acceptable to the Bank.

### 2.3 **Form of Letters of Credit**.

- (a) The Applicant authorizes the Bank to set forth the terms of each Application in the Letter of Credit corresponding to such Application (and in any amendment thereto) in such language as the Bank deems appropriate, with such variations from such

terms as the Bank may in its discretion determine to be necessary (which determination shall be conclusive) and not materially inconsistent with such Application. The Bank may, but shall not be obligated to, request the Applicant to review the form of a Letter of Credit prior to issuance thereof, in which case the Applicant shall be deemed to have approved the form of such Letter of Credit. With respect to any other Letter of Credit, the Applicant agrees that such Letter of Credit shall be conclusively presumed to be in proper form unless the Applicant notifies the Bank in writing of any inconsistency in such Letter of Credit within three Business Days of its issuance. Upon receipt of timely notice of any discrepancy in any Letter of Credit, the Bank will endeavor to obtain the consent of the beneficiary and any confirming bank for an appropriate modification to such Letter of Credit; provided that the Bank shall have no liability or responsibility for its failure to obtain such consent.

- (b) The Applicant accepts the risk that a Letter of Credit will be interpreted or applied other than as intended by the Applicant to the extent such Letter of Credit (i) permits presentation at a place other than the place of issuance, (ii) permits application of laws other than the governing law of this Agreement as set forth in Section 11.5 of this Agreement, (iii) requires termination or reduction against a presentation made by the Applicant rather than the beneficiary or (iv) fails to incorporate, or permits the application of rules and practices other than, established letter of credit practices and rules.

2.4 **Representations and Warranties.** The delivery of each Application shall automatically constitute a representation and warranty by the Applicant to the Bank to the effect that on the requested date of issuance of such Letter of Credit,

- (a) the representations and warranties of the Applicant set forth in Section 4 of this Agreement shall be true and correct as of such requested date as though made on such requested date of issuance and
- (b) no Event of Default or Unmatured Event of Default shall have then occurred and be continuing or will result from such issuance.

### **SECTION 3 REIMBURSEMENT OBLIGATIONS; RESPONSIBILITIES, ETC.**

3.1 **Reimbursement Obligations.** The Applicant hereby agrees to reimburse the Bank forthwith upon demand in an amount equal to any payment or disbursement made by the Bank under any Letter of Credit or any time draft issued pursuant thereto, together with interest on the amount so paid or disbursed by the Bank from and including the date of payment or disbursement to but not including the date the Bank is reimbursed by the Applicant at a rate equal to the Prime Rate from time to time in effect plus 2% per annum (or, if less, the maximum rate permitted by applicable law). Upon any failure to reimburse the Bank for any payment or disbursement made by the Bank under any Letter of Credit within one (1) Business Day of demand, the Bank may utilize the Cash Collateral to satisfy such outstanding Liability. The obligation of the Applicant to reimburse the Bank under this Section 3 for payments and disbursements made by the Bank

under any Letter of Credit or any time draft issued pursuant thereto shall be absolute and unconditional under any and all circumstances, including, without limitation, the following:

- (a) any failure of any Item presented under such Letter of Credit to comply strictly with the terms of such Letter of Credit;
- (b) the legality, validity, regularity or enforceability of such Letter of Credit or of any Item presented thereunder;
- (c) any defense based on the identity of the transferee of such Letter of Credit or the sufficiency of the transfer if such Letter of Credit is transferable;
- (d) the existence of any claim, set-off, defense or other right that the Applicant may have at any time against any beneficiary or transferee of such Letter of Credit, the Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or any unrelated transaction;
- (e) any Item presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
- (f) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;
- (g) waiver by the Bank of any requirement that exists for the Bank's protection and not the protection of the Applicant or any waiver by the Bank which does not in fact materially prejudice the Applicant;
- (h) any payment made by the Bank in respect of an Item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if payment after such date is authorized by the ISP, the UCC or the UCP, as applicable; or
- (i) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing;

provided that the Applicant shall not be obligated to reimburse the Bank for any wrongful payment or disbursement made by the Bank under any Letter of Credit as a result of any act or omission constituting gross negligence or willful misconduct on the part of the Bank.

### 3.2 **Discrepancies.**

- (a) The Applicant agrees that it will promptly examine any and all instruments and documents delivered to it from time to time in connection with any Letter of Credit, and if the Applicant has any claim of non-compliance with its instructions or of discrepancies or other irregularity, the Applicant will immediately (and, in any event, within three Business Days) notify the Bank thereof in writing, and the Applicant shall be deemed to have waived any claim against the Bank unless such

notice is given within such time period. Without limiting the foregoing, if the Bank makes any payment or disbursement under a Letter of Credit and the Applicant does not send a notice to the Bank within three Business Days objecting to such payment or disbursement and specifying in reasonable detail the discrepancy or irregularity which is the basis for such objection, then the Applicant shall be precluded from making any objection to the Bank's honor of the presentation with respect to which such payment or disbursement was made (but shall not be precluded from asserting any objection to any different presentation under the same or a different Letter of Credit).

- (b) The Applicant's acceptance or retention of any documents presented under or in connection with a Letter of Credit (including originals or copies of documents sent directly to the Applicant) or of any property for which payment is supported by a Letter of Credit shall ratify the Bank's honor of the documents and absolutely preclude the Applicant from raising a defense or claim with respect to the Bank's honor of the relevant presentation.

3.3 **Documents**. Unless specified to the contrary in the relevant Application, the Applicant agrees that the Bank and its correspondents:

- (a) may accept as complying with the applicable Letter of Credit any Item drawn, issued or presented under such Letter of Credit which is issued or purportedly issued by an agent, executor, trustee in bankruptcy, receiver or other representative of the party identified in such Letter of Credit as the party permitted to draw, issue or present such Item; and
- (b) may in its or their discretion, but shall not be obligated to, accept or honor (i) any Item which substantially complies with the terms of the applicable Letter of Credit; (ii) any Item which substantially complies under the laws, rules, regulations and general banking or trade customs and usages of the place of presentation, negotiation or payment; (iii) drafts which fail to bear any or adequate reference to the applicable Letter of Credit; (iv) any Item presented to the Bank after the stated expiration date of a Letter of Credit but within any applicable time period during which such Letter of Credit may be honored in accordance with the UCP, the UCC and/or the ISP, as applicable (and, in any event, any Item presented to the Bank on the Business Day immediately following the stated expiration date of any Letter of Credit, if such stated expiration date falls on a day which is not a Business Day); or (v) any Item which substantially complies with the requirements of the UCP, the UCC and/or the ISP, as applicable. In determining whether to pay under any Letter of Credit, the Bank shall have no obligation to the Applicant or any other Person except to confirm that the Items required to be delivered under such Letter of Credit appear to have been delivered and appear on their face to substantially comply with the requirements of such Letter of Credit. For purposes of the foregoing, an Item "substantially complies" unless there are discrepancies in the presentation which appear to be substantial and which reflect corresponding defects in the beneficiary's performance in the underlying transaction. A discrepancy is not substantial if it is unrelated or immaterial to the nature or amount of the Applicant's loss. For

example, documents honored by the Bank that do not comply with the timing requirements of the Letter of Credit for presenting or dating any required beneficiary statement nonetheless substantially comply if those timing requirements are not material in determining whether the underlying agreement has been substantially performed or violated.

3.4 **Exculpation.** In addition to the exculpatory provisions contained in the UCP, the UCC and/or the ISP, as applicable, the Bank and its correspondents shall not be responsible for, and the Applicant's obligation to reimburse the Bank shall not be affected by,

- (a) compliance with any law, custom or regulation in effect in the country of issuance, presentation, negotiation or payment of any Letter of Credit,
- (b) any refusal by the Bank to honor any Item because of an applicable law, regulation or ruling of any governmental agency, whether now or hereafter in effect,
- (c) any action or inaction required or permitted under the UCC, the UCP, the ISP or the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, in each case as applicable, or
- (d) any act or the failure to act of any agent or correspondent of the Bank, including, without limitation, failure of any such agent or correspondent to pay any Item because of any law, decree, regulation, ruling or interpretation of any governmental agency.

3.5 **Risks.** The Applicant assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit (it being understood that such assumption is not intended to, and shall not, preclude the Applicant from pursuing any right or remedy it may have against any such beneficiary or transferee). The Applicant further agrees that any action or omission by the Bank under or in connection with any Letter of Credit or any related Item, document or property shall, unless in breach of good faith, be binding on the Applicant and shall not put the Bank under any resulting liability to the Applicant. Without limiting the foregoing, the Applicant agrees that in no event shall the Bank be liable for incidental, consequential, punitive, exemplary or special damages.

3.6 **Limitation on Bank's Obligations.** Without limiting any other provision herein, the Bank is expressly authorized and directed to honor any request for payment which is made under and in compliance with the terms of any Letter of Credit without regard to, and without any duty on the part of the Bank to inquire into, the existence of any dispute or controversy between any of the Applicant, the beneficiary of any Letter of Credit or any other Person, or the respective rights, duties or liabilities of any of them, or whether any facts represented in any Item presented under a Letter of Credit are true or correct. Furthermore, the Applicant agrees that the Bank's obligation to the Applicant shall be limited to honoring requests for payment made under and in compliance with the terms of any Letter of Credit, and the Bank's obligation remains so limited even if the Bank has prepared or assisted in the preparation of the wording of any Letter of Credit or any Item required to be presented thereunder and even if the Bank is otherwise aware of the underlying transaction giving rise to any Letter of Credit.



3.7 **Automatic Renewal/Extension of Letters of Credit.** IF ANY LETTER OF CREDIT CONTAINS ANY PROVISION FOR AUTOMATIC RENEWAL/EXTENSION, THE APPLICANT ACKNOWLEDGES AND AGREES THAT THE BANK IS UNDER NO OBLIGATION TO ALLOW SUCH RENEWAL/EXTENSION TO OCCUR AND ANY SUCH RENEWAL/EXTENSION SHALL REMAIN WITHIN THE SOLE AND ABSOLUTE DISCRETION OF THE BANK. THE APPLICANT IRREVOCABLY CONSENTS TO THE AUTOMATIC RENEWAL/EXTENSION OF EACH SUCH LETTER OF CREDIT IN ACCORDANCE WITH ITS TERMS IF THE BANK ALLOWS SUCH RENEWAL/EXTENSION TO OCCUR; PROVIDED THAT THE APPLICANT SHALL HAVE THE RIGHT TO REQUEST THE BANK TO DISALLOW ANY SUCH RENEWAL/EXTENSION ON THE CONDITION THAT THE APPLICANT SHALL GIVE THE BANK PRIOR WRITTEN NOTICE OF SUCH REQUEST NOT LESS THAN 30 DAYS PRIOR TO THE DEADLINE IMPOSED UPON THE BANK FOR NOTIFICATION TO THE BENEFICIARY OF NON-RENEWAL/EXTENSION OF ANY SUCH LETTER OF CREDIT.

**SECTION 4 REPRESENTATIONS, WARRANTIES AND COVENANTS.** The Applicant represents and warrants to the Bank that:

- (a) **Organization, etc.** The Applicant is duly organized or formed, validly existing and (to the extent applicable under the laws of the relevant jurisdiction) in good standing under the laws of the jurisdiction of its organization or formation, and the Applicant is duly qualified and in good standing as a foreign entity authorized to do business in each other jurisdiction where, because of the nature of its activities or properties, such qualification is required (except where failure to be so qualified would not have a material adverse effect on the business, financial condition, prospects or operation of the Applicant).
- (b) **Authorization; No Conflict.** The Applicant's execution and delivery of this Agreement and each Application, the Applicant's procurement of the issuance of Letters of Credit for its account hereunder and the Applicant's performance of its obligations under this Agreement each Application are within the organizational powers of the Applicant, have been duly authorized by all necessary organizational action, have received all necessary governmental approval (if any shall be required), and do not and will not contravene or conflict with, or result in or require the imposition of any lien or security interest under, any provision of law or of the charter or by-laws of the Applicant or of any indenture, loan agreement or other contract, or any judgment, order or decree that is binding upon the Applicant.
- (c) **Validity and Binding Nature.** This Agreement is, and upon delivery to the Bank each Application will be, the legal, valid and binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms, subject to bankruptcy, insolvency and similar laws of general application affecting the rights of creditors generally, and to general principles of equity.
- (d) **Approvals.** No authorization, approval or consent of, or notice to or filing with, any governmental or regulatory authority is required to be made in connection with

the execution and delivery by the Applicant of this Agreement or the issuance of any Letter of Credit for the account of the Applicant pursuant hereto.

- (e) **Cash Collateral.** The Applicant covenants and agrees with the Bank to maintain cash on deposit with Bank at all times as collateral security for all Liabilities in an amount equal to at least one hundred five percent (105.00%) of the United States Dollar equivalent of each Letter of Credit issued by the Bank in favor of the Applicant. Such cash collateral shall remain on deposit in account numbers 2729628, 2684829 and 2772094 and will be pledged to Bank as security for all Liabilities in accordance with that certain Addendum to Master Letter of Credit Agreement of even date herewith between Applicant and Bank, as amended, modified or restated from time to time (the "Pledged Account Agreement"). In the event that the balances within the Collateral Accounts shall decrease below one hundred five percent (105.00%) of the United States Dollar equivalent of the face amount of each Letter of Credit issued by the Bank in favor of the Applicant at any time, the Applicant authorizes the Bank to debit the amount of such shortfall from any other deposit account of the Applicant maintained with the Bank.

**SECTION 5 FEES.** The Applicant agrees to pay the Bank all reasonable fees of the Bank (at the rates specified by the Bank from time to time in schedules delivered by the Bank to the Applicant) with respect to each Letter of Credit (including, without limitation, all fees associated with any amendment to, drawing under, banker's acceptance pursuant to, or transfer of a Letter of Credit), such fees to be payable on demand by the Bank therefor. In addition to the foregoing, Applicant shall remit to the Bank a Letter of Credit Fee equal to three percent (3.0%) per annum on the undrawn face amount of each Letter of Credit outstanding, which fee shall be payable upon the issuance of such Letter of Credit and on each one year anniversary of the date of such issuance

**SECTION 6 COMPUTATION OF INTEREST AND FEES.** All interest and fees hereunder shall be computed for the actual number of days elapsed on the basis of a year of 360 days. The interest rate applicable to Letter of Credit reimbursement obligations shall change simultaneously with each change in the Prime Rate.

**SECTION 7 MAKING OF PAYMENTS.**

- (a) All payments of principal of, or interest on, letter of credit reimbursement obligations, all payments of fees and all other payments hereunder shall be made by the Applicant in immediately available funds to the Bank at its principal office in Chicago not later than 12:30 P.M., Chicago time, on the date due, and funds received after that time shall be deemed to have been received by the Bank on the next Business Day. If any payment of principal, interest or fees falls due on a day which is not a Business Day, then such due date shall be extended to the next Business Day, and additional interest shall accrue and be payable for the period of such extension.
- (b) The Applicant irrevocably agrees that the Bank or any affiliate thereof may (but neither the Bank nor any such affiliate shall be obligated to) debit any deposit account of the Applicant in an amount sufficient to pay any fee, reimbursement



obligation or other amount that is due and payable hereunder. The Bank or the applicable affiliate shall promptly notify the Applicant of any such debit (but failure of the Bank or any such affiliate to do so shall not impair the effectiveness thereof or impose any liability on the Bank or such affiliate).

- (c) The Applicant shall reimburse the Bank for each payment under a Letter of Credit in the same currency in which such payment was made; provided that, if the Bank so requests (in its discretion), the Applicant shall reimburse the Bank in United States dollars for any payment under a Letter of Credit made in a foreign currency at the rate at which the Bank could sell such foreign currency in exchange for United States dollars for transfer to the place of payment of such payment or, if there is no such rate, the United States dollar equivalent of the Bank's actual cost of settlement. The Applicant agrees to pay the Bank on demand in United States dollars such amounts as the Bank may be required to expend to comply with any and all governmental exchange regulations now or hereafter applicable to the purchase of foreign currency.
- (d) All payments by the Applicant hereunder shall be made free and clear of and without deduction for any present or future income, excise or stamp taxes and any other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding franchise taxes and taxes imposed on or measured by the Bank's net income or receipts (such non-excluded items being called "Taxes"). If any withholding or deduction from any payment to be made by the Bank hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Applicant will
  - (i) pay directly to the relevant authority the full amount required to be so withheld or deducted;
  - (ii) promptly forward to the Bank an official receipt or other documentation satisfactory to the Bank evidencing such payment to such authority; and
  - (iii) pay to the Bank such additional amount as is necessary to ensure that the net amount actually received by the Bank will equal the full amount the Bank would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Bank or on any payment received by the Bank hereunder, the Bank may pay such Taxes and the Applicant will promptly pay such additional amount (including any penalty, interest or expense) as is necessary in order that the net amount received by the Bank after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount the Bank would have received had no such Taxes been asserted.

If the Applicant fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Bank the required receipts or other required documentary evidence, the Applicant

shall indemnify the Bank for any incremental Tax, interest, penalty or expense that may become payable by the Bank as a result of such failure.

**SECTION 8 INCREASED COSTS.** If, after the date hereof, the adoption of, or any change in, any applicable law, rule or regulation, or any change in the interpretation or administration of any applicable law, rule or regulation by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank with any request, guideline or directive (whether or not having the force of law) of any such authority, central bank or comparable agency,

- (a) affects or would affect the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank and (taking into consideration the Bank's or such controlling corporation's policies with respect to capital adequacy) the Bank determines that the amount of such capital is increased as a consequence of this Agreement or the Letters of Credit; or
- (b) imposes, modifies or deems applicable any reserve (including, without limitation, any reserve imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by the Bank with respect to letters of credit, or imposes on the Bank any other condition affecting this Agreement or the Letters of Credit, and the Bank determines that the result of any of the foregoing is to increase the cost to, or to impose a cost on, the Bank of issuing or maintaining any Letter of Credit or of making any payment or disbursement under any Letter of Credit, or to reduce the amount of any sum received or receivable by the Bank under this Agreement;

then within five Business Days after demand by the Bank (which demand shall be accompanied by a statement setting forth in reasonable detail the basis of such demand and a calculation thereof in reasonable detail), the Applicant shall pay directly to the Bank such additional amount as will compensate the Bank for such increased capital requirement, such increased cost or such reduction, as the case may be. Determinations and statements of the Bank pursuant to this Section 8 shall be conclusive absent manifest error, and the provisions of this Section 8 shall survive termination of this Agreement.

## **SECTION 9 EVENTS OF DEFAULT AND THEIR EFFECT.**

9.1 **Events of Default.** Each of the following shall constitute an Event of Default under this Agreement:

9.1.1 **Non-Payment of Liabilities, etc.** Default in the payment when due of any principal of or interest on any Liabilities; or default, and continuance thereof for five days after notice thereof from the Bank, in the payment when due of any fees or other amounts payable by the Applicant hereunder.

9.1.2 **Bankruptcy, etc.** Other than in respect of an Applicant formed or organized under the laws of the United States or a jurisdiction thereof, which is currently subject to a case under the United States Bankruptcy Code, the Applicant or any guarantor of the Liabilities

shall become insolvent or admit in writing its inability to pay debts as they mature, or the Applicant or any such guarantor shall apply for, consent to or acquiesce in the appointment of a trustee or receiver, or in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for the Applicant or any such guarantor, or any proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or against the Applicant or any such guarantor and, if instituted against the Applicant or such guarantor, remains for 30 days undismissed, or any writ of attachment is issued against any substantial portion of the Applicant's or any such guarantor's property and is not released within 30 days of service, or the Applicant or any such guarantor takes any action to authorize, or in furtherance of, any of the foregoing.

9.1.3 **Agreements with Bank.** Any default shall occur (subject to any applicable grace period) under any other agreement between the Applicant and the Bank or any of its affiliates (including any agreement under which the Applicant is a borrower and the Bank or any such affiliate and one or more other financial institutions are the lenders); or the Applicant shall fail to comply with or to perform (subject to any applicable grace period) any covenant set forth in this Agreement or any other agreement with Bank as such covenant is in effect on the date hereof or is amended from time to time with the consent of the Bank (but without giving effect to the expiration or termination of any such agreement unless such agreement is replaced by another agreement to which the Bank is a party).

9.1.4 **Representations and Warranties.** Any representation or warranty made by the Applicant herein or in any writing furnished in connection with or pursuant to this Agreement shall be false or misleading in any material respect on the date made.

- (i) **Effect of Event of Default.** If any Event of Default described in Section 9.1.2 shall occur, all Liabilities shall immediately become due and payable and the Applicant shall immediately become obligated to deliver to the Bank cash collateral in an amount equal to the face amount of all outstanding Letters of Credit; and if any other Event of Default shall occur, the Bank may declare all Liabilities to be due and payable and may demand that the Applicant immediately deliver to the Bank cash collateral in an amount equal to the face amount of all outstanding Letters of Credit, whereupon all Liabilities shall become immediately due and payable and the Applicant shall immediately become obligated to deliver to the Bank cash collateral in an amount equal to the face amount of all outstanding Letters of Credit. The Bank shall promptly advise the Applicant of any such declaration, but failure to do so shall not impair the effect of such declaration. The Applicant hereby grants the Bank a security interest in all cash collateral delivered hereunder and in the products and proceeds thereof. All cash collateral, and the products and proceeds thereof, if any, shall be held by the Bank and applied to Liabilities arising in connection with any drawing under a Letter of Credit. After all Letters of Credit have been fully drawn, expired or been terminated, such cash collateral shall be applied by the Bank, first, to any remaining Liabilities and, then, to any other liabilities of the Applicant to the Bank, and any excess shall be delivered to the Applicant or as a court of competent jurisdiction may direct.

## SECTION 10 SECURITY.

10.1 **Grant of Security Interest.** As security for the prompt payment and performance of all Liabilities, and in addition to any other security given to the Bank by separate agreement, the Applicant hereby grants to the Bank a continuing security interest in all of the following, whether now existing or hereafter arising: (i) deposit account numbers 2729628, 2684829 and 2772094 (the "Deposit Accounts") maintained at the Bank and all cash, instruments and funds on deposit therein pursuant to the terms of the Addendum hereto, (ii) all investments of the funds in the Deposit Accounts and all instruments evidencing such investments, (iii) all interest, cash, instruments and other property received in respect of, or in substitution or exchange for, any of the foregoing and (iv) the products and proceeds (if any) of the foregoing. The Applicant further agrees that the Bank or any of its affiliates may set off and apply to any of the Liabilities which are then due and payable (by acceleration or otherwise) any deposit of the Applicant (including, but not limited to, the Deposit Accounts) at any time held by the Bank or any of its affiliates. The Applicant also agrees that, on request by the Bank, the Applicant shall execute and deliver such financing statements and other documents or instruments as may be required by the Bank to perfect or maintain the security interest of the Bank hereunder.

10.2 **Rights and Remedies.** The Bank shall have all rights and remedies of a secured party under the UCC. If prior notice to the Applicant is required for any action, the Bank shall give the Applicant at least ten days' notice in writing of the time and place of the sale, disposition or other event giving rise to such required notice, and the Applicant agrees that such notice will be deemed commercially reasonable. Any property or document representing collateral may be held by the Bank in its name or in the name of the Bank's nominee, all without prior notice. Proceeds of any sale or other disposition of collateral shall be applied, in order, to the expenses of retaking, holding and preparing the Collateral for sale (including reasonable attorneys' fees and legal expenses), and then to the obligations of the Applicant hereunder until paid in full. The Applicant shall be liable for any deficiency.

10.3 **Possession and Transfer of Collateral.** The cancellation or surrender of any Letters of Credit, upon payment or otherwise, shall not affect the right of the Bank to retain any collateral for any of the other Liabilities.

10.4 **Financing Statements.** Applicant shall, at the Bank's request, at any time and from time to time, execute and deliver to the Bank such financing statements, amendments and other documents and do such acts as the Bank deems necessary in order to establish and maintain valid, attached and perfected first priority security interest in the Collateral in favor of the Bank, free and clear of all Liens and claims and rights of third parties whatsoever. Applicant hereby irrevocably authorizes the Bank at any time, and from time to time, to file, with or without execution by Applicant, in any jurisdiction any initial financing statements, amendments thereto and continuations thereof to perfect and maintain the security interest of the Bank hereunder in the Collateral, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed or as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein and contain any other information required by Part 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any

financing statement or amendment, including the type of organization of Applicant and any organization identification number of Applicant. Applicant agrees to furnish any such information to the Bank promptly upon request. Applicant further ratifies and affirms its authorization for any financing statements and/or amendments thereto executed and filed by the Bank in any jurisdiction prior to the date of this Agreement.

10.5 **Preservation of the Collateral.** The Bank may, but is not required to, take such action from time to time as the Bank deems appropriate to maintain or protect the Collateral. The Bank shall have exercised reasonable care in the custody and preservation of the Collateral if it takes such action as Applicant shall reasonably request in writing; provided, however, that such request shall not be inconsistent with the Bank's status as a secured party, and the failure of the Bank to comply with any such request shall not be deemed a failure to exercise reasonable care. In addition, any failure of the Bank to preserve or protect any rights with respect to the Collateral against prior or third parties, or to do any act with respect to preservation of the Collateral, not so requested by Applicant, shall not be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral. Applicant shall have the sole responsibility for taking such action as may be necessary, from time to time, to preserve all rights of the Applicant and the Bank in the Collateral against prior or third parties.

10.6 **Other Actions as to any and all Collateral.** Applicant further agrees to take any other action reasonably requested by the Bank to ensure the attachment, perfection and first priority of, and the ability of the Bank to enforce, the Bank's security interest in any and all of the Collateral including, without limitation, (a) executing, delivering and, where appropriate, filing financing statements, continuations thereof and amendments relating thereto under the Uniform Commercial Code, to the extent, if any, that Applicant's signature thereon is required therefor, (b) causing the Bank's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the bank to enforce, the Bank's security interest in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Bank to enforce, the Bank's security interest in such Collateral, (d) obtaining governmental and other third party consents and approvals, including without limitation any consent of any licensor, lessor or other Person obligated on Collateral, and (e) taking all actions required by the UCC in effect from time to time or by other law, as applicable in any relevant UCC jurisdiction, or by other law as applicable in any foreign jurisdiction.

## **SECTION 11 GENERAL.**

11.1 **Waiver; Amendments.** No delay on the part of the Bank in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall be effective unless the same shall be in writing and signed and delivered by the Bank, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

11.2 **Notices.**

- (a) Except as otherwise expressly provided herein, all notices hereunder shall be in writing (including facsimile and electronic transmission, which shall be considered original writings). Notices given by mail shall be deemed to have been given three Business Days after the date sent if sent by registered or certified mail, postage prepaid, to the applicable party at its address shown below its signature hereto or at such other address as such party may, by written notice received by the other party to this Agreement, have designated as its address for notices. Notices given by facsimile or electronic transmission shall be deemed to have been given when sent. Notices sent by any other means shall be deemed to have been given when received (or when delivery is refused).
- (b) The Bank may rely on any writing (including any facsimile, any electronic transmission or any information on a computer disk or similar medium which may be reduced to writing), or any telephonic or other oral message or instruction (including, without limitation, any oral waiver of any discrepancy with respect to any Item), that the Bank believes in good faith to have been received from an authorized officer, employee or representative of the Applicant, and the Bank shall not be liable for any action taken in good faith with respect to any writing, message or instruction from an unauthorized person. The Bank shall not be under any duty to verify the identity of any person submitting any Application or other writing or making any other communication hereunder. Notwithstanding the foregoing, the Bank is not obligated to recognize the authenticity of any request to issue, amend, honor or otherwise act on any Letter of Credit that is not evidenced to the Bank's satisfaction by a writing originally signed by a person the Applicant has certified is authorized to act for the Applicant hereunder or by a message or instruction authenticated to the Bank's satisfaction.

11.3 **Costs, Expenses and Taxes; Indemnification.**

- (a) The Applicant agrees to pay on demand all reasonable out-of-pocket costs and expenses of the Bank (including the reasonable fees and charges of counsel for the Bank) in connection with the enforcement of this Agreement and the Liabilities. In addition, the Applicant agrees to pay, and to save the Bank harmless from all liability for, any stamp or other taxes which may be payable in connection with the execution, delivery or enforcement of this Agreement, the issuance of Letters of Credit hereunder, or the issuance of any other instrument or document provided for herein or delivered or to be delivered hereunder or in connection herewith.
- (b) The Applicant agrees to indemnify the Bank and each of its affiliates and each of their respective officers, directors, employees and agents (each an "Indemnified Party") against, and to hold each Indemnified Party harmless from, any and all actions, causes of action, suits, losses, costs, damages, expenses (including reasonable attorneys' fees and charges, expert witness fees and other dispute resolution expenses) and other liabilities (collectively the "Indemnified Liabilities") incurred by any Indemnified Party as a result of, or arising out of, or



relating to, this Agreement or any Letter of Credit (and without regard to whether the applicable Indemnified Party is a party to any proceeding out of which such Indemnified Liabilities arise), except to the extent that a court of competent jurisdiction determines in a final, non-appealable order that any Indemnified Liability resulted directly from the gross negligence or willful misconduct of such Indemnified Party. Without limiting the generality of the foregoing sentence, the term "Indemnified Liabilities" includes any claim or liability in which an advising, confirming or other nominated bank, or a beneficiary requested to issue its own undertaking, seeks to be reimbursed, indemnified or compensated. If and to the extent the foregoing undertaking may be unenforceable for any reason, the Applicant agrees to make the maximum contribution to the payment of each of the Indemnified Liabilities which is permitted under applicable law.

- (c) Without limiting clause (b), the Applicant agrees to indemnify the Bank, and to hold the Bank harmless from, any loss or expense incurred by the Bank as a result of any judgment or order being given or made for the payment of any amount due hereunder in a particular currency (the "Currency of Account") and such judgment or order being expressed in a currency (the "Judgment Currency") other than the Currency of Account and as a result of any variation having occurred in the rate of exchange between the date which such amount is converted into the Judgment Currency and the date of actual payment pursuant thereto. The foregoing indemnity shall constitute a separate and independent obligation of the Applicant.
- (d) All obligations provided for in this Section 11.3 shall survive any termination of this Agreement.

11.4 **Captions**. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

11.5 **Governing Law**. This Agreement shall be a contract made under and governed by the laws of the State of Illinois applicable to contracts made and to be performed entirely within such State. Except to the extent inconsistent with such state law or otherwise expressly stated in any Letter of Credit, each Letter of Credit and this Agreement also are subject to the terms of (i) with respect to matters relating to standby Letters of Credit and Applications therefor, the ISP, and (ii) with respect to matters relating to commercial Letters of Credit and Applications therefor, the UCP. Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations of the Applicant and rights of the Bank expressed herein shall be in addition to and not in limitation of those provided by applicable law.

11.6 **Counterparts**. This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. A facsimile or other electronic signature to this Agreement shall be deemed an original hereunder.

11.7 **Successors and Assigns.** This Agreement shall be binding upon the Applicant and its successors and assigns, provided that the Applicant may not assign any of its rights or obligations hereunder without the prior written consent of the Bank.

11.8 **Right of Bank to Act through Branches and Affiliates.** The Bank may cause any Letter of Credit requested by the Applicant to be issued by a branch or affiliate of the Bank, and all references to the “Bank” herein or in any related document shall include each applicable branch or affiliate.

11.9 **Foreign Assets Control Regulations; USA Patriot Act Notice.** The Applicant certifies that no transaction in foreign commodities covered by any Application will be prohibited under the foreign assets control regulations of the United States Treasury Department and that any importation related to any Letter of Credit will conform with all applicable laws, rules and regulations. The Applicant shall

- (a) ensure, and cause each subsidiary to ensure, that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders,
- (b) not use or permit the use of the Letters of Credit or the proceeds of the Letter of Credits to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and
- (c) comply, and cause each subsidiary to comply, with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended. The Bank hereby notifies the Applicant that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the “Act”), and the Bank’s policies and practices, the Bank is required to obtain, verify and record certain information and documentation that identifies the Applicant, which information includes the name and address of the Applicant and such other information that will allow the Bank to identify the Applicant in accordance with the Act.

11.10 **Mitigation; Limitation of Liability.** The Applicant agrees to take action to avoid or reduce the amount of any damages which may be claimed against the Bank. For example,

- (a) in the case of wrongful honor, the Applicant agrees to enforce its rights arising out of the underlying transaction (except to the extent that enforcement is impractical due to the insolvency of the beneficiary or other Person from whom the Applicant might otherwise recover), and
- (b) in the case of wrongful dishonor, the Applicant agrees to act specifically and timely to authorize the Bank to effect a cure and give written assurances to the beneficiary that a cure is being arranged. The Applicant’s aggregate remedies against the Bank for honoring a presentation or retaining honored documents in breach of the Bank’s obligations to the Applicant (whether arising under this Agreement, applicable letter of credit practice or law, or any other agreement or law) are limited to the



aggregate amount paid by the Applicant to the Bank with respect to the honored presentation.

11.11 **Subrogation**. The Bank shall be subrogated (for purposes of defending against the Applicant's claims and proceeding against others to the extent of any liability of the Bank to the Applicant) to the Applicant's rights against any Person who may be liable to the Applicant on any underlying transaction, to the rights of any holder in due course or Person with similar status against the Applicant and to the rights of the beneficiary of any Letter of Credit or its assignee or any Person with similar status against the Applicant.

11.12 **Co-Applicants**.

- (a) If this Agreement is signed by two or more Persons (each a "Co-Applicant"), then the term "Applicant" shall mean each such Person and all such Persons shall be jointly and severally liable for all obligations of the "Applicant" hereunder and in respect of the Letters of Credit issued pursuant hereto and all other Liabilities. Any Co-Applicant shall have the right to issue all instructions relating to Letters of Credit (including, without limitation, instructions as to the disposition of documents and waiver of discrepancies) and to agree with the Bank upon any amendment, extension, renewal or modification of, or change in the amount of, any Letter of Credit, and such instructions and agreements shall be binding upon all Co-Applicants. Each Co-Applicant shall be bound by (i) any notice from the Bank to any other Co-Applicant, (ii) any other Co-Applicant's settlement or release of any claim against the Bank arising under this Agreement and (iii) any default under this Agreement attributable to any other Co-Applicant.
- (b) Each Co-Applicant agrees that if at any time all or any part of any payment theretofore applied by the Bank to any of the Liabilities is or must be rescinded or returned by the Bank for any reason whatsoever (including the insolvency, bankruptcy or reorganization of any Co-Applicant), such Liabilities shall, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Bank, and the obligations of such Co-Applicant with respect thereto shall continue to be effective or be reinstated, as the case may be, as to such Liabilities, all as though such application by the Bank had not been made.
- (c) The Bank may, from time to time, in its sole discretion and without affecting the obligation of any Co-Applicant, take any or all of the following actions: (a) retain or obtain the primary or secondary obligation of any other obligor, in addition to such Co-Applicant, with respect to any of the Liabilities, and take any security for the obligations of any such other obligor, (b) extend or renew any of the Liabilities for one or more periods (whether or not longer than the original period), alter or exchange any of the Liabilities, or release or compromise any obligation of any other Co-Applicant or any obligation of any nature of any other obligor with respect to any of the Liabilities, (c) release its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Liabilities, or extend or renew for one or more periods (whether or not longer

than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property, and (d) resort to such Co-Applicant for payment of any of the Liabilities when due, whether or not the Bank shall have resorted to any property securing any of the Liabilities or shall have proceeded against any other Co-Applicant or any other obligor primarily or secondarily obligated with respect to any of the Liabilities.

11.13 **Continuation of Liability.** Regardless of the expiry date of any Letter of Credit, the Applicant shall remain liable hereunder until the Bank is released from liability by every Person that is entitled to draw or demand payment under each Letter of Credit issued pursuant hereto.

11.14 **Jurisdiction.** ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY APPLICATION, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF COOK COUNTY, ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE BANK'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. THE APPLICANT HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF COOK COUNTY, ILLINOIS AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE PURPOSE OF ANY SUCH LITIGATION. THE APPLICANT FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, TO THE ADDRESS SET FORTH BENEATH ITS SIGNATURE HERETO (OR SUCH OTHER ADDRESS AS IT SHALL HAVE SPECIFIED IN WRITING TO THE BANK AS ITS ADDRESS FOR NOTICES HEREUNDER) OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. THE APPLICANT EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

11.15 **Waiver of Jury Trial.** EACH OF THE APPLICANT AND, BY ISSUING ANY LETTER OF CREDIT, THE BANK HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ANY APPLICATION, INSTRUMENT, DOCUMENT, AMENDMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

11.16 **Amendment and Restatement.** This Agreement is entered into and delivered to Bank in replacement of and substitution for, and not in payment of or satisfaction for, the Master Letter of Credit Agreement dated as of March 26, 2015 between one or more Applicants and the Bank (the "Prior Master Letter of Credit Agreement"). All other documents, including, the other instruments,

documents, agreements and applications executed and delivered in connection with the Prior Master Letter of Credit Agreement are hereby reaffirmed and shall continue in full force and effect, as may be amended, restated or otherwise modified in connection herewith. The Applicant acknowledges that the Letters of Credit and other obligations evidenced by the Prior Master Letter of Credit Agreement have not been satisfied but instead have become part of the Liabilities under this Agreement. The Applicant further acknowledges that all of the liens granted by each Applicant under the Prior Master Letter of Credit Agreement and all instruments, documents and agreements executed in connection therewith are hereby reaffirmed and shall continue hereafter to secure each Applicant's Liabilities under this Agreement.

*(Signature Pages Follow)*

*Signature Page to Amended and Restated Master Letter of Credit Agreement*

Delivered at Chicago, Illinois, as of the day and year first above written.

**APPLICANT:**

**WESTMORELAND COAL COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Jennifer S. Grafton  
Chief Administrative Officer &  
Secretary

**WESTMORELAND ENERGY LLC,** a  
Delaware limited liability company

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTMORELAND – NORTH  
CAROLINA POWER, L.L.C.,** a Virginia  
limited liability company

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WEI-ROANOKE VALLEY, INC.,** a  
Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTMORELAND – ROANOKE  
VALLEY, L.P.,** a Delaware limited  
partnership

By: WEI-Roanoke Valley, Inc.,  
*its general partner*

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

Signature Page to Amended and Restated Master Letter of Credit Agreement (con't.)

**APPLICANT:**

**WESTMORELAND PARTNERS**, a  
Virginia general partnership

By: Westmoreland-Roanoke Valley, L.P., *its  
general partner*

By: WEI-Roanoke Valley, Inc.,  
*its general partner*

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

By: Westmoreland-North Carolina Power,  
L.L.C., *its general partner*

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTMORELAND RESOURCES,  
INC.**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTMORELAND COAL SALES  
COMPANY, INC.**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WRI PARTNERS, INC.**, a Delaware  
corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

Signature Page to Amended and Restated Master Letter of Credit Agreement (con't.)

**APPLICANT:**

**WCC LAND HOLDING COMPANY, INC.**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTMORELAND CANADA LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Jennifer S. Grafton  
Vice President and Secretary

**WESTMORELAND ENERGY SERVICES, INC.**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTMORELAND MINING LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTERN ENERGY COMPANY**, a Montana corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**TEXAS WESTMORELAND COAL CO.**, a Montana corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

Signature Page to Amended and Restated Master Letter of Credit Agreement (con't.)

**APPLICANT:**

**WESTMORELAND SAVAGE CORPORATION**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**DAKOTA WESTMORELAND CORPORATION**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**BUCKINGHAM COAL COMPANY, LLC**, an Ohio limited liability company

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**HAYSTACK COAL COMPANY**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTMORELAND COAL COMPANY ASSET CORP.**, a New York corporation

By: \_\_\_\_\_  
Jennifer S. Grafton  
Secretary

**WESTMORELAND ENERGY SERVICES NEW YORK, INC.**, a New York corporation

By: \_\_\_\_\_  
Jennifer S. Grafton  
Secretary

Signature Page to Amended and Restated Master Letter of Credit Agreement (con't.)

**APPLICANT:**

**WESTMORELAND TEXAS JEWETT  
COAL COMPANY**, a Texas corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary and General Counsel

**WESTMORELAND SAN JUAN  
HOLDINGS, INC.**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**WESTMORELAND SAN JUAN, LLC.**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**SAN JUAN COAL COMPANY**, a  
Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**SAN JUAN TRANSPORTATION  
COMPANY**, a Delaware corporation

By: \_\_\_\_\_  
Samuel N. Hagreen  
Secretary

**APPLICANT:**

**WESTMORELAND CANADIAN  
INVESTMENTS, L.P.**, a limited  
partnership organized and existing under the  
laws of the Province of Quebec

By: Westmoreland Canada LLC,  
*its general partner*



Signature Page to Amended and Restated Master Letter of Credit Agreement (con't.)

By: \_\_\_\_\_  
Jennifer S. Grafton  
Vice President and Secretary

**WESTMORELAND CANADA HOLDINGS, INC.**, a corporation organized and existing under the laws of the Province of Alberta

By: \_\_\_\_\_  
Jennifer S. Grafton  
Assistant Secretary

**PRAIRIE MINES & ROYALTY ULC**, an unlimited liability company organized under the laws of the Province of Alberta

By: \_\_\_\_\_  
Jennifer S. Grafton  
Assistant Secretary

**SCHEDULE I**  
**EXISTING LETTERS OF CREDIT**

<b><u>Issuer</u></b>	<b><u>Applicant</u></b>	<b><u>Issue Date</u></b>	<b><u>Beneficiary</u></b>	<b><u>Face Amount</u></b>
CIBC Bank USA	Prairie Mines & Royalty ULC	December 10, 2018	Canadian National Railway Company	\$1,100,000 CAD
CIBC Bank USA	Western Energy Company	June 10, 2014	Travelers Casualty & Surety Company of America	\$1,880,000
CIBC Bank USA	Westmoreland Coal Company	October 16, 2016	Zurich American Insurance Company	\$500,000
CIBC Bank USA	Prairie Mines & Royalty ULC	February __, 2019	Ridley Terminals Inc.	\$4,000,000 CAD

### **Addendum to Master Letter of Credit Agreement**

This Addendum to Master Letter of Credit Agreement is made as of February \_\_, 2019 by the Applicants party hereto (collectively, the “Applicants”) and CIBC Bank USA (the “Bank”). Reference is hereby made to that certain Master Letter of Credit Agreement dated as of February \_\_, 2019 among the Applicants, certain of their affiliates and the Bank (as amended, modified or restated from time to time, the “Agreement”). All capitalized terms used herein without definition shall have the same meanings herein as set forth in the Agreement.

As security for the payment and performance of Applicants’ and each of their affiliates’ Liabilities under the Agreement, the Applicants hereby pledge and grant to the Bank a lien on and security interest in account numbers 2729628, 2684829 and 2772094 maintained with the Bank (collectively, the “Accounts”), and all cash and other amounts and property on deposit or held therein from time to time, and all interest thereon, and all products and proceeds of the foregoing, including any and all commercial paper given in payment of amounts on deposit in the Accounts (collectively, the “Cash Collateral”). The Applicants understand and agree that with respect to the Cash Collateral, the Bank shall have the rights of a secured party under the Illinois Uniform Commercial Code in effect from time to time. While the Bank has this pledge of and security interest in each Account and the Cash Collateral, the Applicants shall not have the right to withdraw or otherwise direct the disbursement of any Cash Collateral including, without limitation, all cash and other amounts or property in the Accounts. In addition, the Applicants agree that upon the Bank’s payment of any drawing under any Letter of Credit, the Bank may, without demand or notice to the Applicants, automatically charge any Account for the amount of any such drawing as reimbursement to the Bank for such drawing, together with the amount of other Liabilities. The Applicants understands that the Bank’s right to charge the Accounts to reimburse itself for drawings under the Letters of Credit shall not affect the Applicants’ obligation to reimburse the Bank for any and all such drawings. Upon full payment and performance to the Bank of all Liabilities, and return of the Letters of Credit to the Bank for cancellation, the Bank will return to the Applicants or to such other person as the Applicants may direct, the amount of Cash Collateral remaining in the Accounts, if any.

Except as supplemented hereby, the Agreement shall remain in full force and effect. Any reference to the Agreement shall be deemed to include this Addendum. This Addendum shall be governed by and construed in accordance with the laws of the State of Illinois.

(Signature Page Follows)

In Witness Whereof, the Applicants have caused this Addendum to be executed by its duly authorized representatives as of the date first written above.

WESTMORELAND COAL COMPANY, a  
Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PRAIRIE MINES & ROYALTY ULC, an  
unlimited liability company organized  
under the laws of the Province of Alberta

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WESTERN ENERGY COMPANY, a  
Montana corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted and Agreed to as of the date first written above.

CIBC Bank USA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

United States Bankruptcy Court  
Southern District of Texas

In re:  
Westmoreland Coal Company  
Westmoreland Texas Jewett Coal Company  
Debtors

Case No. 18-35672-drj  
Chapter 11

**CERTIFICATE OF NOTICE**

District/off: 0541-4

User: VrianaPor  
Form ID: pdf002Page 1 of 5  
Total Noticed: 160

Date Rcvd: Feb 25, 2019

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Feb 27, 2019.

db +Absaloka Coal, LLC, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Basin Resources, Inc., 9540 South Maroon Circle, Suite 300, Englewood, co 80112-5730  
db +Buckingham Coal Company, LLC, 9540 South Maroon Circle, Suite 300, x,  
Englewood, CO 80112-5730  
db +Dakota Westmoreland Corporation, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db Daron Coal Company, LLC, 9450 South Maroon Circle, Suite 300, Englewood, CO 80112  
db +Harrison Resources, LLC, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Haystack Coal Company, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Oxford Conesville, LLC, 9540 South Maroon Circle, Suite 300, Englewood, co 80112-5730  
db +Oxford Mining Company, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Oxford Mining Company - Kentucky, LLC, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db +San Juan Coal Company, 9540 South Maroon Circle, Suite 300, Englewood, Co 80112-5730  
db +San Juan Transportation Company, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db +Texas Westmoreland Coal Company, 9540 South Maroon Circle, Suite 300,  
Englewood, Co 80112-5735  
db +WCC Land Holding Company, Inc., 9540 South Maroon Circle, Suite 300,  
Englewood, co 80112-5730  
db +WEI - Roanoke Valley, Inc., 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db WLB Debtors, Jackson Walker, L.L.P., Patricia B. Tomasco, Houston, TX 77010  
db +Western Energy Company, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Westmoreland Coal Company, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5735  
db +Westmoreland Coal Company Asset Corp., 9540 South Maroon Circle, Englewood, co 80112-5735  
db +Westmoreland Coal Sales Company, Inc., 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5735  
db +Westmoreland Energy Services New York, Inc., 9540 South Maroon Circle, Suite 300,  
Englewood, Co 80112-5730  
db +Westmoreland Energy Services, Inc., 9540 South Maroon Circle, Suite 300,  
Englewood, co 80112-5730  
db +Westmoreland Energy, LLC, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Westmoreland Kemmerer Fee Coal Holdings, LLC, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db +Westmoreland Kemmerer, LLC, 9540 South Maroon Circle, Suite 300, Englewood, co 80112-5730  
db +Westmoreland Mining LLC, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Westmoreland North Carolina Power, LLC, 9540 South Maroon Circle, Suite 300,  
Englewood, Co 80112-5730  
db +Westmoreland Partners, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5735  
db +Westmoreland Power, Inc., 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Westmoreland Resource Partners, LP, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db +Westmoreland Resources GP, LLC, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db +Westmoreland Resources, Inc., 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db +Westmoreland San Juan Holdings, Inc., 9540 South Maroon Circle, Suite 300,  
Englewood, Co 80112-5730  
db +Westmoreland San Juan, LLC, 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
db +Westmoreland Savage Corporation, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db +Westmoreland Texas Jewett Coal Company, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
db +Westmoreland-Roanoke Valley LP, 9540 South Maroon Circle, Suite 300,  
Englewood, CO 80112-5730  
dbpos +WRI Partners, Inc., 9540 South Maroon Circle, Suite 300, Englewood, CO 80112-5730  
aty +Anne Piero-Silagay, Silagy Law Offices, 1225 South Main St., Ste. 1,  
North Canton, OH 44720-4247  
aty +Anupama Yerramalli, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas,  
New York, NY 10036-2714  
aty Boies Schiller Flexner LLP, 55 Hudson Yards, New York, NY 10001  
aty +Christine R. Etheridge, 1738 Bass Road, P.O.Box 13708, Macon, GA 31208-3708  
aty +Demme Doufekias, Morrison Forester LLP, 2000 Pennsylvania Avenue, NW, Suite 6000,  
Washington, DC 20006-1909  
aty +Douglas J. Lipke, VEDDER PRICE, 222 North LaSalle Street, Chicago, IL 60601-1104  
aty +Erica J. Richards, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050  
aty +Felice Yudkin, Cole Schotz P.C., 25 Main St., Hackensack, NJ 07601-7189  
aty +Gregory J. Ossi, Venable LLP, 8010 Towers Crescent Drive, Suite 300,  
Tysons Corner, VA 22182-2723  
aty +Jennifer L Marines, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050  
aty +Jennifer R. Sharret, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas,  
New York, NY 10036-2714

District/off: 0541-4

User: VrianaPor  
Form ID: pdf002Page 2 of 5  
Total Noticed: 160

Date Rcvd: Feb 25, 2019

aty +John C. Goodchild, III, Morgan, Lewis & Bockius LLP, 1701 Market Street,  
Philadelphia, PA 19103-2987

aty +John R. Mooney, Mooney, Green, Saindon, Murphy & Welch, 1920 L Street N.W., Suite 400,  
Washington, DC 20036-5041

aty +Laura McCarthy, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-2003

aty +Leonard Gerson, 200 Constitution Ave. N.W., STE N-4611, Washington, DC 20210-0001

aty +Lorenzo Marinuzzi, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050

aty +Mark A. Lightner, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050

aty +Mark E. Hindley, SToel Rives LLP, 201 Main St #1100, Salt Lake City, UT 84111-2208

aty +Matthew E. McClintock, K&L Gates LLP, 70 West Madison Street, Suite 3100,  
Chicago, IL 60602-4244

aty +Matthew Ziegler, Morgan Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178-0060

aty Michael E. Petrella, Bois Schiller Flexner LLP, 55 Hudson Yards, New York, NY 10001

aty Nakisha Duncan, Morgan, Lewis & Bockius, LLP, 101 Park Avenue, New York, NY 10178-0060

aty +Nicholas J. Brannick, Cole Shotz PC, 50 Delaware Avenue, Suite 1410,  
Wilmington, DE 19803

aty +Paul Andrew Green, Mooney, Green, Saindon, Murphy & Welch, 1920 L Street, N.W., Suite 400,  
Washington, DC 20036-5041

aty +Rachel Jaffe Mauceri, Morgan Lewis & Bockius LLP, 1701 Market Street,  
Philadelphia, PA 19103-2987

aty Sean F. O'Shea, Bois Schiller Flexner LLP, 55 Hudson Yards, New York, NY 10001

aty +Steven Rhodes, Steven Rhodes Consulting, LLC, 1610 Arborview Rd.,  
Ann Arbor, MI 48103-3650

aty +Todd M. Goren, Morrison Foerster LLP, 250 West 55th Street, New York, NY 10019-0050

cr +Alex J. Sanchez, 2603 Espinoza, Trinidad, CO 81082-3912

cr +Alva Ray Trail, 193 Dusty Miller St., Princeton, WV 24740-7663

cr +American Guarantee and Liability Insurance Company, c/o Duane J. Brescia,  
Clark Hill Strasburger, 720 Brazos, Suite 700, Austin, TX 78701-2531

intp +Bayou Coal Partners, LLC, Bradley Arant Boulton Cummings LLP, 600 Travis Street, Suite 4800,  
Attn: Nathan Graham, Houston, TX 77002-3024

cr +Ben Epifanio Palomino, 537 Railroad Ave, Raton, NM 87740-3222

intp +Bethel J. Brock, 6223 Bear Creek Meadows Drive, Wise, VA 24293-4434

cr Big Horn County, c/o Tara LeDay, PO Box 1269, Round Rock, TX 78680-1269

intp +Bond Safeguard Insurance Company, Philip Eisenberg, 600 Travis, Suite 2800,  
Houston, TX 77002-2914

cr +Bridgestone Americas Tire Operations, c/o Waller, 511 Union Street, 27th Fl,  
Attn: Blake Roth, Nashville, TN 37219-1733

cr +CRG Financial LLC, 100 Union Avenue, Cresskill, NJ 07626-2141

cr +Carl N Neace, 236 East Lynn Rd, Ranger, WV 25557-7003

cr +Caterpillar Financial Services Corporation, 2120 West End Avenue, Nashville, TN 37203-5341

cr +Colonial American Casualty and Surety Company, c/o Duane J. Brescia, Clark Hill Strasburger,  
720 Brazos, Suite 700, Austin, TX 78701-2531

cr CornerStone Education Loan Services, PO Box 145123, Salt Lake City, UT 84114-5123

cr +Davis Graham & Stubbs LLP, 1550 17th Street Suite 500, Denver, CO 80202,  
UNITED STATES 80202-1500

cr +Dennis Neuberger, 417 Front Street, Beulah, ND 58523-6729

cr +Donna Ramsey, c/o Edwards Law Firm, 1648 Poly Drive, Suite 206, Billings, MT 59102-1704

cr +Double M. Mud Co., Inc., PO Box 1618, Aztec, NM 87410-4618

cr +Earl Spears, 115 Fox Dr., Pennington Gap, VA 24277-8166

cr Edward Leon Freeman, 8314 Birchfield Heights Rd., Wise, VA 24293

intp +Edward Velasquez, P.O. Box 516, Aguilar, CO 81020-0516

cr +Eugene S Castillo, 1012 Pierce Street, Trinidad, CO 81082-3649

cr +Fidelity and Deposit Company of Maryland, c/o Duane J. Brescia, Clark Hill Strasburger,  
720 Brazos, Suite 700, Austin, TX 78701-2531

cr +Frank Colangelo, 312 Robard Ave, Trinidad, CO 81082-3137

cr Freestone County et al, c/o Tara LeDay, PO Box 1269, Round Rock, TX 78680-1269

cr +G.R. Peart, POB 114, Randolph, UT 84064-0114

cr +Gloria Chavez, 8060 CR 69.1, Trinidad, CO 81082-9716

intp +Harold Richard Guptill, 790 Legion Street, Craig, CO 81625-1758

cr +Holt Texas Ltd. dba Holt CAT and dba Holt Rental S, c/o Caldwell East & Finlayson PLLC,  
700 N. St. Mary's Street, Attn: Zachary J. Fanucchi, Suite 1825,  
San Antonio, TX 78205-3545

intp +James K. Bills, 1125 Sorensen Dr., Kemmerer, WY 83101-3442

cr +Jim S. Villos, P O Biox 621, Kenimerer, WY 83101-0621

intp +Joe McGuire, P.O. Box 344, Diamondville, WY 83116-0344

cr +John Montano, 9315 CR 43.6, Trinidad, CO 81082-9509

cr +Karol Kolle Latham, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433

cr +Katherine Kolle King, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433

intp +Ken Lloyd, 210 Webster St., Montpelier, ID 83254-1076

intp +Kenneth Clark, 518 Upper Sunset Dr., Kemmerer, WY 83101-3309

intp +Kim McKee, PO Box 27, Kemmerer, WY 83101-0027

cr +Komatsu Financial Limited Partnership, c/o Kane Russell Coleman Logan PC,  
5051 Westheimer Road, Suite 1000, Houston, TX 77056-5749

cr Larry Rutherford, 205 E. 11th St W, Big Stone Gap, VA 24219

cr Larry Wharton, 620 N 12th St, Herrin, IL 62948-3226

cr +Lewis A. Clark, 210 Howard Lawson Dr, Big Stone Gap, VA 24219-8522

intp +Lexon Insurance Company, Inc., Locke Lord LLP, c/o Philip G. Eisenberg, Esq.,  
2800 JPMorgan Chase Tower, 600 Travis St., Houston, TX 77002-3009

intp +Lexon Insurance Company, Inc. / Sompo Internationa, Harris Beach PLLC, ATTN: Lee Woodard,  
333 W. Washington St., Ste. 200, Syracuse, NY 13202-5202

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Total Noticed: 160

Date Rcvd: Feb 25, 2019

intp +Lonnie Smith, PO Box 406, Diamondville, WY 83116-0406  
 cr +Marvin Bauer, 309 2nd Ave SE, POB 712, Beulah, ND 58523-0712  
 intp +Marvin Kern, 180 Mississippi Dr., Duffield, VA 24244-4375  
 cr +Max Casias, 2607 Espinoza St, Trinidad, CO 81082-3936  
 intp +Melvin & Trudy Hatch, 405 Sixth Street, PO Box 254, Cokeville, WY 83114-0254  
 intp +Merida Natural Resources, LLC, Bradley Arant Boulton Cummings LLP,  
 600 Travis Street, Suite 4800, Attn: Nathan Graham, Houston, TX 77002-3024  
 intp +Mining and Minerals Division, NM Energy, Minerals, 1220 South St. Frances Dr.,  
 Santa Fe, NM 87505-4225  
 cr +Monsanto Company, c/o Husch Blackwell, Attn: Buffey Klein, 1900 N. Pearl, Suite 1800,  
 Dallas, TX 75201-2451  
 cr +New Mexico State Land Office, 310 Old Santa Fe Trail, Santa Fe, NM 87501-2708  
 intp +North American Coal Corporation, c/o Hunton Andrews Kurth LLP, 600 Travis, Suite 4200,  
 Houston, TX 77002-2929  
 intp +NorthWestern Corporation, a Delaware Corporation,, 208 N. Montana Ave., Suite 205,  
 Helena, MT 59601-3837  
 cr +PNM Resources, Inc. and Public Services Company of, c/o Annie Catmull, Sanders McGarvey LLP,  
 12 Greenway Plaza #210, Houston, TX 77046-1216  
 cr +PacifiCorp, c/o Mark E. Hindley, STOEL RIVES LLP, 201 Main St., #1100,  
 Salt Lake City, UT 84111-2208  
 cr +PacifiCorp, c/o Oren Buchanan Haker, STOEL RIVES LLP, 760 SW Ninth, Suite 3000,  
 Portland, OR 97205-2587  
 intp +Pat Argyle, PO Box 339, Garden City, UT 84028-0339  
 cr +Perry Norris, P O Box 235, Randolph, UT 84064-0235  
 intp Railroad Commission of Texas, c/o Office of the Attorney General,  
 Bankruptcy & Collections Division, P. O. Box 12548, Austin, TX 78711-2548  
 cr Rick Halter, POB 1031, Beulah, ND 58523-1031  
 intp +Rick Whitmore, PO Box 201, Kemmever, WY 83101-0201  
 cr +Ronald E. George, Sr., POB 461, Craigsville, WV 26205-0461  
 cr +Rosebud County, c/o Tara LeDay, PO Box 1269, Round Rock, TX 78680-1269  
 cr +Rosebud County et al, c/o Tara LeDay, PO Box 1269, Round Rock, TX 78680-1269  
 cr +Roy R. Townsend, 145 Boat Docket Lane, Gate City, VA 24251-4596  
 intp +Sabine Pass Coal Group, LLC, Bradley Arant Boulton Cummings LLP,  
 600 Travis Street, Suite 4800, Attn: Nathan Graham, Houston, TX 77002-3024  
 cr +Salvador Sanchez, 1601 Garfield Ave, Trinidad, CO 81082-3714  
 cr +Silver Spur Conveyors, Inc., Silver Spur Conveyors, Inc., P.O. Box 490, 578 Raven Road,  
 Raven, VA 24639, UNITED STATES 24639-0490  
 intp +Sompo International Insurance, c/o Philip G. Eisenberg, 2800 JP Morgan Chase Tower,  
 600 Travis, Suite 2800, Houston, TX 77002-2914  
 intp +Sonia Chae United States Securities & Exchange Com, 175 W. Jackson Blvd., Suite 1450,  
 Chicago, IL 60604-2710  
 cr +Stephanie Raver, PO Box 5128, Etna, WY 83118-0128  
 cr +Stephen Earl Kolle, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433  
 intp +Steven Roberts, P.O. Box 4, Kemmerer, WY 83101-0004  
 cr +Susan K Marek, 1614 Crestmon, Wharton, TX 77488-3433  
 cr +Texas Comptroller of Public Accounts, John Stern, P.O. Box 12548, Austin, TX 78711-2548  
 cr +The Crow Tribe of Indians, c/o Barnet B. Skelton, Jr., 815 Walker, Suite 1502,  
 Houston, TX 77002-5832  
 cr The Texas Ad Valorem Taxing Jurisdictions, c/o Tara LeDay, PO Box 1269,  
 Round Rock, TX 78680-1269  
 cr +Tractor & Equipment Co., Perkins Coie LLP, 1201 Third Avenue, Suite 4900,  
 Seattle, WA 98101-3095  
 intp +Trustees of the United Mine Workers of America 199, c/o Morgan, Lewis & Bockius LLP,  
 Attn: Crystal Axelrod, 1000 Louisiana Street, Suite 4000, Houston, TX 77002-5048  
 intp +Trustees of the United Mine Workers of America, c/o Morgan, Lewis & Bockius LLP,  
 Attn: Crystal Axelrod, 1000 Louisiana Street, Suite 4000, Houston, TX 77002-5048  
 cr +U.S. Bank National Association, as Trustee and Not, Shipman & Goodwin LLP,  
 One Constitution Plaza, Hartford, CT 06103-1919  
 cr +Virginia Bates Kolle, c/o S Marek, 1614 Crestmont, Wharton, TX 77488-3433  
 cr +Virginia Bates Kolle Family Trust, 1614 Crestmont St, Wharton, TX 77488-3433  
 cr Wells Fargo Vendor Financial Services, LLC, PO Box 13708, Macon, GA 31208-3708  
 cr +Zurich American Insurance Company, c/o Duane J. Brescia, Clark Hill Strasburger,  
 720 Brazos, Suite 700, Austin, TX 78701-2531  
 cr +Zurich Insurance Company Ltd., c/o Duane J. Brescia, Clark Hill Strasburger,  
 720 Brazos, Suite 700, Austin, TX 78701-2531  
 cr +Zurich Insurance Group, Ltd., c/o Duane J. Brescia, Clark Hill Strasburger,  
 720 Brazos, Suite 700, Austin, TX 78701-2531

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

aty +E-mail/Text: ccooper@mooneygreen.com Feb 25 2019 22:18:06 Diana Bardes,  
 Mooney, Green, Saindon, Murphy & Welch, 1920 L Street, N.W., Suite 400,  
 Washington, DC 20036-5041  
 aty +E-mail/Text: sst@lawtoll.com Feb 25 2019 22:15:49 Sheldon S Toll,  
 Law Office of Sheldon S. Toll PLLC, 29580 Northwestern Hwy., Suite 1000,  
 Southfield, MI 48034-1031  
 cr E-mail/Text: houston\_bankruptcy@LGBS.com Feb 25 2019 22:17:05 Harris County,  
 Linebarger Goggan Blair & Sampson LLP, C/O John P. Dillman, PO Box 3064,  
 Houston, TX 77253-3064



District/off: 0541-4

User: VrianaPor  
Form ID: pdf002

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Total Noticed: 160

Date Rcvd: Feb 25, 2019

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center (continued)

cr +E-mail/Text: stephen@youtzvaldez.com Feb 25 2019 22:15:51  
International Union of Operating Engineers, Local, c/o Youtz & Valdez PC,  
900 Gold Avenue SW, Albuquerque, NM 87102-3043  
cr E-mail/Text: pat@pmfpc.com Feb 25 2019 22:17:50 United Mine Workers of America,  
c/o Patrick M. Flynn, P.C., 1225 North Loop W, STE 1000, Houston, TX 77008-1775  
TOTAL: 5

\*\*\*\*\* BYPASSED RECIPIENTS (undeliverable, \* duplicate) \*\*\*\*\*

atp The WMLP Debtors and the Conflicts Committee of th  
atp Vedder Price P.C.  
cr ACE American Insurance Company  
cr ACE Insurance Company of Texas  
cr ACE Property & Casualty Insurance Company  
intp Andrew Skillin  
intp Ankura Trust Company, LLC  
intp Anthony Winder  
intp Argonaut Insurance Company  
cr Avista Corporation  
cr Benjamin J. Smith  
intp Brett Grunig  
intp Brian Nelson  
intp CCU Coal and Construction LLC  
intp CIBC Bank USA  
intp Calder Lutz  
cr Canadian Imperial Bank of Commerce  
intp Charles M. Hunzie  
cr Chevron Products Company, a division of Chevron U.  
cr Chrystella Montoya  
cr Chubb Insurance Company of Canada  
cr City of Dover, Ohio  
intp Clarson Moore  
cr Claud E Onrada  
intp Claudia Ourada  
intp Clint Bowen  
op Coal Act Retirees Committee  
intp Connie Gunter  
cr Conveyors & Equipment, Inc.  
intp David Auilg  
intp Dower Rolex  
intp Eddie W Gomez  
intp Emily Oddino  
intp Eplonio Palomins  
inre Ethel Nadine Mead, Trust  
cr Everly I Silva, Sr.  
cr Federal Insurance Company  
cr First Surety Corporation  
cr GT Nix Construction, Inc.  
intp Gary Biebinger, Jr.  
cr Genesis Alkali, LLC  
intp Gilbert Remmal  
cr Great Northern Insurance Company  
intp Great Northern Properties L.P.  
cr HYG Financial Services, Inc. fka NMHG Financial Se  
cr Henry Moore  
intp Hopedale Mining LLC  
cr Illinois Union Insurance Company  
cr James Cardill, Birdstone Gap, VT  
intp James W Barker  
intp Jason B Chandler  
intp Jason K.  
intp John B. McKnight, IV  
intp John Beachler  
intp Johnny L. Cantor  
intp Joni Henderson  
intp Kathleen Plaistd  
intp Kevin L.  
cr Kinder Morgan Utopia LLC  
intp Larry Kennedy  
cr Lenders and Ad Hoc Noteholders  
intp Les Rex  
intp MKiall  
cr MLP Ad Hoc Group  
intp Mar-Bow Value Partners, LLC  
cr Marie Crum  
consult McKinsey Recovery & Transformation Services U.S.,  
intp Mickil Klinginbury  
cr Montana Department of Natural Resources and Conser  
cr Montana Department of Revenue



District/off: 0541-4

User: VrianaPor  
Form ID: pdf002

Page 5 of 5  
Total Noticed: 160

Date Rcvd: Feb 25, 2019

\*\*\*\*\* BYPASSED RECIPIENTS (continued) \*\*\*\*\*

intp Moody's Investors Service, Inc.  
 cr NRG Texas Power LLC  
 intp Natural Resource Partners L.P.  
 intp Navakai, Inc  
 intp Neil L Argyle  
 cr Nelson Brothers Mining Services, LLC  
 cr Norman R. Mestos  
 intp North Dakota Public Service Commissio  
 cr Northwest Colstrip Owners (NWC0)  
 intp Ohio Department of Natural Resources  
 intp Ohio Environmental Protection Agency  
 cr Ohio Machinery Co. ("Ohio Cat") and OMCO Leasing C  
 cr Paul Buchanan  
 cr Pension Benefit Guaranty Corporation  
 cr Portland General Electric Company  
 consult PricewaterhouseCoopers LLP  
 cr Prudential Retirement Insurance and Annuity Company  
 cr Puget Sound Energy, Inc.  
 intp Robert Huff  
 cr Robert T Sanchez  
 cr Rock Springs Royalty Company LLC  
 cr Ronald Crum  
 intp Samoa Hale Jordan  
 cr San Juan County Museum Association  
 intp State of Montana, Department of Revenue  
 cr Stephanie Crum  
 cr Talen Montana, LLC  
 cr Tenaska Power Services Co.  
 intp Thayne Christensen  
 crcm The Official Committee of Unsecured Creditors  
 cr The Sierra Club  
 intp The WMLP Debtors, US  
 intp Tom Price  
 cr Travelers Casualty and Surety Company of America  
 intp Tyler Hysell  
 cr U.S. Bank National Association  
 cr United States Department of Labor  
 cr United States Department of the Interior  
 cr United States Secretary of Labor  
 cr United States of America  
 intp Verdie Winder  
 intp Virgil Kent Service  
 intp WPP LLC  
 cr Wagner Equipment Co.  
 cr Westchester Fire Insurance Company  
 cr Westchester Surplus Lines Insurance Company  
 intp Western Organization of Resource Councils  
 cr Wheeler Machinery Co.  
 intp Whitney Garrett  
 cr Wilmington Savings Fund Society, FSB  
 intp\* +G. R. Peart, P.O. Box 114, Randolph, UT 84064-0114

TOTALS: 120, \* 1, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

**I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**

**Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Feb 27, 2019

Signature: /s/Joseph Speetjens

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### CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on February 25, 2019 at the address(es) listed below:  
NONE.

TOTAL: 0