

SHEA & GARDNER  
1800 MASSACHUSETTS AVENUE, N.W.  
WASHINGTON, D.C. 20036

FEB 12 '98

3-34 PM

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\*NOT ADMITTED IN D.C.

OF COUNSEL  
RICHARD T. CONWAY  
WILLIAM H. DEMPSEY  
BARBARA L. KIRSCHTEN

February 12, 1998

Vernon A. Williams  
Secretary  
Surface Transportation Board  
The Mercury Building  
1925 K Street, N.W.  
Washington, D.C. 20423

Dear Mr. Williams:

I have enclosed an original of the document described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

This document is a Business Loan/Security Agreement, a primary document, dated December 29, 1997.

The names and addresses of the parties to the document are as follows:

Lender and Secured Party: National Consumer Cooperative Bank  
1401 Eye Street, N.W.  
Washington, D.C. 20005

Borrower: Western Fuels Association, Inc.  
1100 West 116th Avenue  
Westminster, Colorado 80234

A description of the equipment covered by the document follows:

100 Hopper Cars (open top steel railcars) and numbered WFA 79300 to 79399, both inclusive.

*Country Club - Rebecca N.W.*

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RECEIVED  
SURFACE TRANSPORTATION  
BOARD

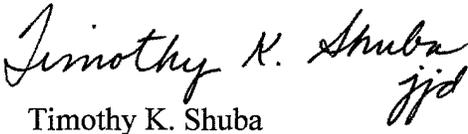
Vernon A. Williams  
February 12, 1998  
Page 2

A filing/recording fee of \$24.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to: Timothy K. Shuba, Shea & Gardner, 1800 Massachusetts Ave., N.W., Washington, D.C. 20036.

A short summary of the document to appear in the index follows:

Business Loan/Security Agreement between National Consumer Cooperative Bank, 1401 Eye Street, N.W., Washington, D.C. 20005, lender, and Western Fuels Association, Inc. debtor, dated December 29, 1997, and covering 100 Hopper Cars (open top steel railcars) and numbered WFAX 79300 to 79399, both inclusive.

Very truly yours,

  
Timothy K. Shuba

Attorney for National Consumer  
Cooperative Bank

TKS:jjd

Encl.

*Original*

RECORDATION NO. 21219 FILED

FEB 12 '98 3-34PM

BUSINESS LOAN/SECURITY AGREEMENT

NATIONAL CONSUMER COOPERATIVE BANK  
1401 Eye Street, N.W.  
Washington, D.C. 20005

LOAN NO. 22030 17

DATE: December 29, 1997

THIS BUSINESS LOAN/SECURITY AGREEMENT (this "Agreement") is entered into as of the date stated above by and between WESTERN FUELS ASSOCIATION, INC., a Wyoming corporation with principal offices at 1100 West 116th Avenue, Westminster, Colorado 80234 ("Borrower"), and NATIONAL CONSUMER COOPERATIVE BANK, d/b/a National Cooperative Bank, a federally chartered banking corporation with principal offices located in Washington, D.C. ("Bank").

WHEREAS, Borrower has applied to Bank for a loan in the form and amount and for the purposes set forth in this Agreement; and

WHEREAS, Bank is agreeable to making such loan to Borrower, subject to the terms and conditions of this Agreement, Borrower's promissory note substantially in the form attached hereto as Exhibit 1, and any and all other documents to be delivered hereunder;

NOW THEREFORE, in consideration of their mutual covenants and agreements contained herein, the parties hereby covenant and agree as follows:

ARTICLE I. LOAN AND REPAYMENT

Section 1.1. The Loan. Bank hereby agrees to lend, and Borrower agrees to accept, subject to the terms and conditions of this Agreement, a term loan (the "Loan") in an aggregate principal amount not to exceed Two Million One Hundred Thousand and No/100 U.S. Dollars (\$2,100,000.00). The Loan is to be evidenced by a promissory note substantially in the form attached as Exhibit 1 hereto (the "Note") to be issued by Borrower to Bank on the Closing Date and maturing on December 1, 2002 (the "Maturity Date").

Section 1.2. Purpose and Availability of Proceeds. (a) Borrower agrees that the Loan proceeds will be used only in connection with Borrower's business and only for the purpose of refinancing that certain revolving credit loan (the "Revolver") made by Bank to Lender for the purpose of purchasing 100 Open Top Hopper steel railcars (the "Railcars"), as identified on

Appendix A attached hereto, which are to be used for coal deliveries to the Board of Municipal Utilities of Sikeston, Missouri ("Sikeston"), pursuant to a Coal Purchase Agreement between Borrower and Sikeston dated November 30, 1991, as amended July 30, 1997, and October 1, 1997 (as amended, the "Coal Purchase Agreement").

(b) Subject to the terms and conditions hereof, the Loan proceeds shall be drawn on the Closing Date.

(c) Bank shall apply the proceeds of the Loan directly to pay off all outstanding principal under the Revolver.

Section 1.3. Interest; Late Charge. (a) The Note shall bear interest on the outstanding principal balance thereunder from the Closing Date until the Note is paid in full at a fixed rate of interest (the "Interest Rate"), computed on the basis of the actual number of days elapsed over a year of 360 days, equal to eight and 2/100 percent (8.02%).

(b) In the event that Borrower fails to pay any amount of principal or any other amount (other than interest) payable by Borrower hereunder when due, whether by acceleration, at the stated maturity, or otherwise, and Bank notifies Borrower that it is in default and that it must therefore pay interest at a higher rate, then Borrower shall pay interest on any such amount for the period commencing on the date stated in such notification and continuing until the same is paid in full, at the rate of 200 basis points in excess of the Interest Rate. Such notification, or the lack thereof, shall not affect the fact that Borrower is in default under Article VII of this Agreement.

(c) In the event that Borrower fails to make any payment under this Agreement within fifteen (15) days after the date such payment is due, Borrower shall immediately pay to Bank a late charge (the "Late Charge") equal to five percent of the required payment. The Late Charge shall be in addition to, and not in lieu of, any other right or remedy Bank may have and is in addition to any reasonable fees or charges of any agents or attorneys to which Bank may be entitled pursuant to the terms hereof.

(d) If at any time the Interest Rate shall be deemed by any competent court of law, governmental agency or tribunal to exceed the maximum rate of interest permitted by any applicable laws (including in such computation any other fee or charges or other requirements imposed on Borrower hereunder, and deemed interest by said court, agency or tribunal), then, for such time as the rate would be deemed excessive, its application shall be suspended and there shall be charged instead the maximum rate of interest permissible (including in such computation all fees, charges or other requirements imposed on Borrower hereunder and deemed interest by said court, agency or tribunal).

Section 1.4. Payment Provisions. Borrower shall repay the outstanding principal balance under the Note in 59 equal payments, each equal to 1/120th of the initial principal balance under the Note commencing January 1, 1998, and continuing on the first day of each month thereafter, through

and including November 1, 2002, with a final payment equal to the entire remaining principal balance on the Maturity Date. Borrower shall further pay accrued interest on the outstanding principal balance under the Note on each principal payment date hereunder.

Section 1.5. Prepayment. Borrower may prepay the Note any time in increments of \$50,000 or multiples thereof without penalty or premium. Each prepayment shall be applied first, to the payment of any late fees or other fees due hereunder, second, to all interest accrued under the Note as of the date of such prepayment and third, to the outstanding and unpaid principal amount of the Note, applied against installments in their inverse order of maturity. Borrower may not reborrow under the Note.

Section 1.6. Method of Payment. Whenever any payment of principal, interest, expenses or fees to be made hereunder or under the Note becomes due on a Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of the District of Columbia (any other day being a "Business Day"), such payment may be made on the next succeeding Business Day, and such extension of time shall in each case be included in the computation of the amount of interest then to be paid. All payments and prepayments hereunder shall be made to Bank, at P.O. Box 91760, Washington, D.C. 20090-1760, or at such other address as Bank may specify to Borrower in writing, in such money of the United States as at the time of payment shall be legal tender for the payment of public and private debts and in immediately available funds. Each payment shall be received by Bank no later than 12:00 noon, District of Columbia time, in order to be credited to Borrower on the day of receipt, and any payment received after such time shall be treated as received on the next Business Day.

## ARTICLE II. SECURITY

Section 2.1. Security Interests and Encumbrances. In order to secure all obligations of Borrower hereunder and under the Note (all of which are hereinafter collectively called the "Obligations"), Borrower hereby grants, assigns and conveys to Bank, and agrees to grant or cause to be granted, the following security interests in and liens upon the following property, together with all proceeds and products thereof of every type, including cash and non-cash proceeds. (All collateral in which Borrower herein grants and agrees to grant or cause to be granted security interests and encumbrances under this Section 2.1 is, collectively, the "Collateral".)

(a) Equipment. A first-priority security interest in the 100 Railcars purchased with the proceeds of the Revolver to be refinanced by the Loan, more particularly described in Appendix A hereto, and all increases, substitutions, replacements, additions and accessions thereto.

(b) Contract Rights. All of Borrower's right, title and interest in, to and under (i) the obligation of Sikeston, under the Coal Purchase Agreement to pay as "fixed costs" any and all amounts payable by Borrower hereunder and under the Note (the "Fixed Costs"); (ii) any and all

claims for damages or other amounts arising out of the nonpayment of such Fixed Costs; and (iii) any and all rights of Borrower to compel performance of Sikeston's obligation to pay such Fixed Costs.

Section 2.2. Perfection and Administration. In order to perfect the rights of Bank in the security interests and liens granted and to be granted hereunder and to assure to Bank the further protection and effective administration of its interests hereunder, Borrower shall:

(a) execute and deliver or cause to be executed and delivered to Bank for filing and recording such mortgages, deeds of trust, financing statements, amendments, and continuation statements as Bank may reasonably, from time to time, present to Borrower, including without limitation such letters of transmittal or other documents as may be necessary to record the security interests granted herein pursuant to 49 U.S.C. § 11303 and 49 C.F.R. Part 1177, and execute and deliver or cause to be executed and delivered to Bank any assignment, endorsement, hypothecation agreement, instrument, estoppel certificate or other writing that Bank may determine to be necessary or convenient in order to perfect or protect its security interests in or liens on, or facilitate the collection of, the Collateral, or otherwise to carry out the terms of this Agreement;

(b) cause the Collateral to be available for inspection to Bank or its agents at all reasonable times and places; and

(c) permit Bank or its agents, upon reasonable prior notice, access during normal business hours to the books, records, receipts and all other data of Borrower pertaining to the Collateral or relating to any transaction affecting the Bank's interest hereunder to review, examine, and audit all such books, records, receipts and other data, and to make extracts therefrom, and, as requested by Bank, cause appropriate officers of Borrower to meet with and provide information to Bank or its agents.

Section 2.3. Power of Attorney. Borrower irrevocably appoints Bank its true and lawful attorney with full power of substitution to endorse or negotiate in Borrower's name any checks or other instruments of payment constituting proceeds of or relating to the Collateral and to take any action which Bank deems necessary or appropriate to create, perfect, protect and preserve the liens and security interest of Bank on and in the Collateral or to enforce any of Bank's other rights in the Collateral, including, without limitation, notification to account debtors or lessees of Bank's security interests and liens and direction to such account debtors or lessees to make payments directly to Bank; provided, however, that Bank's rights under this sentence shall not be exercised except after the occurrence and continuance of an Event or Default. Borrower irrevocably appoints Bank as its true and lawful attorney and agent, with full power of substitution, to execute and file, on Borrower's behalf, Uniform Commercial Code financing statements in any appropriate public office.

### ARTICLE III. REPRESENTATIONS AND WARRANTIES

In order to induce Bank to enter into this Agreement, Borrower hereby warrants and represents to Bank, as of the Closing Date:

Section 3.1. Organization. Each of Borrower and its subsidiaries identified in Appendix B hereto (its "Subsidiaries"), if any, is and will remain a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, is duly qualified to do business in every jurisdiction where such qualification is necessary (except for jurisdictions the failure in which to qualify would have no material adverse impact upon Borrower's properties, operations, or financial condition on a Consolidated Basis), has the corporate power and authority to own its assets and transact the business in which it is engaged, and has obtained all necessary certificates, franchises and licenses for its operations. Borrower has no subsidiaries other than as listed in Appendix B. Borrower is an eligible borrower under the terms of the National Consumer Cooperative Bank Act (the "Bank Act") and Bank policies.

Section 3.2. Authorization. (a) The execution, delivery and performance of this Agreement, the Note, and all other documents as are to be delivered hereunder

(i) are within the corporate powers of Borrower;

(ii) have been duly authorized by all necessary corporate action;

(iii) do not violate any provision of the Articles of Incorporation or Bylaws of Borrower or of any law, rule, regulation (including, without limitation, Regulation U, 12 C.F.R. Part 221), order, writ, judgment, injunction, decree, determination or award presently in effect and having applicability to Borrower or its assets (including, without limitation, the Collateral);

(iv) are not in conflict with and do not result in a breach of or constitute a default under any indenture, loan or credit agreement, or any other agreement, lease or instrument to which Borrower is a party or by which it or its assets or properties may be bound or affected; and

(v) do not result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature upon or with respect to any of the assets or properties now owned or hereafter acquired by Borrower, except for the security interests and encumbrances granted and to be granted to Bank under Article II hereof; and

(b) Except as identified in Appendix C hereto, each of Borrower and its Subsidiaries,

(i) is in compliance with all applicable laws, rules, regulations, writs, judgments, orders, injunctions, decrees, determinations or awards applicable to it, and

(ii) is not in default under any indenture, agreement, lease, or instrument. The term "default" as used herein includes any Event of Default or any event which with notice or lapse of time or both would become an Event of Default ("Incipient Default").

Section 3.3. Validity. This Agreement, the Note, and all other documents to be delivered hereunder have been or shall be duly executed and delivered by Borrower and, when so executed, constitute the legal, valid and binding obligations of Borrower enforceable against Borrower and the Collateral in accordance with their respective terms, except as such enforcement may be limited by applicable bankruptcy, reorganization, or similar laws affecting the enforceability of creditors' rights in general and except for generally applicable principles of equity (collectively, the "General Exceptions").

Section 3.4. Governmental Approvals. No filing with or action or approval of any federal, state or local governmental department, agency, bureau, commission, board or instrumentality, except for those specifically identified in Appendix D hereto, is or will be required under existing law in connection with the valid execution, delivery or performance by Borrower of this Agreement or the Note or in connection with the validity and enforceability of the security interests and encumbrances in or on the Collateral, except as has been accomplished or obtained by Borrower and none of which has been or is threatened to be rejected or revoked, and except for the filing and recording of financing statements, mortgages, deeds of trust, and other documents required under Section 2.2 hereof.

Section 3.5. Litigation. There are no undischarged judgments against Borrower and there are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, its Subsidiaries, or any of its or their properties before any court or governmental department, commission, board, bureau, agency or instrumentality which, if determined adversely to Borrower or any of its Subsidiaries, would have a material adverse effect on the financial condition, properties or operations of Borrower, except as described in Appendix C attached hereto.

Section 3.6. Records and Business Location. The principal place of business of Borrower and the office where Borrower keeps its corporate and accounting records, including records relating to the Collateral, is, and in the absence of 30 days prior written notice to Bank shall remain, located at Borrower's address stated in Section 8.8 hereof.

Section 3.7. Security Interests. This Agreement, together with the financing statements, mortgages, deeds of trust and other documents required under Section 2.2 hereof, and such other documents as are to be executed and delivered hereunder, create valid and, assuming timely filing in all jurisdictions and with all authorities identified in Appendix E hereto, perfected first-priority security interests and liens in, on and to all of the Collateral as provided in Section 2.1 hereof, enforceable against the Collateral in accordance with the terms hereof and thereof, excepting only the General Exceptions.

Section 3.8. Encumbrances. Except as stated in Appendix F hereto, none of the Collateral is subject to any assignment, lien, security interest, charge or encumbrance (other than in favor of Bank) and no effective financing statement, mortgage, deed of trust or other instrument similar in effect covering any of the Collateral is on file in any filing or recording office, except such as have been or will promptly be filed in favor of Bank and except as permitted under Section 6.2 hereof.

Section 3.9. Financial Condition. The financial statements delivered to Bank pursuant to Section 4.1 hereof are accurate and complete and fully and fairly reflect Borrower's financial condition, on a Consolidated Basis, as of the date(s) thereof, and the results of operations of Borrower, on such basis, for the accounting periods covered therein, all in accordance with generally accepted accounting principles applied on a consistent basis ("GAAP") (as to annual statements) or (as to monthly or quarterly statements) in accordance with other consistently applied methods acceptable to Bank. Borrower has good and marketable title to all assets reflected in such financial statements except as stated therein, and all personal property of Borrower is in good operating condition and repair, and is suitable and adequate for the purpose for which it is being used. Except as stated in Appendix C hereto, Borrower has no contingent tax or other liability not disclosed by or reserved against in the balance sheets delivered as part of such financial statements; there are no material unrealized or anticipated losses from any commitment of Borrower; and there has been no material adverse change in Borrower's financial condition or operations since the date of and period covered by the latest such financial statements.

Section 3.10. Taxes. Borrower, on a Consolidated Basis, has filed all United States income tax returns and all state and municipal tax returns which are required to be filed, and has paid, or made provision for the payment of, all taxes which have become due pursuant to said returns or pursuant to any assessment received by Borrower, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided, and no federal or state tax liens have been filed or, to the knowledge of Borrower, threatened against Borrower or any of its Subsidiaries.

Section 3.11. Burdensome Documents. Neither Borrower nor any of its Subsidiaries is a party to or bound by, nor are any of their respective assets or operations affected by, any agreement (except with Bank), ordinance, decree, regulation, order or judgment which materially and adversely affects any of their respective assets, properties or operations, except as identified in Appendix D hereto.

Section 3.12. ERISA. With respect to any employee benefit plan maintained in whole or in part for the benefit of employees of Borrower or any of its Subsidiaries ("Plan") that is subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and regulations issued pursuant to ERISA, each of Borrower and its Subsidiaries is in compliance in all material respects with the applicable provisions of ERISA, except as stated on Appendix C hereto; no Plan or related trust maintained by Borrower has incurred any "accumulated funding deficiency" as defined in Section 302 of ERISA or Section 412 of the Internal Revenue Code; no Reportable Event as defined in Section 4043(b) of ERISA that requires notification of the Pension Benefit Guaranty Corporation

("PBGC") has occurred with respect to any Plan; and no provision of this Agreement will result in a Reportable Event or violation of ERISA.

Section 3.13. Margin Stock. Borrower is not and will not be engaged in the business of purchasing, carrying, or extending credit for the purpose of purchasing or carrying "margin stock", as defined by Regulation U of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 221, and no loan proceeds hereunder will be used for the purpose of purchasing or carrying margin stock or extending credit for such purpose.

Section 3.14. Hazardous Substances. (a) Neither Borrower nor any of its Subsidiaries has generated, stored, used, treated, disposed of or otherwise handled any Hazardous Substance (as used herein "Hazardous Substance" means any substance which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated by any applicable local, state or federal law or regulation, whether currently in existence or hereafter promulgated, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., and regulations promulgated thereunder, and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., and regulations promulgated thereunder (collectively, the "Environmental Laws"), and includes also, without limitation, raw materials, building components, the products of any manufacturing activities, wastes, petroleum, and source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 3011 et seq.), excluding only such customary amounts of Hazardous Substances as may be commonly and lawfully generated, stored, used, treated, disposed of, or otherwise handled or located on or at any facility or other property used in the same or similar business or businesses as the affected facility or facilities or other property owned, leased or operated by Borrower ("Permissible Amounts"); (b) except as set forth in Appendix G hereto, Borrower, after due investigation, has no knowledge of the generation, storage, use, treatment, disposal, or release into the environment of any Hazardous Substance by any other Person on or from any facility or other property owned, leased or operated by Borrower or any of its Subsidiaries; (c) except as set forth in Appendix G hereto, no Hazardous Substance in excess of Permissible Amounts is presently located on any facility or other property owned, leased or operated by Borrower or any of its Subsidiaries; (d) no property owned, leased or operated by Borrower or any of its Subsidiaries has been listed or proposed for listing on the National Priorities List established by the United States Environmental Protection Agency ("EPA"), or on any other list developed or maintained by any federal, state or local governmental entity and purporting to identify properties posing the threat of pollution or contamination due to the presence of any Hazardous Substance and neither Borrower nor any of its Subsidiaries has been identified by the EPA or any federal, state or local governmental entity as a potentially responsible party for environmental cleanup obligations with respect to any property, site or facility; and (e) all activities, operations and conditions at or on any facility or other property owned, leased, or operated by Borrower or any of its Subsidiaries are in compliance with all Environmental Laws.

Section 3.15. Insurance. Each insurance policy currently owned or held by Borrower is (a) with an insurance company rated acceptably to Bank or otherwise acceptable to Bank, (b) in full

force and effect, and (c) a valid, outstanding and enforceable policy. The insurance policies currently owned or held by Borrower collectively (a) insure against all risks of the kinds customarily insured against and in amounts customarily carried by entities in the same or similar type and size of business and owning similar property in the same general area situated similarly to Borrower, and (b) provide adequate coverage for the assets, properties, and business of Borrower.

Section 3.16. Coal Purchase Agreement. The remaining term of the Coal Purchase Agreement extends beyond the Maturity Date.

#### ARTICLE IV. CONDITIONS PRECEDENT

Section 4.1. Conditions Precedent to Closing. The obligations of Bank under this Agreement are subject to compliance by Borrower, on or prior to the Closing Date, with each of the following:

(a) Bank shall have received each of the following documents, in form and substance satisfactory to Bank and to its counsel:

- (i) triplicate originals of this Agreement, executed by Borrower and Bank;
- (ii) the Note, executed by Borrower;
- (iii) a transmittal letter addressed to the National Surface Transportation Board with respect to the Equipment Collateral and satisfying the requirements of 49 C.F.R. § 1177.3(d);
- (iv) executed financing statements with respect to the Collateral;
- (v) duplicate originals of an assignment of the obligation of Sikeston to pay the Fixed Costs, together with consents of Sikeston thereto;
- (vi) a certificate issued by the appropriate state officer with respect to the good standing of Borrower and its charter documents on file;
- (vii) copies, certified by its Secretary or an Assistant Secretary, of the Articles of Incorporation and Bylaws of Borrower, with all amendments thereto to date;
- (viii) resolutions of the Board of Directors or other appropriate authorizations of Borrower certified by its Secretary or an Assistant Secretary, authorizing the execution, delivery and performance, as applicable, of this Agreement, the Note, and all other documents necessary for performance of the obligations of Borrower under this Agreement;

(ix) certificates, executed by the Secretary or an Assistant Secretary of Borrower, as to the incumbency and authenticity of signatures of the officers of Borrower executing this Agreement and any and all other documents required as conditions precedent under this Section;

(x) a favorable opinion of counsel for Borrower with respect to the matters stated in Sections 3.1-3.4, 3.7-3.8 and 3.12, and with respect to such other matters as Bank or its counsel may require;

(xi) financial statements of Borrower as of such dates and for such periods as may be requested by Bank in writing, each including a balance sheet and statements of income, changes in financial position, cash flows, and stockholders' equity, if any, all in reasonable detail and (as to annual statements) prepared in accordance with GAAP, accompanied by a certification as to accuracy and fair and complete presentation by the chief financial officer of Borrower or such other person as may be acceptable to Bank, and audited and certified by an independent certified public accountant acceptable to Bank and containing no material qualifications or (as to quarterly or monthly statements) prepared in accordance with a consistently applied method acceptable to Bank and certified as to accuracy and fair and complete presentation by the chief financial officer of Borrower or such other person as may be acceptable to Bank;

(xii) satisfactory lien, suits and judgment searches, together with any required releases, terminations, satisfactions or subordinations necessary, in the sole judgment of Bank, to ensure that Bank's priority position with respect to the Collateral, as required by Section 2.1 of this Agreement, will be obtained upon closing [**we will need a release of all previous security interests in the Railcars**] ;

(xiii) copies of all insurance policies or certificates of Borrower and each Subsidiary, including without limitation, full coverage casualty insurance on the Collateral, and copies of all endorsements to such policies of Borrower identifying Bank as an additional insured or loss payee, as appropriate;

(xiv) copies of all applicable licenses or permits of Borrower and each Subsidiary; and

(xv) any other documents requested by Bank prior to the Closing Date.

(b) Borrower shall have paid to Bank a Commitment Fee in the amount of \$5,000.

(c) There shall exist no Event of Default or Incipient Default under this Agreement.

(d) In accordance with the requirements of Section 104(d) of the Bank Act, Borrower shall own, on or before the Closing Date, shares of Class B capital stock of Bank, par value \$100 per share, equal, at such par value, to at least one percent (1%) of the Loan amount. Such stock shall be purchased from such existing holder(s) of such stock as Bank may designate. Such ownership

may be funded from the proceeds of the Loan. Ownership by Borrower of such shares, and any transfer of such shares, will be evidenced only by entry on the books of Bank, subject to the Bylaws of Bank. Bank shall have and hold a first lien on all shares of any class or series of its capital stock (including but not limited to the shares purchased pursuant to this Agreement, whether or not fully paid for) for any and all indebtedness of Borrower to Bank. This security interest extends to any proceeds of or distributions on such shares. Bank may at its sole option cancel such shares and apply the purchase price thereof against amounts now or hereafter owed to Bank by Borrower, at any time when Borrower is in default hereunder or under any other indebtedness to Bank. Borrower has no right to apply the price of the shares against the Loan, in any circumstances; and no such application shall occur unless and until Bank in its sole option notifies Borrower in writing that it has elected to cancel the shares because of a default. If Borrower ceases to be an active functioning cooperative, or ceases to be an eligible borrower from Bank at any time, including after all liabilities of Borrower to Bank have been satisfied, Bank may cancel or exchange such shares as provided in the Bylaws of Bank. Tax consequences to Borrower, if any, of the purchase and ownership of such shares are the sole responsibility of Borrower. The stock is not redeemable and, even after the Loan is repaid, may only be sold pursuant to Bank's rules governing such sales, as they may be amended from time to time. There is no assurance that Borrower will ever be permitted to sell its Class B stock pursuant to those rules. Borrower understands and acknowledges that (i) the Bank Act requires borrowers from Bank to own Class B stock in an amount not less than one percent (1%) of the face amount of the Loan at the time the Loan is made; (ii) Bank has furnished Borrower with the Act and current Bylaws of Bank and the most recent Annual Report of Bank for information purposes; (iii) Bank has made no representations concerning its Class B stock, other than those contained in this Agreement; and (iv) Borrower's decision to accept the Loan, and thereby incur the requirement to purchase or cause the purchase of Class B stock, has been made solely in reliance on the terms and conditions of the documents executed and delivered in connection with the Loan, and not on any expectation of future earnings or performance of Bank.

(d) Borrower shall have furnished evidence permitting Bank to determine that Borrower is an eligible borrower under Section 105 of the Bank Act.

#### ARTICLE V. AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, until all of its obligations hereunder, under the Note, and under all other documents delivered hereunder have been satisfied in full and in the absence of prior contrary written consent of Bank:

Section 5.1. Payments Hereunder. Borrower shall make all payments of principal, interest, fees, and all other payments required hereunder, under the Note, and under any other agreements with Bank to which Borrower is a party, as and when due.

Section 5.2. Existence and Good Standing. Borrower shall do and, with respect to each of its Subsidiaries, cause to be done all things necessary (a) to preserve and keep in full force and effect its corporate existence, rights, and licenses, permits and franchises and comply with all applicable laws and all rules, regulations and orders of federal, state and local regulatory bodies having jurisdiction applicable to it, including without limitation all Environmental Laws; (b) to maintain and protect its assets or properties used or useful in the conduct of its operations in a prudent business manner; (c) to keep the Collateral in good order and repair and not waste the same; (d) to conduct its operations and continue the conduct of its business without any substantial change in the general nature of such operations or business from that in effect on the Closing Date; (e) to maintain Borrower's place of business at the location specified in Section 3.6 hereof, provided, however, that upon 30 days prior written notice to Bank, Borrower may change its place of business; and (f) to maintain its status as an eligible borrower, as defined in the Bank Act, and as set forth in Bank's policies as they exist on the date hereof.

Section 5.3. Taxes and Charges. Borrower shall, and shall cause each of its Subsidiaries to, timely file returns and pay and discharge all taxes, assessments and governmental fees, charges or levies imposed upon it or its income or profits or upon its assets or properties or any part thereof, before the same shall be in default, as well as all lawful claims which, if unpaid, might become a lien or charge upon such properties or any part thereof; provided, however, that neither Borrower nor any of its Subsidiaries shall be required to pay and discharge or cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and Borrower or its Subsidiaries, as applicable, shall have set aside on its books adequate reserves therefor.

Section 5.4. Insurance. Borrower shall, and shall cause each of its Subsidiaries to, at all times maintain insurance with insurance companies rated acceptably to Bank or otherwise acceptable to Bank, in such amounts and against such risks as are satisfactory to Bank, including without limitation casualty and liability insurance and, in any event, as would be reasonably prudent for entities in the same or similar type and size of business and owning similar property in the same general area. All such policies insuring Borrower or the Collateral shall provide that the proceeds thereof shall be payable to Bank pursuant to an additional insured or a standard mortgagee or loss payee clause. Copies (or, with respect to coverage of Bank, originals) of all said policies or certificates thereof, including all endorsements, shall be delivered to Bank; and such policies shall contain provisions that no such insurance may be canceled or decreased without ten days prior written notice to Bank. In the event of acquisition by Borrower of additional insurable Collateral, Borrower shall cause such insurance coverage to be increased or amended in such manner and to such extent as prudent business judgment would dictate. If Borrower or any of its Subsidiaries shall at any time or times hereafter fail to obtain or maintain any of the policies of insurance required herein, or fail to pay any premium in whole or in part relating to such policies, Bank may, but shall not be obligated to, obtain or cause to be maintained insurance coverage, including, at Bank's option, the coverage provided by all or any of the policies of Borrower or its Subsidiaries and pay all or any part of the premium therefor, without waiving any default by Borrower, and any sums so disbursed

by Bank shall be additional loans to Borrower by Bank payable on demand. Bank shall have the right to settle and compromise any and all claims under any of the casualty policies required to be maintained by Borrower hereunder, and Borrower hereby appoints Bank as its attorney-in-fact, with power to demand and receive all monies payable thereunder, to execute in the name of Borrower or Bank or both any proof of loss, notice, draft, or other instruments in connection with such policies or any loss thereunder and generally to do and perform any and all acts as Borrower, but for this appointment, might or could perform.

Section 5.5. Financial Statements. Borrower shall maintain accurate and complete books and financial records and shall deliver or cause to be delivered to Bank:

(a) no later than 150 days after the close of each fiscal year of Borrower and Sikeston, each of Borrower's and Sikeston's financial statements for such fiscal year, respectively, on a Consolidated Basis, each containing a balance sheet as of the end of such fiscal year and statements of income, stockholders' equity, if any, cash flows, and changes in financial position for such fiscal year, all in reasonable detail and prepared in accordance with GAAP, accompanied by a certification as to accuracy and fair and complete presentation by Borrower's or Sikeston's chief financial officer, respectively, or such other person as may be approved by Bank in writing, and audited and certified by an independent certified public accountant reasonably acceptable to Bank and containing no material qualifications;

(b) within 30 days after the end of each quarter of each fiscal year of Borrower, financial statements for Borrower for such quarter, on a Consolidated Basis, each such financial statement containing a balance sheet as at the end of such period and statements of income, and such other quarterly statements as are customarily prepared by Borrower on a quarterly basis, and, upon the written request of Bank and with reasonable notice, such other financial information as Bank may reasonably deem necessary to provide current financial information, each prepared in a format substantially similar to similar statements, if any, delivered under Section 4.1(a)(xiv) and all prepared by accountants satisfactory to Bank and accompanied by a certification as to accuracy and fair and complete presentation by Borrower's chief financial officer or such other person as may be approved by Bank in writing; and

(c) concurrently with the delivery of the financial statements required under subsections (a) and (b) of this Section, a certificate of Borrower's chief financial officer or such other person as may be approved by Bank in writing stating that there exists no Event of Default or Incipient Default hereunder.

Section 5.6. Reports. Borrower shall deliver to Bank, in reasonable detail and in form acceptable to Bank,

(a) as soon as possible, and, in any event, within five Business Days after Borrower receives notice or knowledge thereof or learns facts which would lead a reasonable person to undertake diligent inquiry with respect thereto, a report or statement executed by a senior officer of

Borrower with respect to (i) the occurrence of any Reportable Event that requires notification of the PBGC by Borrower or any of its Subsidiaries pursuant to ERISA and regulations thereunder; (ii) the occurrence of any Event of Default or Incipient Default or failure to observe or perform any covenant set forth herein or in any other agreement with Bank to which Borrower is a party and any action taken or contemplated with respect thereto; (iii) (A) the existence or change in status of any pending or threatened litigation or administrative proceedings or investigations against or affecting Borrower or any of its Subsidiaries which, if determined adversely to Borrower or any of its Subsidiaries, would have a material adverse effect upon the financial condition or operations of Borrower on a Consolidated Basis and (B) any reserves set aside or to be set aside in connection with such proceedings, in accordance with GAAP; and (iv) any report, citation, notice demand or other written or oral communication concerning any facility or other property now or hereafter owned, leased or operated by Borrower or any of its Subsidiaries to which any Hazardous Substance used, generated, treated or disposed of by Borrower or any of its Subsidiaries may have been transported, or concerning the activities, operations or potential responsibility for environmental cleanup obligations of Borrower or any of its Subsidiaries, to or from any governmental agency or entity empowered to enforce, investigate, or oversee compliance with any Environmental Law; and

(b) such other reports as Bank may, from time to time, reasonably request in writing from Borrower.

Section 5.7. Management. Borrower shall maintain in the positions of chief executive officer and chief financial officer (or, in each case, an equivalent position) a person of demonstrated skill and experience in the duties of each such position, and, in the event that any person holding such a position leaves the employ of or otherwise ceases to hold such a position with Borrower, Borrower shall immediately notify Bank of such vacancy and shall, immediately upon employing a replacement, so notify Bank.

Section 5.8. Hazardous Substances. (a) All activities, operations and conditions at or on any facility or other property now or hereafter owned, leased or operated by Borrower or any of its Subsidiaries shall be conducted and maintained in compliance with all Environmental Laws. Borrower shall perform or have performed at its expense, or cause its Subsidiaries to perform or have performed at their expense, such environmental investigations, audits, surveys, or tests as Bank may from time to time require. Upon discovery of any Hazardous Substance at or on any facility or other property now or hereafter owned, leased, or operated by Borrower or any of its Subsidiaries in excess of Permissible Amounts, excepting only such Hazardous Substances as are identified in Appendix G hereto, or upon discovery of the release of any Hazardous Substance into the environment from any such facility or property, Borrower shall immediately notify Bank thereof. Borrower shall, or shall cause its Subsidiaries to, immediately take all actions necessary (i) to comply with laws requiring notification of government agencies concerning such discovered or released Hazardous Substances, (ii) to remedy or correct the condition, including, without limitation, any resulting environmental contamination, and (iii) to remove from the facility or other property all such discovered or released Hazardous Substances. Borrower shall, and shall cause each of its Subsidiaries to, handle and dispose of such substances in accordance with Environmental Laws.

Borrower shall, or shall cause its Subsidiaries to, take any and all actions necessary to obtain reimbursement or compensation from any Person responsible for the presence or release of such Hazardous Substances. Bank shall be subrogated to Borrower's rights in all such claims.

(b) Bank or its agents shall have the right to enter and inspect the condition of any facility or other property owned, leased, or operated by Borrower at any time and to conduct such inspection, testing, environmental audit and/or other procedures as Bank believes are necessary to determine current compliance with the covenants and representations contained in this Section 5.8 and in Sections 3.14 and 6.5.

Section 5.9. Coal Purchase Agreement. Borrower shall include in the fixed costs to be paid by Sikeston under the Coal Purchase Agreement all costs and expenses incurred by it, and all payments to be made by it, in connection with the Loan. Borrower shall take all such reasonable steps as may be necessary to secure prompt payment by Sikeston of the Fixed Costs. Borrower shall perform all of its obligations under the Coal Purchase Agreement consistently with its terms, and shall take all such reasonable steps as may be necessary to assure that the Coal Purchase Agreement does not expire or terminate until the Note has been paid in full.

## ARTICLE VI. NEGATIVE COVENANTS

Borrower covenants and agrees that, until such time as Borrower's obligations hereunder, under the Note and under all other documents delivered hereunder have been satisfied in full, and in the absence of prior contrary written consent of Bank:

Section 6.1. Mergers and Related Transactions. Except as specifically identified on Appendix F hereto, Borrower shall not, nor shall any of its Subsidiaries, (a) merge into, acquire, or consolidate with or into any other Person, (b) create or acquire any Subsidiary not listed in Appendix B, (c) alter or amend its capital structure in any way, or (d) amend its Articles of Incorporation or Bylaws in any material respect (except as may be necessary to comply with Section 5.2 hereof, in which case it shall provide the Bank with 15 days prior written notice of such amendments), nor shall any material change be made in the ownership of any legal or beneficial interest in Borrower or any of its Subsidiaries.

Section 6.2. Encumbrances and Indebtedness. Except as provided in Appendix F hereto, Borrower shall not, nor shall it cause or permit any of its Subsidiaries to:

(a) Assume, create, incur, maintain or suffer to exist any indebtedness, other than to Bank, except for short-term trade indebtedness incurred in the ordinary course of business, indebtedness existing as of the date hereof and previously disclosed to Bank in writing, and indebtedness permitted under any other loan from Bank to Borrower;

(b) Create, incur, assume, maintain or suffer to exist any mortgage, deed of trust, security interest, lien or other encumbrance upon any of its real or personal properties or assets, whether now owned or hereafter acquired, except for (i) encumbrances granted to Bank; (ii) liens for taxes not yet due or contested in good faith by appropriate proceedings; and (iii) encumbrances securing indebtedness permitted under Section 6.2(a); or

(c) Make loans or other advances to any Person, or assume or incur any direct or contingent obligation or liability, as endorser, guarantor, surety or otherwise, with respect to the obligations of any other Person.

Section 6.3. Sales and Dispositions. Borrower shall not, nor shall it cause or permit any of its Subsidiaries to, sell, exchange, loan, deliver, transfer, lease, assign, mortgage or otherwise dispose of any material portion of its assets, including any of the Collateral, or its interests therein, except in the ordinary course of business.

Section 6.4. Financial Requirements. Borrower shall not suffer or permit its tangible net worth at any time to be less than \$4,000,000.00.

Section 6.5. Hazardous Substances. Throughout the term of this Agreement, Borrower shall not allow, and shall cause its Subsidiaries not to allow, any Hazardous Substance in excess of Permissible Amounts, excepting only such Hazardous Substances as are identified in Appendix G hereto, to be brought onto, generated, stored, used, treated, disposed of, transported over, or otherwise handled or located at any facility or other property owned, leased, or operated by it or its Subsidiaries. Upon receipt of notice from Borrower concerning Borrower's or any Subsidiary's intent or desire to take any action described in this Section 6.5, Bank may, at its sole option, consent, withhold consent, or condition its consent upon the provision by Borrower or its Subsidiaries of insurance adequate to fully cover and protect Bank's interest under the Note.

Section 6.6 Ownership of Subsidiaries. Borrower shall, at no time, own less than 51% of the stock of its Subsidiaries without prior written notice to Bank, except as described in Appendix F.

Section 6.7. Franchises. Borrower shall not suffer the final revocation, suspension, material amendment or termination of any franchise, agreement, permit, or license necessary for the lawful operation of its primary business activity.

Section 6.8. Coal Purchase Agreement. Borrower shall not commit any breach of its obligations under the Coal Purchase Agreement or cause or permit the Coal Purchase Agreement to expire or terminate or be terminated or canceled prior to the Maturity Date.

## ARTICLE VII. DEFAULT

Section 7.1. Events of Default. Each of the following events shall constitute an Event of Default hereunder if such event shall not be remedied within the time period set forth below:

(a) Borrower shall fail to pay any amount of principal, interest, fees, or other payments due hereunder or under the Note in accordance with Section 5.1 or under any other agreement with Bank to which Borrower is a party when such amount is due and payable, and such failure shall continue for more than five days;

(b) Borrower, any of its Subsidiaries, or Sikeston shall fail to pay any indebtedness (other than that due under any agreement with Bank), when due (whether by scheduled maturity, by required prepayment, by acceleration, by demand or otherwise), shall fail to meet its obligations under the terms of any guaranty when called upon to do so, or shall fail to perform any term, covenant or agreement on its part to be performed under any agreement or instrument evidencing or securing or relating to any such indebtedness or guaranty when required to be performed, and the effect of any such failure is to accelerate, or to permit the holder or holders of such indebtedness or the trustees under any such agreement or instrument to accelerate, the maturity of such indebtedness or such obligation guaranteed by Borrower, such Subsidiary, or Sikeston, and Borrower, such Subsidiary or Sikeston has not cured such failure within the grace period, if any, provided by the applicable instrument or agreement, whether or not such holders or trustees elect to exercise such remedy or to waive such failure;

(c) Any representation or warranty made by Borrower in this Agreement or any certificate, agreement, instrument, report or statement contemplated by or made or delivered pursuant to or in connection with this Agreement or any other agreement with Bank to which Borrower is a party, shall be, at the time of the making of such representation or warranty, untrue or incorrect in any respect;

(d) Borrower shall fail to observe or perform any covenant or agreement contained in (i) the corporate existence clause of Section 5.2(a), 5.6(a), 6.1 through 6.4, and 6.7 hereof, or (ii) any other provision of Article V or VI of this Agreement or any other agreement with Bank to which Borrower is a party, except as otherwise provided herein, and such failure shall continue for more than 30 days;

(e) Borrower, any of its Subsidiaries, or Sikeston shall generally not pay its debts (other than inter-company debts) as they become due or admit in writing its inability generally so to pay its debts, make an assignment for the benefit of creditors, seek an order for relief in bankruptcy, become insolvent or bankrupt within the meaning of the Federal Bankruptcy Code, petition or apply to any tribunal for the appointment of any receiver, custodian, liquidator, trustee, or similar official (hereinafter "Official") for it or any substantial part of its property, commence any proceeding relating to it under any reorganization, arrangement, readjustment of debt, conservatorship, receivership, dissolution or liquidation law or statute of any jurisdiction (including, without limita-

tion, the Federal Bankruptcy Code) or there shall be commenced against it any such proceeding which remains unstayed or undismissed for a period of more than sixty (60) days, or it shall consent to, approve of or acquiesce in any such proceeding or the appointment of any such Official, or it shall suffer any such proceeding to continue undischarged for a period of more than sixty (60) days;

(f) Borrower or any of its Subsidiaries (i) shall suffer the entry of any judgment against it by any court of record for the payment of money, if the aggregate of all such judgments, on a Consolidated Basis, outstanding is in excess of \$250,000 at any one time, or enjoining the conduct of any material part of its business or the performance of any material covenants in this Agreement or (ii) shall suffer the issuance of any writ of attachment on any of its assets, if the aggregate of all such writs outstanding at any one time is greater than \$250,000, and, under the circumstances of either (i) or (ii), above, Borrower or such Subsidiary shall not discharge the same or provide for its discharge in accordance with its terms, or fully bond or insure against the same or procure a stay of execution thereon within 30 days from the date of entry thereof, unless execution thereon is effectively stayed pending further proceedings;

(g) Any security interest or lien granted herein or to be granted hereunder in or on the Collateral shall for any reason not be or cease to be a valid and perfected security interest or lien having priority as stated in Section 2.1;

(h) Any Reportable Event that requires notification of the PBGC and which might constitute grounds for the termination of any Plan covered by Title IV of ERISA or for the appointment by the appropriate United States District Court of a trustee to administer any such Plan shall have occurred and be continuing 60 days after written notice to such effect shall have been given to Borrower by Bank, or any such Plan shall be terminated, or a trustee shall be appointed by an appropriate United States District Court to administer any such Plan, or the PBGC shall institute proceedings to terminate any such Plan or to appoint a trustee to administer any such Plan;

(i) Bank in good faith shall believe the prospect of payment of the Note is substantially impaired due to acts or events bearing upon the financial condition of Borrower, on a Consolidated Basis, or Sikeston; and

(j) Borrower shall breach any of its obligations under the Coal Purchase Agreement or the Coal Purchase Agreement shall expire or terminate.

Section 7.2. Acceleration. Upon the occurrence of any Event of Default, Bank may, by written notice to Borrower, elect to make no further advances under the Loan and declare the entire indebtedness of Borrower then outstanding under the Note immediately due and payable without presentment, demand, protest, notice of protest or any other notice of any kind, all of which are hereby expressly waived. Notwithstanding the foregoing provisions of this Section, the entire indebtedness of Borrower then outstanding under the Note shall become immediately due and payable without notice or election of any kind and without need for any action by Bank if Borrower, any of its Subsidiaries, or Sikeston shall file a voluntary petition for an order for relief in bankruptcy, for

an arrangement with its unsecured creditors or for corporate reorganization under any bankruptcy, receivership or similar statute. Bank shall have no obligation to disburse any Loan proceeds during the existence of any Event of Default or Incipient Default.

Section 7.3. Right of Setoff. Upon the occurrence and during the continuance of any Event of Default, Bank is hereby authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower), to set off and apply any and all money, credits, stocks, bonds or other securities or property of any nature whatsoever at any time held, and other indebtedness at any time owing, by Bank to or for the credit or the account of Borrower, including patronage dividends which would otherwise be payable by Bank to Borrower, against any and all of the obligations of Borrower, first under this Agreement and second under any other agreement with Borrower, irrespective of whether or not Bank shall have made any demand under this Agreement or the Note, and although such obligations may be unmatured. Bank agrees promptly to notify Borrower after any such setoff and application, provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of Bank under this Section are in addition to other rights and remedies (including, without limitation, other rights of setoff) that Bank may have.

Section 7.4. Rights to Collateral. Upon the occurrence of any Event of Default, Bank shall have all rights with respect to the Collateral hereunder as are available to secured parties under the Uniform Commercial Code and other applicable law in effect in the District of Columbia, and in the jurisdiction in which any portion of the Collateral is located (including without limitation the right to repossession without judicial process as set forth in Section 9-503 of the Uniform Commercial Code), and Bank may (a) enter upon Borrower's premises peaceably, by Bank's own means or with legal process, and take possession of the Collateral, or render it unusable, or dispose of the Collateral on Borrower's premises, and Borrower agrees not to resist or interfere, (b) require Borrower to assemble the Collateral and make such Collateral available to Bank at a place reasonably designated by Bank, and (c) sell, assign and deliver all, or any part of, the Collateral at any broker's board or at any public or private sale, as Bank may elect, either for cash or on credit, and for present or future delivery without assumption of any credit risk, and without either demand, advertisement or notice of any kind, all of which are expressly waived. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Bank will give Borrower reasonable notice of the time and place of any public sale thereof or of the time after which any public or private sale or any other intended disposition thereof is to be made. In any event, Borrower agrees that any notice of sale or other action given by Bank at least five Business Days prior to such action shall constitute reasonable notice. Bank may at any time after the occurrence of any Event of Default notify account debtors on any Collateral that the Collateral has been assigned to Bank and that proceeds shall be paid to Bank. Upon request by Bank after the occurrence of any Event of Default, Borrower agrees to so notify account debtors and to indicate on all account billings that the accounts are payable to Bank. In the event of any sale hereunder, Bank shall, after deducting all costs or expenses of every kind for care, safekeeping, collection, sale, delivery, administration of this Agreement, or otherwise, apply the residue of the proceeds of such sale first, to the payment of interest due under the Note, second, to the payment of principal due under the Note, third, to the

payment of any unpaid fees hereunder, and fourth, if there be any surplus remaining, to Borrower; provided, however, that if the proceeds are insufficient to pay all such expenses, interest, principal, and fees, Borrower shall remain liable for any deficiency. Upon the occurrence of any Event of Default, Bank is further authorized to transfer any Collateral to its own name or that of its nominees. Bank shall not have any duty with reference to any Collateral in its possession other than to use reasonable care in the custody and preservation of such Collateral, which duty shall not include any steps to preserve rights against prior parties or to send notices, perform services, or take any action in connection with the management of the Collateral. Borrower shall bear all risks of diminution or depreciation of the Collateral upon and after the occurrence of any Event of Default, and Bank shall have the right, in its sole discretion, to delay or refrain from selling or otherwise disposing of the Collateral. In the absence of any Event of Default, Borrower may continue to vote any shares of stock constituting Collateral and to receive any cash dividends on such shares permitted hereunder.

#### ARTICLE VIII. MISCELLANEOUS

Section 8.1. Rights and Waivers. All rights, remedies and powers granted to Bank herein, or in the Note or any other instrument or document delivered or to be delivered in connection herewith (collectively the "Loan Documents"), whether express or implied, shall be cumulative and may be exercised singly or concurrently with such other rights as Bank may have, and shall include, without limitation, the right to apply to a court of equity for any injunction to restrain a breach or threatened breach of this Agreement and all rights as stated in Article VII hereof. No failure or delay on the part of Bank in exercising any right, power or privilege hereunder, under any other of the Loan Documents, or under applicable law, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege; and Borrower shall remain liable for the strict performance hereof until all Obligations shall have been fully paid in accordance with their terms and this Agreement shall have been terminated. No waiver or modification of any right, power or privilege of Bank, or of any obligation of Borrower shall be effective unless such waiver or modification is in writing, signed by Bank and then only to the extent set forth therein. A waiver by Bank of any right, power or privilege hereunder on any one occasion shall not be construed as a bar to, or a waiver of, any such right, power or privilege which Bank otherwise would have on any subsequent occasion. This Agreement and the Loan Documents shall continue in full force and effect for so long as Borrower shall be indebted to Bank, and thereafter until Bank shall have actually received written notice of the termination hereof from Borrower and until all Obligations of Borrower to Bank incurred or contracted before receipt of such notice, plus applicable interest, fees, costs and expenses, including without limitation attorneys' fees, shall have been fully paid. Bank shall have no liability to Borrower for failure to fund the Loan on the date or dates set for such funding if such failure is due to forces or circumstances beyond the control of Bank, including, without limitation, Acts of God, concerted work stoppages, or delays in wire transfer systems.

Section 8.2. Binding Effect; Assignment. This Agreement shall bind and inure to the benefit of the parties, their legal representatives, successors and assigns, including, without limitation, other banks to which Bank may assign participations in the Loan to the extent of such participations, except that Borrower may not assign or transfer its rights hereunder or any interests herein without the prior written consent of Bank. Borrower waives all statutory exemptions as to liabilities hereunder, including, without limitation, exemptions under the bankruptcy laws.

Section 8.3. Severability. Any provision of this Agreement prohibited by the laws of any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, or modified to conform with such laws, without invalidating the remaining provisions of this Agreement, and any such prohibition in any jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 8.4. Interpretation. Article and Section headings used herein are for convenience only and shall not affect the construction or interpretation of this Agreement. Use of the singular shall include the plural, and vice versa, whenever appropriate to protect the interests of Bank; the conjunctive shall include the disjunctive, and vice versa, whenever so appropriate, and masculine, feminine, and neuter pronouns shall be considered interchangeable. Specification of any section or subsection herein shall be deemed to include specification of any exhibit or appendix referred to therein. Each party to this Agreement has participated in its drafting, and this Agreement shall be interpreted without reference to any rule of construction providing for interpretation of documents against the Persons drafting them.

Section 8.5. Governing Law; Jury Trial. This Agreement and the Note shall be construed in accordance with and governed by the internal laws of the District of Columbia (but excluding its choice of law rules). Borrower consents to the jurisdiction of the courts of the District of Columbia (including, without limitation, the federal district court) over all disputes or controversies arising in connection with this Agreement or the Note, and waives any defense of inconvenient forum, and all litigation in that regard shall be brought in such courts unless Bank otherwise consents. The parties individually with respect to each instance and each issue arising in connection with this Agreement or the Note as to which the right to a trial by jury would otherwise accrue, waive and elect not to assert their right to trial by jury on any issue triable of right by a jury to the full extent that any such right shall now or hereafter exist, and each represents that it has entered into such waiver knowingly, willingly and voluntarily after receiving the advice of independent counsel of its own choosing, and Borrower certifies that no representative or agent of Bank (including without limitation Bank's counsel) has represented, expressly or otherwise, to Borrower that Bank will not seek to enforce this waiver of right to jury trial provision. The parties consent to service of process by registered mail, return receipt requested.

Section 8.6. Payment of Expenses and Taxes. Borrower agrees to pay all actual and reasonable out of pocket costs and expenses of Bank in connection with the negotiation, preparation, execution and delivery of this Agreement, the Note, the other Loan Documents, and any other related documents, including without limitation the fees and disbursements of special counsel to Bank, up to a maximum of \$10,000, and to pay all actual and reasonable out of pocket costs and expenses of

Bank in connection with the administration and enforcement of this Agreement, the Note, and the other Loan Documents, including actual attorneys' fees and disbursements arising in connection therewith (whether or not suit is instituted). Borrower agrees to pay all actual out-of-pocket costs of Bank in connection with any review, investigation, inspection, examination, testing, or audit performed under Section 2.2(c) or 5.8(b). Borrower agrees to indemnify Bank, its officers and agents from and against any and all liabilities, losses, damages, penalties, actions, judgments, costs, expenses (including, without limitation, attorneys' fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Bank or such officers or agents in any litigation, proceeding or investigation instituted or conducted by any Person (other than Borrower) with respect to any aspect of, or any transaction contemplated by, or referred to in, this Agreement or the Loan or any matter related to the business of Borrower or any securities or other litigation arising as a result of any action or failure to act by Borrower. Borrower also agrees to pay, and to make Bank harmless from any delay in paying, all stamp and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of this Agreement, the Note, any other of the Loan Documents, or any modification hereof or thereof, and all filing and recording fees in connection therewith. All costs and expenses of whatever nature to be paid by Borrower to or for Bank hereunder shall be paid by Borrower on demand, together with interest thereon from the date incurred until repaid at the Interest Rate.

Section 8.7. Survival of Representations and Warranties. All representations and warranties made by Borrower in this Agreement and in the other Loan Documents shall survive the execution and delivery of this Agreement and the making of the Loan hereunder until payment of the Obligations and shall be deemed made and reaffirmed by Borrower at the time of the making of each disbursement under the Loan, and the provisions of Section 8.6 hereof shall survive payment of the Obligations.

Section 8.8. Notices. Unless otherwise specified herein, all notices, requests and demands to or upon any party hereto shall be deemed to have been given or made when delivered or when transmitted by facsimile, with confirmation, or when mailed, first-class, postage prepaid, addressed to such party as follows or to such other address as may be hereafter designated in writing by such party to the other parties hereto:

(a) if to Bank to:

National Cooperative Bank  
1401 Eye Street, N.W.  
Washington, D.C. 20005  
Attention: Elaine MacDonald

with a copy to:

Shea & Gardner  
Suite 800  
1800 Massachusetts Avenue, N.W.  
Washington, D.C. 20036  
Attention: Timothy K. Shuba

(b) if to Borrower to:

Western Fuels Association, Inc.  
P.O. Box 33424  
Denver, CO 80233  
Attention: Robert P. Norrgard

with a copy to:

Doherty Rumble & Butler, P.A.  
2800 Minnesota World Trade Center  
30 East Seventh Street  
St. Paul, Minnesota 55101-4999  
Attention: David P. Swanson

Section 8.9. Execution. This Agreement may be executed by the parties hereto individually or in any combination of the parties hereto in several separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same Agreement.

Section 8.10. Amendments. This Agreement and its Appendices and Exhibits, together with the provisions of the Note and the other Loan Documents, constitute the entire agreement between the parties hereto, superseding all prior and contemporaneous oral or written understandings with respect to the subject matter, and no amendment or waiver of any provision of this Agreement or the Note nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Bank and Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific stated purpose for which given.

Section 8.11. Relationship of the Parties. This Agreement provides for the making of a loan by Bank, in its capacity as a lender, to Borrower, in its capacity as a borrower, and for the payment of interest and repayment of principal by Borrower to Bank. The relationship between Bank and Borrower is limited to that of creditor/secured party, on the one hand, and debtor, on the other hand. The provisions herein for compliance with financial, environmental, and other covenants, delivery of financial, environmental and other reports, and financial, environmental and other inspections, investigations, audits, examinations, or tests are intended solely for the benefit of Bank to protect its interests as a lender in assuring payments of interest and repayment of principal and protecting

and preserving the Collateral, and nothing contained in this Agreement or the Note shall be construed as permitting or obligating Bank to act as a financial or business advisor or consultant to Borrower, as permitting or obligating Bank to control Borrower or to conduct or operate Borrower's operations, as creating any fiduciary obligation on the part of Bank to Borrower, or as creating any joint venture, agency, or other relationship between the parties other than as explicitly and specifically stated in this Agreement. Borrower acknowledges that it has had the opportunity to obtain the advice of experienced counsel of its own choosing in connection with the negotiation and execution of this Agreement and to obtain the advice of such counsel with respect to all matters contained herein, including, without limitation, the provision in Section 8.5 for waiver of trial by jury. Borrower further acknowledges that it is experienced with respect to financial and credit matters and has made its own independent decision to apply to Bank for the financial accommodations provided hereby and to execute and deliver this Agreement.

Section 8.12. Participants. Bank reserves the right to obtain participants with respect to the Loan and the Note, and Borrower agrees to cooperate fully with any reasonable requests necessary or convenient to implement and administer such participations, including without limitation providing financial information and statements to prospective participants. Prior to the closing of any participation, Bank shall give at least five days' prior written notice to Borrower of the name of each participant.

Section 8.13. Definitions. For purposes of this Agreement, terms bearing initial capitals and defined in various previous Sections of this Agreement shall have the meanings stated in such Sections; financial or accounting terms not specifically defined shall have the meanings ordinarily applied under GAAP; and the following terms shall have the meanings stated below, except as the context otherwise requires:

(a) "Closing Date" means the date first stated on page one hereof, provided that all of the conditions precedent stated in Section 4.1 have then been satisfied;

(b) "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization or a government or any agency or political subdivision thereof; and

(c) "On a Consolidated Basis" means to present the results of operations and the financial position of Borrower and all Subsidiaries of which Borrower owns 50% or more of the outstanding voting shares essentially as if the group were a single entity with one or more divisions, and if Borrower has no such Subsidiaries, any requirement in this Agreement that Borrower do something on a Consolidated Basis shall mean only on behalf of Borrower itself.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered in duplicate as of the date stated on the first page hereof.

ATTEST:

WESTERN FUELS ASSOCIATION, INC.

Lisa McKinney  
[SEAL]

By: Robert P. Norrgard

Name: Robert P. Norrgard

Title: Manager of Finance & Administration

State of DISTRICT OF

County of COLUMBIA ) ss:

On this 29 day of December, 1997, before me personally appeared ROBERT P. NORRGARD, to me personally known, who being by me duly sworn, says that (s)he is the MANAGER OF FINANCE + ADMINISTRATION of Western Fuels Association, Inc., and that the foregoing Business Loan/Security Agreement was signed by him/her on behalf of said corporation, and (s)he acknowledged that the execution of the Business Loan/Security Agreement was the free act and deed of said corporation.

(SEAL)

Christiane Hirt  
Notary Public

CHRISTIANE HIRT

NOTARY PUBLIC, DISTRICT OF COLUMBIA

My commission expires ~~on~~ **Commission Expires November 30, 2002**

BANK

NATIONAL CONSUMER COOPERATIVE

By: Elaine m. macdonald

Name: Elaine m. macdonald

Title: Vice President

State of DISTRICT OF )

County of COLUMBIA ) ss:

On this 29 day of December, 1997, before me personally appeared ELAINE M. MACDONALD, to me personally known, who being by me duly sworn, says that (s)he is the VICE PRESIDENT of National Consumer Cooperative Bank, and that the foregoing Business Loan/Security Agreement was signed by him/her on behalf of said corporation, and (s)he acknowledged that the execution of the Business Loan/Security Agreement was the free act and deed of said corporation.

(SEAL)

Christiane Hirt

Notary Public

CHRISTIANE HIRT

My commission expires **NOTARY PUBLIC, DISTRICT OF COLUMBIA, My Commission Expires November 30, 2002**

EXHIBIT 1

**SECURED PROMISSORY NOTE**

\$2,100,000.00

Washington, D.C.  
December \_\_, 1997

FOR VALUE RECEIVED, the undersigned WESTERN FUELS ASSOCIATION, INC., hereby promises to pay to the order of NATIONAL CONSUMER COOPERATIVE BANK, d/b/a NATIONAL COOPERATIVE BANK, a federally chartered banking association, or to its assigns (the "Bank"), at its offices at 1401 Eye Street, N.W., Washington, D.C. 20005, or at such other address as the Bank may specify to Maker in writing, in lawful money of the United States of America and in immediately available funds, without offset, the principal sum of Two Million One Hundred Thousand and No/100 Dollars (\$2,100,000.00), or so much thereof as shall have been advanced hereunder pursuant to that certain Business Loan/Security Agreement dated December \_\_, 1997, by and between Maker and the Bank (the "Agreement"), together with interest accrued on the unpaid principal amount hereof (computed on the basis of the actual number of days elapsed over a year of 360 days).

Interest on the outstanding principal balance hereunder shall accrue from the date hereof until this Note is paid in full at a fixed rate of interest (the "Interest Rate") equal to eight and 2/100 percent (8.02%).

Maker shall repay the outstanding principal balance hereunder in 59 equal payments, each equal to 1/120th of the initial principal balance under this Note, commencing January 1, 1998, and continuing on the first day of each month thereafter, through and including November 1, 2002, with a final payment equal to the entire remaining principal balance hereunder on December 1, 2002 (the "Maturity Date"). Maker shall further pay accrued interest on the outstanding principal balance under this Note on each principal payment date hereunder.

In the event that Maker fails to make any payment under this Note within fifteen (15) days after the date such payment is due, Maker shall immediately pay to the Bank a late charge (the "Late Charge") equal to five percent of the required payment. The Late Charge shall be in addition to, and not in lieu of, any other right or remedy the Bank may have.

To secure the prompt payment when due of this Note, whether by acceleration or otherwise, and of any other obligation of Maker to the Bank, whether now existing or hereafter created or arising, direct or indirect, matured or unmatured, and whether absolute or contingent, joint, several, or joint and several, Maker has granted or caused to be granted to the Bank certain security interests and encumbrances, all as provided in the Agreement. This Note is issued pursuant to the Agreement, and is entitled to the benefits thereof, including, without limitation, security interests and encumbrances and provisions for prepayment, for a default rate of interest, for

acceleration of maturity, for payment of costs of enforcement and collection, and for waivers by Maker of demand, presentment, protest, and other notices, all as provided in the Agreement.

ATTEST:

WESTERN FUELS ASSOCIATION,  
INC.

\_\_\_\_\_

[SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPENDIX A**  
**to Business Loan/Security Agreement**

Equipment Collateral

100 Open Top Hopper Cars, marked and numbered WFAV 79300 to WFAV 79399, both inclusive.

**APPENDIX B**  
**to Business Loan/Security Agreement**

Subsidiaries

**Western Fuels-Illinois, Inc.** (The Borrower owns the voting rights and the patronage capital; equity interests are owned by the Board of Public Utilities of Kansas City, Kansas, and the Board of Municipal Utilities of Sikeston, Missouri)

**Brushy Creek Coal Company** (100% of the voting and equity stock is owned by Western Fuels-Illinois, Inc.)

**Western Fuels-Wyoming, Inc.** (The Borrower owns all issued Class A stock, which is the voting stock; the Borrower initially owned all issued Class B stock, which is the equity stock, but under an agreement the Class B stock is being distributed by the Borrower to the owners of the Laramie River Station)

**Western Fuels Service Corporation** (100% of the issued and outstanding stock is owned by the Borrower)

**APPENDIX C**  
**to Business Loan/Security Agreement**

<u>Section 3.2(b) (defaults)</u>	None
<u>Section 3.5 (litigation)</u>	None
<u>Section 3.9 (contingent liabilities/ material adverse changes)</u>	None
<u>Section 3.12 (ERISA compliance)</u>	None

**APPENDIX D**  
**to Business Loan/Security Agreement**

Section 3.4 (government approvals)      None

Section 3.11 (burdensome documents)      None

**APPENDIX E**  
**to Business Loan/Security Agreement**

Filing Jurisdictions

- (1) Filing of Business Loan/Security Agreement or a recording memorandum with the National Surface Transportation Board pursuant to 49 U.S.C. Section 11301
- (2) Filing of UCC-1 Financial Statement, naming the Borrower as debtor and the Lender as secured party and describing as the collateral covered thereby the equipment and contract rights as described in § 2.1 of the business Loan/Security Agreement, with the Colorado Secretary of State

**APPENDIX F**  
**to Business Loan/Security Agreement**

Section 3.8 (encumbrances)

None

Sections 6.1 & 6.6 (mergers & related transactions/ownership of subsidiaries)

As described in Appendix B, the ownership of Class B stock of Western Fuels-Wyoming, Inc. is being transferred to the LRS Participants

Section 6.2 (encumbrances and indebtedness)

Borrower may incur unsecured indebtedness not to exceed \$2 million outstanding at any time

**APPENDIX G**  
**to Business Loan/Security Agreement**

Section 3.14 (hazardous substances)

None (other than storage, use and disposal of  
Hazardous Substances in Permissible Amounts)