

APPENDIX A

FINANCIAL INFORMATION SUBMITTED TO THE UNITED STATES FROM SOUTHERN COAL AND AFFILIATED COMPANIES

- Promissory Notes
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- Mortgage Agreements
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APPENDIX B

Priority Permits for Treatment System Audits

Phase 1

Alabama

SMCRA	NPDES	Facility Name
P3946	AL0080071	Crane Central Mine

Kentucky

SMCRA	NPDES	Facility Name
860-8020	KY0094510	Jones Fork Preparation Plant
860-5339	KYGE40925	Tutrlr Br. (Abundance)
860-9015	KYGE40925	Jones Fork Impoundment
860-9016	KYGE40925	Jones Fork Refuse
860-5346	KYGE40853	Mousie HZ #4 (Bear Br.)
860-5349	KYGE40899	Slone Branch
860-0505	KYGE40875	Yellow Mountain
860-5342	KYGE40977	Triplett Branch
860-0502	KYGE40977	Big Springs #1

Tennessee

SMCRA	NPDES	Facility Name
3237/3239	TN0049964	Baldwin Plant/Baldwin Refuse
TN-021	TN0079502	Mine 14
3183	TN0079570	Area 20
3154	TN0076376	Mine 7

Virginia

SMCRA	NPDES	Facility Name
1702073	VA0082073	VFC-Calvin Facilities
1301742	VA0081742	Kelly View Unit Train Load
1101914	VA0081914	Sawmill Hollow #3 Mine
1101916	VA0081916	Sawmill Hollow Mine #2
1101991	VA0081991	Craiger Hollow Surface Mine
1402094	VA0082094	War Creek Mine #1
1602071	VA0082071	VFC- Eastern Strip
1101975	VA0081975	Canepatch/Sargent Hollow
1102077	VA0082077	VFC - Hobcaw Strip
1102059	VA0082059	VFC Surface Mine #1
1101953	VA0081953	Baden Surface Remining
1102042	VA0082042	MRC No. 1
1302047	VA0082047	Ramsey Prep
1602078	VA0082078	VFC-Eastern Strip
1602074	VA0082074	State Line Strip
1101905	VA0081905	Looney Ridge Surface Mine
1102052	VA0082052	Kelly Branch Surface Mine

West Virginia

SMCRA	NPDES	Facility Name
S-3014-11	WV1026488	Three Marie Highwall Mine
S-0072-82	WV1006304	Red Fox Strip Surface Mine
S-4025-86	WV0097446	Nufac Surface Mine 2
S-3009-08	WV1022580	Tams No.1 Surface Mine
U-0432-00	WV1006681	Double E Deep Mine No.1
S-4009-00	WV1018965	Sewell Seam Surface #2
S-4008-99	WV1018779	Pinnacle Ridge Surface Mine
S-4003-99	WV1018736	Payne Branch Strip Surface Mine

Phase 2

Alabama

SMCRA	NPDES	Facility Name
P3843, P3877	AL0062693	Mine No. 2
P3807	AL0072991	Henagar Mine
P3822	AL0073920	Mine No. 1
P3908	AL0078867	Poore Kirby
P3829	AL0073962	Glade Prep Plant
P3889	AL0078026	Mine No. 3

Kentucky

SMCRA	NPDES	Facility Name
813-0354	KYGE40652	Five Mile
813-0363	KYGE40958	Spring Fork
813-5032	KYGE40964	K2 Deep Mine
813-7036	KYGE40958	Haul Road
813-8028	KYGE40659	Prep Plant
813-8032	KYGE40646	K2 Impoundment
813-8033	KYGE40646	K2 Impoundment
836-5580	KYGE40714	Inner Mountain Mining
836-5581	KYGE40695	Marshall Mining #7
836-8070	KYGE40721	Jett Loadout
848-0221	KYGE40904	Infinity #3
848-0230	KYGE40722	Liggett
848-0249	KYGE40976	Cawood Surface Mine
848-0270	KYG041951	Liggett #1/Sequoia
848-0271	KYG045723	Sequoia Energy
848-0273	KYG046085	Sequoia Energy
848-0274	KYG046077	Sequoia Energy
848-0275	KYG046143	Liggett #7
848-0277	KYGE40976	Cawood Surface Mine
848-0278	KYGE40976	Cawood Surface Mine
848-0282	KYGE40904	Trace Branch
848-0283	KYGE40904	Infinity #2
848-0315	KYGE40710	Virginia Fuels
848-0316	KYGE40710	Virginia Fuels
848-0317	KYGE40710	Virginia Fuels
848-5459	KYG044274	Sequoia Energy

848-5460	KYG043206	Creech B&D Mine
848-5461	KYGE40722	Darby Deep
848-5462	KYGE40722	Sequoia Energy
848-5463	KYGE40840	Liggett 8 & 9/ Harlan
848-5466	KYGE40722	Sequoia Energy
848-5485	KYGE40722	Liggett #3
848-5505	KYGE40710	Virginia Fuels
848-5506	KYGE40710	Darby
848-5507	KYGE40710	Virginia Fuels
848-5508	KYGE40710	Creech Deep Mine
848-5509	KYGE40710	Parsons/Wax Small Seam
848-5510	KYGE40710	Jerichol Prep
848-5511	KYGE40710	Low Splint
848-5512	KYGE40710	Huff Creek
848-5513	KYGE40710	Wilson #1
848-7024	KYG044503	Sequoia Haul Road
848-7027	KYGE40976	Four Star Haul Road
848-7036	KYGE40710	VFC Haul Road
848-8076	KYGE40722	Bardo Prep
848-8082	KYGE40710	Louder Creek
848-9025	KYGE40722	John's Branch Refuse
848-9028	KYGE40710	Trace Gap Refuse
860-0502	KYGE40977	Big Springs
860-0503	KYGE40923	Hunter Branch
860-0504	KYGE40977	Triplett Branch Ridge #6
860-0505	KYGE40875	Yellow Mountain
860-5337	KYGE40649	Sycamore Fork
860-5338	KYGE40670	Old J&R Coal
860-5339	KYGE40925	Jones Fork
860-5340	KYGE40925	E1 South
860-5341	KYGE40923	Motts Branch E1
860-5342	KYGE40977	Triplett Branch
860-5343	KYGE40398	Old Blazing Saddles
860-5344	KYGE40725	North Star 12
860-5345	KYGE40925	E-3 Slope
860-5346	KYGE40853	Bear Branch
860-5347	KYGE40925	E3 Four Mile
860-5348	KYGE40759	Caney E1
860-5349	KYGE40899	Slone Branch
860-5350	KYGE40923	Marshall Mining
860-5351	KYGE40925	J&T Mining
860-7013	KYGE40925	Rt 80 Jones Fk Haul Road
860-8020	KY0094510	Jones Fork Plant
860-9015	KYGE40925	Jones Fork Impoundment
860-9016	KYGE40925	Jones Fork Refuse
866-5151	KYG046680	Lovely Branch
866-5152	KYGE40967	Lovely Branch
867-0498	KY0106151	Job 4
877-0206	KYGE40894	Bull Creek
877-0207	KYGE40894	Bull Creek West
898-0775	KYGE40869	Beech Creek
898-0840	KYGE40094	New Bear Branch
898-0881	KYGE40992	Bent Mountain
898-0882	KYGE40992	Bent Mountain
898-0883	KYGE40992	Bent Mountain
898-0884	KYGE40874	Bevin's Branch

898-0933	KYGE40246	New Bear Branch 3
898-0940	KYGE40740	New Bear Branch 2
898-4490	KYGE40246	New Bear Branch 3

Tennessee

SMCRA	NPDES	Facility Name
2427	TN0052531	Mine 8
2866	TN0051918	Tipple & Prep Plant
2872	N/A	Haul Rd 2R
2873	N/A	Haul Rd 1R
2883	TN0063592	Refuse 2
2951	TN0071307	Area 18
3046	TN0072168	Deep Mine 11
3055	TN0072419	Deep Mine 12
3064	TN0076368	Refuse 3
3143	TN0079529	Area 19
3183	TN0079570	Area 20
3233	TN0079294	Mine 3
3234	TN0079308	Mine 4
3235	TN0079561	Mine 15
3236	N/A	Haul Rd 3
3237	TN0049964	Baldwin Plant
3238	TN0043222	Baldwin Loadout
3239	TN0049964	Baldwin Impoundment
3240	TN0052965	Mine 17
3241	TN0069159	Mine 5A
3249	TN0076376	Mine 7
3250	TN0069175	Mine 3B
3254	N/A	Haul Rd No. 1
3255	TN0071803	Deep Mine 8
3256	TN0072729	Deep Mine 9
2283066	TN0046647	Deep Mine 2
TN-020	TN0076180	Deep Mine 10
TN-021	TN0079502	Mine 14
TN-023	TN0079120	Deep Mine 11

Virginia

SMCRA	NPDES	Facility Name
1100877	VA0080877	Bearpen Hollow #4
1101554	VA0081554	Adjacent to Cane Patch
1101800	VA0081800	Job 21-19 GOB
1101824	VA0081824	Looney Ridge Surface Mine #2
1101905	VA0081905	Looney Ridge #2/ Job 23
1101914	VA0081914	A & G #2 / Sawmill Hollow #3
1101916	VA0081916	Job 20/ Sawmill Hollow #1
1101917	VA0081917	Job 20/ Sawmill Hollow #2
1101918	VA0081918	A & G #21 Canepatch Mine
1101953	VA0081953	Baden Surface Remining
1101954	VA0081954	Job 22 Bearpen Hollow #4
1101975	VA0081975	Job 20 / Sargeant Hollow
1101991	VA0081991	Craiger Hollow
1102003	VA0082003	Possum Trot Surface

1102028	VA0082028	Job 23A Wilson/ Lick Branch
1102042	VA0082042	MRC No. 1
1102051	VA0082051	Halfway Branch Surface Mine
1102052	VA0082052	Kelly Branch
1102054	VA0082054	Meg Lynn Mill Branch Mine
1102058	VA0082058	Blackwood Strip
1102059	VA0082059	VFC Surface Mine 1
1102077	VA0082077	VFC - Hobcaw Strip "Hobcaw"
1102079	VA0082079	Dalton Branch Surface "Bishop"
1201949	VA0081949	Never Transferred
1202070	VA0082070	VFC Harlan #2 Mine
1202075	VA0082075	Stone Creek Mine "Hobcaw"
1202076	VA0082076	Hobcaw#1 "Hobcaw"
1301742	VA0081742	Kelly View
1301992	VA0081992	Bullitt Complex
1302047	VA0082047	Ramsey Prep
1302048	VA0082048	Ramsey Refuse Disposal Area
1302066	VA0082066	Bishop Refuse Impoundment
1302069	VA0082069	Exeter Tipple
1402094	VA0082094	War Creek
1502053	VA0082053	Meg-Lynn Prep Facility
1502057	VA0082057	Straight Fork Surface Mine
1602068	VA0082068	*Sigmon* VFC-Western Strip
1602071	VA0082071	*Sigmon* VFC-Eastern Strip
1602072	VA0082072	*Sigmon* VFC-Southern Strip
1602074	VA0082074	State Line Strip/Wilson 1&2
1602078	VA0082078	VFC-Eastern Strip/Darby Strip
1702073	VA0082073	*Sigmon* VFC-Calvin Facilities

West Virginia

SMCRA	NPDES	Facility Name
D001182	WV1005995	No. 26A Mine - Poca #11
D070200	WV1005987	Haulroad - Mitchem Cem.
E007400	WV0062961	Coal Mountain No.2
E011700	WV1005774	Rolfe 6A Mine - Poca #6
H041400	WV1006070	Haulroad 26-79 Strip
H043600	WV1020366	WV-3 Haul Road
H062200	WV1005995	Haulroad (By 19 to 24 Mine)
N/A	WV1024230	Eckman Loadout
O006083	WV1005979	Old Shop Yard 37 Mine
O007383	WV1005979	Haulroad - Mitchem Cemetery
O008282	WV0060216	Preparation Plant
O008382	WV0060216	Refuse Disposal Site
O301109	WV1024361	East Gulf Haulroad
O403688	WV1006614	HR - Box cut to #35 Mine
P058600	WV1016539	Coal Mountain No.1
S007282	WV1006304	Red Fox Strip - Multiple Seam
S300309	WV1022652	Bald Knob Surface Mine
S300908	WV1022580	Laurel Creek #1 Surface Mine
S300998	WV1015389	Tams No. 1 Surface Mine
S301411	WV1026488	Three Marie Mine
S301809	WV1024442	East Gulf Surface Mine
S400110	WV1024078	McDonald Fork Surface Mine
S400305	WV1021281	Puncheoncamp Thin Seam #2

S400311	WV1025911	Bishop WV Surface Mine
S400399	WV1018736	Payne Branch Strip (Job 32)
S400504	WV1021249	Puncheoncamp Thin Seam
S400899	WV1018779	Pinnacle Ridge Strip (Job 39)
S400900	WV1018965	Sewell Seam Surface #2 (34)
S400905	WV1021338	Big Branch 12 Seam Highwall
S401301	WV1021079	Poca. 11 Contour & Auger No. 2
S401401	WV1021061	Contour & Auger No. 1
S401996	WVG014022	12 Seam Auger
S402096	WV1016539	Coal Mountain No.1
S402196	WV0062961	Coal Mountain No.2
S402586	WV0097446	Keystone No. 1 Strip - Sewell
S501300	WV1020366	WV 3 Surface Mine & Haulroad
U005284	WV0060216	Keystone No. 1 Mine - Poca #3
U012083	WV0065048	Coal Loadout Drainage
U015000	WV1006070	No. 14 Mine - Poca #10
U021483	WV0091952	Mine #36/ Dalton Branch Refuse
U043200	WV1006681	Coal Mountain
U045700	WV1005987	No. 20 Mine
U046000	WV1005987	No. 21 Mine
U048100	WV1008552	NO. 41 Mine - Poca #11
U062400	WV1005987	No. 22 Mine
U400107	WV1021451	Double Camp Mine No. 1
U400189	WV1005979	No. 37 Mine - Poca #6
U400202	WV1021095	Mine No. 65 - Little Firecreek
U400289	WV1005979	No. 38 Mine - Poca #6
U400302	WV1021117	Mill Creek Deep Mine
U400398	WV1024132	No. 55 Mine - Poca #12
U400587	WV1005952	Classic Mine
U400592	WV1024116	No. 45 Mine - Poca #11
U400599	WV1018752	No. 59 Mine - Poca. #9
U400788	WV1006347	No. 32 Mine
U400808	WV1023781	Spider Ridge Deep Mine
U400895	WV1024124	No. 53 Mine - Poca #6
U400999	WV1018787	Mine No. 60
U401098	WV1018663	No. 58 Mine - Poca #4
U401099	WV1018787	Mine No. 61
U401199	WV1018787	Mine No. 62
U401292	WV1018809	Buckeye Mine
U401398	WV1018698	No. 57 Mine - Poca #11
U401488	WV1005481	Miller Mine
U401493	WV1012312	No. 48 Mine - Poca #11
U401498	WV1018701	No. 56 Mine - Poca #6
U401511	WV1026003	Belcher Branch Deep Mine
U401593	WV1012312	No. 49 Mine - Poca #11
U401693	WV1024116	No. 50 Mine - Poca #11
U401699	WV1018833	No. 63 Mine - Poca #11
U401787	WV1005944	No. 66 Mine - Poca #6
U401799	WV1018833	No. 64 Mine - Poca #11
U401892	WV1012045	No. 46 Mine - Poca #11
U402009	WV1024060	Deep Mine 8
U402109	WV1024060	Deep Mine 9
U402192	WV1012088	No. 47 Mine - Poca #11
U402209	WV1024060	Deep Mine 9L
U402289	WV1005481	Nufac Mine
U402295	WV1024167	No. 52 Mine - Poca #11

U402389	WV1008803	No. 42 Mine - Poca #11
U402488	WV1006479	No. 35 Mine - Poca #11
U402588	WV1006479	No. 36 Mine - Poca #11
U402790	WV1024159	No. 39 Mine
U402889	WV1008838	No. 44 Mine - Poca. #4
U402890	WV1024159	No. 40 Mine
U403588	WV1006614	No. 33 Mine
U403588	WV1006614	No. 33A Mine - Poca #10
U404186	WV1005481	Sunrise Mine

Carter Bank & Trust
1300 Kings Mountain Road
Martinsville, Virginia 24112
(276) 656-1776

IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: **[insert number]**

ISSUANCE DATE: **[insert date]**

MAXIMUM AMOUNT: \$4,500,000

APPLICANT:

Environmental Fund, LLC

[Insert contact information (address, phone, email, etc.)]

TO:

U.S. Environmental Protection Agency, Regions 3 and 4
c/o Melissa K. Raack, Office of Civil Enforcement, Mail Code 2243A, U.S. EPA,
1200 Pennsylvania Ave., NW, Washington, DC 20004.

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. **[insert number]** in your favor, at the request and for the account of Environmental Fund, LLC (“Applicant”), in the amount of \$4,500,000 within thirty days of the Effective Date of the Consent Decree [dated] [Docket Number ____] (“Effective Date”) (and reduced as follows: \$3,500,000 on the first year anniversary of the Effective Date; \$2,500,000 on the second year anniversary of the Effective Date; \$1,500,000 on the third year anniversary of the Effective Date; and \$0 on the fourth year anniversary of the Effective Date) (the “Maximum Amount”). We hereby authorize you, the United States Environmental Protection Agency (“EPA”), to draw at sight on us, Carter Bank & Trust, an aggregate amount equal to the Maximum Amount, to be deposited as described below, upon presentation of:

- (1) Your sight draft, bearing reference to this Letter of Credit No. **[insert number]** (which may, without limitation, be presented in the form attached hereto as Exhibit A), presented to us at the Notice Address; and
- (2) Your signed statement reading as follows: “I certify that the amount of the draft is payable pursuant to the Consent Decree, dated **[insert date]**, **[insert docket number]** (“Consent Decree”), entered into, applying to and binding upon Environmental Fund,

LLC, and relating to the coal mines and coal processing facilities in Alabama, Kentucky, Tennessee, Virginia, and West Virginia.

This letter of credit is effective within thirty days of [the Effective Date] and shall expire on [fourth year anniversary of the Effective Date].

All notifications, requests, and demands required or permitted hereunder shall be given in writing, identify the Consent Decree, and provide a contact person (and contact information).

Multiple and partial draws on this letter of credit are expressly permitted, up to an aggregate amount not to exceed the Maximum Amount. Whenever this letter of credit is drawn on, under, and in compliance with the terms hereof, we shall duly honor such draft upon presentation to us, and we shall deposit, on the same day, or if received after 2:00 p.m., the next day on which federally-insured banks are generally open in Martinsville, Virginia, the amount of the draft directly into the standby trust fund established by the applicant in accordance with the Consent Decree for the fulfillment of the Defendants' obligations under the Consent Decree.

Each notice, request or other communication to be sent to us by the Applicant or you under this Letter of Credit shall be presented at our office (the "Notice Address") located at:

Carter Bank & Trust
1300 Kings Mountain Road
Martinsville, Virginia 24112
Attn: Phyllis Q. Karavatakis, President
phyllis.karavatakis@carterbankandtrust.com

with a copy sent by facsimile to number (276) 656-6765 or such other facsimile number or electronic mail address that we may hereafter designate by written notice delivered to the Applicant and you.

All banking and other charges under this letter of credit are for the account of the Applicant.

This letter of credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce.

Very Truly Yours,

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

Address: _____

Contact information: _____

**Exhibit A - Form of Sight Draft
[EPA LETTERHEAD]**

SIGHT DRAFT

TO: **Carter Bank & Trust**
Phyllis Q. Karavatakis, President
1300 Kings Mountain Road
Martinsville, VA 24112
phyllis.karavatakis@carterbankandtrust.com

RE: Letter of Credit No. **[insert number]**

DATE: **[Insert date on which draw is made]**

TIME: **[Insert time of day at which draw is made]**

This draft is drawn under your Irrevocable Standby Letter of Credit No. **[insert number]**. I certify that the amount of the draft is payable pursuant to the Consent Decree, dated **[insert date]**, **[insert docket number]** (“Consent Decree”), entered into, applying to and binding upon Environmental Fund, LLC, and relating to coal mining and coal processing facilities in Alabama, Kentucky, Tennessee, Virginia, and West Virginia. Pay to the standby trust fund, established by Environmental Fund, LLC in accordance with the Consent Decree for the fulfillment of Environmental Fund, LLC’s obligations under the Consent Decree, the amount of \$**[insert dollar amount of draw]**.

Pay such amount as is specified in the immediately preceding paragraph to the standby trust fund as follows: **[insert specific standby trust fund wiring instructions and information: e.g., name of institution, ABA number, Attn: [point of contact and title], account number, reference number]**.

This Sight Draft has been duly executed by the undersigned, an authorized representative or agent of the United States, whose signature hereupon constitutes an endorsement.

By [signature]: _____
Printed name: _____
Title: _____
Address: _____
Contact information: _____

STANDBY TRUST AGREEMENT

Dated: _____, 2016

This Trust Agreement (the “Agreement”) relating to Account Number 1015007616 is entered into as of _____, 2016, between Environmental Fund, LLC (“Grantor”), and United Bank, Inc., a West Virginia Banking corporation (“Trustee”). The United States is not a signatory hereto, but will act hereunder in accordance with the Consent Decree (defined below).

RECITALS

Whereas, the United States Environmental Protection Agency (“EPA”) and the Grantor have entered into a Consent Decree, dated _____, 2016, [**insert docket number**] (“Consent Decree”), under the authority of Sections 309(b) and (d) of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. § 1319(b) and (d), requiring the Grantor, among other things, to provide assurance that funds will be available when needed for performance of the Work as defined in and required by the Consent Decree at coal mining and coal processing facilities (“Facilities”) in Alabama, Kentucky, Tennessee, Virginia, and West Virginia;

Whereas, the Grantor is establishing a trust to provide all or part of such financial assurance for Work at the Facilities;

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) “Agreement” has the meaning provided in the first paragraph of this Agreement.
- (b) “Beneficiary” means the Grantor or any person or entity seeking payment from the Trust under and consistent with Section 4 to finance the Work.
- (c) “CWA” has the meaning provided in the Recitals.
- (d) “Consent Decree” has the meaning provided in the Recitals.
- (e) “Defendants” has the meaning provided in the Consent Decree.
- (f) “EPA” has the meaning provided in the Recitals.
- (g) “Facilities” has the meaning provided in Section 2.

- (h) “Grantor” has the meaning provided in the first paragraph of this Agreement, along with any successors or assigns of the Grantor.
- (i) “Trust” has the meaning provided in Section 3.
- (j) “Trust Assets” has the meaning provided in Section 3.
- (k) “Trustee” has the meaning provided in the first paragraph of this Agreement, along with any successor Trustee appointed pursuant to Section 11.
- (l) “Work” has the meaning provided in the Consent Decree.

Capitalized terms not otherwise defined herein shall have the meanings provided for in Clean Water Act, 33 U.S.C. §§ 1251-1388.

Section 2. This Agreement pertains to costs for Work required under the Consent Decree at coal mining and coal facilities in Alabama, Kentucky, Tennessee, Virginia, and West Virginia (“Facilities”).

Section 3. Establishment of Trust. The Grantor and the Trustee hereby establish a trust fund (“Trust”). The Grantor and the Trustee acknowledge that the purpose of the Trust is to fulfill the Defendants’ Work obligations under the Consent Decree. All expenditures from the Trust shall only be to fulfill the Work obligations of the Defendants under the Consent Decree and for no other purpose, and not any obligation of EPA. An independent third party will not have access to the Trust Assets (defined below) except as herein provided. The Trust is established initially as consisting of cash and/or cash equivalents in the amount of \$0.00, which is acceptable to the Trustee. Such funds, along with any other cash and/or cash equivalents subsequently transferred to the Trustee, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement, are referred to herein collectively as the “Trust Assets.” The Trust Assets shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Defendants under the Consent Decree.

Section 4. Payment for Work Required Under the Consent Decree. The Trustee shall make payments from the Trust to finance the Work under EPA’s oversight in accordance with the following procedures:

- (a) From time to time, the Grantor and/or its representatives or contractors, or contractors selected by the Trustee, may request that the Trustee make payment from the Trust for Work performed or to be performed under the Consent Decree by delivering to the Trustee a written request for payment signed by an officer of the requesting entity. A copy of the payment request shall also be sent to EPA. Any payment request should be in a form substantially identical to the sample provided in Exhibit A and, at a minimum, should:

- (i) Include a certification that the request is submitted for Work performed or to be performed at the Facilities in accordance with the Consent Decree;
- (ii) Describe the Work that has been performed or will be performed;
- (iii) Specify the amount of funds requested from the Trust; and
- (iv) Identify the payee(s) of the funds requested.

(b) As part of EPA's oversight role regarding the implementation of Work, EPA may object, in whole or in part, to any payment request under subparagraph (a) only on the grounds that the requested payment is either not for the costs of Work under the Consent Decree or otherwise inconsistent with the terms and conditions of the Consent Decree. If EPA objects to any payment request, EPA shall advise the Trustee and requesting entity in writing, by stating whether EPA objects to all or only part of the payment requested and the basis for the objection.

(c) If the Trustee receives a payment request under subparagraph (a) and EPA advises the Trustee in writing that payment from the Trust is necessary to fulfill the requirements under the Consent Decree, the Trustee shall promptly make the requested payment from the Trust.

(d) If EPA objects to any payment request under subparagraph (b), the Trustee shall promptly make payments from the Trust for the portion of the requested payment, if any, that is not subject to an objection by EPA. The Trustee shall not make any payment from the Trust for any portion of the requested payment that is subject to an EPA objection.

(e) The Grantor may request the Trustee to return to the Grantor any funds that remain after all of the Work has been completed. A copy of the request shall also be sent to EPA. If EPA advises the Trustee in writing that Trust Assets are no longer necessary to fulfill the Grantor's obligations under the Consent Decree, the Trustee shall promptly return any remaining Trust Assets to the Grantor.

(f) In no event shall the Trustee disburse any portion of the Trust Assets to Grantor unless and until it has received the advice and consent of EPA as provided for in this Section 4.

(g) This Section does not limit or alter EPA's authority under the CWA, 33 U.S.C. §§ 1251-1388.

Section 5. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust invested as a single fund, without distinction between principal and income, in accordance with directions which the Grantor may communicate in writing to the Trustee from time to time, subject, however,

to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Trust Assets, the Trustee shall discharge its duties with respect to the Trust solely in a fiduciary capacity consistent with the purpose of this Agreement and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of any person or entity shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Trust Assets in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 6. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(b) To receive, manage, invest, supervise, and protect the Trust Assets, and to withdraw, make distributions, and pay taxes, if applicable or required, and other obligations owed by the Trust;

(c) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale;

(d) To retain and pay employees and professionals as the Trustee may deem necessary or appropriate to assist the Trustee with respect to the responsibilities described herein, including the performance of Work under the Consent Decree; provided, however, that EPA may (using objective criteria) review and approve of the qualifications for environmental contractors and/or consultants the Trustee proposes to perform the Work; provided further, that EPA cannot select, recommend, or propose any firms or individuals for hire/employment by the Trustee;

(e) To prepare work plans and budgets of projected expenditures from the Trust for EPA's review in order to ensure compliance with the Consent Decree under the oversight of EPA; and

(f) To use its best efforts to comply with any requirements set forth in the Consent Decree relating to access and institutional controls that are needed to

implement the Work.

Section 7. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Trust shall be paid from the Trust. All other expenses and charges incurred by the Trustee in connection with the administration of the Trust shall be paid by the Grantor.

Section 8. Annual Valuation. Until the Trust is funded, annual valuations are not required. Once the Trust is funded, the Trustee shall annually, no more than 30 days after the anniversary date of establishment of the Trust, furnish to the Grantor and to EPA a statement confirming the value of the Trust. The annual valuation shall include an accounting of any fees or expenses levied against the Trust. The Trustee shall also provide such information concerning the Trust as EPA may request from time to time.

Section 9. Advice of Counsel. The Trustee may from time to time consult with counsel with respect to questions relating to the construction of this Agreement or any action to be taken hereunder, except for questions relating to EPA's determinations under Section 4 or EPA's authorities under the Consent Decree. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 10. Trustee Compensation. The Trustee shall receive the following compensation from Grantor for its services: On the date of this Agreement, \$60,000; on the one-year anniversary of this Agreement, \$55,000; on the second-year anniversary of this Agreement, \$50,000; and on the third-year anniversary of this Agreement, \$45,000. If any such payment is not made within ten (10) days of the due date, Grantor shall pay Trustee a ten percent (10%) penalty.

Section 11. Trustee and Successor Trustee. The Trustee and any replacement Trustee must not be affiliated with the Grantor. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee, this successor accepted such appointment and the appointment has been approved by the Court. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the cash and/or cash equivalents then constituting the Trust Assets. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to the Court entering the Consent Decree for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Trust in a writing sent to the Grantor, EPA, and the present Trustee by certified mail 10 days before the change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 7.

Section 12. Instructions to the Trustee. All orders, requests, and instructions to the Trustee shall be in writing, signed by such persons as are empowered to act on behalf of the entity sending such orders, requests, and instructions to the Trustee, including those designated in the attached Exhibit B or such other designees as the Grantor may designate by amendment to Exhibit B. The Trustee shall be fully protected in acting without inquiry in accordance with such orders, requests, and instructions. All orders, requests, and instructions by EPA to the Trustee shall be in writing, signed by an authorized EPA official as designated in Section 18(c) or his or her designee, and the Trustee may rely on these instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions, except as provided for herein. In the event of conflict between the Grantor's instructions and EPA's instructions, EPA's instructions shall control.

Section 13. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, with the concurrence of EPA, or by the Trustee and EPA if the Grantor ceases to exist; provided, however, that this Agreement may not be amended to name EPA as a Beneficiary of the Trust or to direct funds to EPA or an EPA contractor.

Section 14. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 13, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor and the Trustee, with the concurrence of EPA, or by the Trustee and EPA if the Grantor ceases to exist. Upon termination of the Trust, all remaining Trust property, less final Trust administration expenses, shall be delivered to the Grantor.

Section 15. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or EPA so long as such directions are not inconsistent with this Agreement and/or the Consent Decree. The Trustee shall be indemnified and saved harmless by the Grantor from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense. EPA does not indemnify either the Grantor or the Trustee due to the restrictions imposed by the Anti-Deficiency Act, 31 U.S.C. 1341.

Section 16. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of West Virginia with regard to claims by the Grantor, Trustee, or any party other than EPA. Claims involving EPA are subject to federal law.

Section 17. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy

of this Agreement. In the event of a conflict in the wording of this Agreement and the Consent Decree, the wording of the Consent Decree shall prevail.

Section 18. Notices. All notices and other communications given under this Agreement shall be in writing, identify the Facility, provide a contact person (and contact information), and be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

(a) If to the Grantor, to Environmental Fund, LLC, 302 S. Jefferson Street, Roanoke, Virginia 24011, Attn: Stephen W. Ball, Phone No. 540-776-7890, e-mail address steve.ball@bluestoneindustries.com.

(b) If to the Trustee, to United Bank, Inc., P.O. Box 393, Charleston, WV 25322-0393, Attn: Jeff W. Carmichael, Phone No. 304-348-8381, e-mail address jeff.carmichael@bankwithunited.com, with a copy to United Bank, Inc., 514 Market Street, Parkersburg, WV 26101, Attn: Wesley H. White, Phone No. 304-357-5189, e-mail address wesley.white@bankwithunited.com.

(c) If to EPA, to Melissa K. Raack, Office of Civil Enforcement, Mail Code 2243A, U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20004.

Section 19. Miscellaneous. The Grantor shall provide a copy of the Consent Decree to the Trustee, and the Grantor shall submit an originally-signed duplicate of the executed Agreement to EPA. The individuals executing this Agreement on behalf of the Grantor and Trustee have all necessary and proper authority to bind such party as may be required under the bylaws, operating agreement or other similar corporate governance instrument and, upon execution, this Agreement shall be binding upon the Grantor and Trustee as well as their respective successors and assigns. Paragraph headings are for the convenience of the parties only and are not to be construed as part of the terms of this Agreement. Unless the context otherwise requires, when used herein, the singular shall include the plural, the plural shall include the singular, and all nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.

[SIGNATURES ON FOLLOWING PAGE]

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

FOR THE GRANTOR:

Date: _____

ENVIRONMENTAL FUND, LLC

By: Wintergreen Hospitality Partners,
LLC, its sole member

By: _____
Stephen W. Ball, Secretary

State of _____
County of _____

On this _____, 2016, before me personally came Stephen W. Ball, to me known, who, being by me duly sworn, did depose and say that he is Secretary of Wintergreen Hospitality Partners, LLC, the sole member of Environmental Fund, LLC, the entity described in and which executed the above instrument; and that he signed his name thereto.

[Signature of Notary Public]

FOR THE TRUSTEE:

Date: _____

UNITED BANK, INC.

By: _____
Wesley H. White, Trust Legal Counsel

State of _____
County of _____

On this _____, 2016, before me personally came Wesley H. White, to me known, who, being by me duly sworn, did depose and say that he is Trust Legal Counsel of United Bank, Inc., the entity described in and which executed the above instrument; and that he signed his name thereto.

[Signature of Notary Public]

Exhibit A
Sample Payment Request

[Insert date]

United Bank, Inc.
514 Market Street
Parkersburg, WV 26101

Re: Request for payment from the Standby Trust Account Number 1015007616
established as financial assurance for the Consent Decree dated
_____, 2016 [Docket Number ___]

Dear United Bank, Inc.:

Pursuant to Section 4(a) of the subject Trust, the Grantor (as defined therein) or contractors selected by the Trustee (as defined therein), are authorized to request that the Trustee make payment from the Trust for Work (as defined therein) performed or to be performed under the Consent Decree (as defined therein) by delivering to the Trustee (with a copy to EPA (as defined therein)) a written request for payment signed by an officer of the requesting entity. By this letter, **[insert requesting entity]** requests payment from the Trust. The bases for the payment request are more fully described below.

1. **Certification**: **[insert certification from officer of requesting entity that the request is submitted for Work performed or to be performed in accordance with the Consent Decree]**.
2. **Description of Applicable Work**: **[insert description of the Work that has been or will be performed]**.
3. **Amount of Payment Request**: **[insert amount of funds requested from Trust]**.
4. **Proposed Payee**: **[insert identification of payee(s) of the funds requested]**.

Please let me know if you have any questions. I can be reached at **[insert telephone number and email address]**.

Sincerely,

[insert name of officer of the requesting entity]
[insert address of the requesting entity]

cc: Melissa K. Raack, Office of Civil Enforcement, Mail Code 2243A, U.S. EPA,
1200 Pennsylvania Ave., NW, Washington, DC 20004.

Exhibit B

Grantor-Designated Individuals Authorized for Orders, Requests, and Instructions

James C. Justice III-Executive Vice President

jcj3@bluestoneindustries.com

Fax: 540-301-5550

Phone: 540-776-7890

Address: 302 S. Jefferson Street, Roanoke, Virginia 24011

Tommy D. Lusk- Chief Operating Officer

tom.lusk@southerncoalcorp.com

Fax: 540-301-5550

Phone: 304-252-1074

Physical Address: 216 Lake Drive, Daniels, WV 25832

Mailing Address: P.O. Box 2178, Beaver, WV 25813

Zachary D. Wright- Chief Compliance Officer

Zachary.wright@southerncoalcorp.com

Fax: 540-301-5550

Phone: 304-252-1074

Physical Address: 216 Lake Drive, Daniels, WV 25832

Mailing Address: P.O. Box 2178, Beaver, WV 25813

Stephen W. Ball-General Counsel

steve.ball@bluestoneindustries.com

Fax: 540-301-5919

Phone: 540-776-7890

Address: 302 S. Jefferson Street, Roanoke, Virginia 24011

Appendix E: NPDES Permits that Share an Outlet

SMCRA	NPDES	Company	Site	NPDES ID	outfall	Lat.	Long.	Notes
\$402096, E007400	WV1016539	Dynamic Energy	Coal Mountain No. 1 Surface Mine	054		37.3728	81.4628	
\$402096, E007400	WV1016539	Dynamic Energy	Coal Mountain No. 1 Surface Mine	124		37.3728	81.4628	Not constructed
\$402096, E007400	WV1016539	Dynamic Energy	Coal Mountain No. 1 Surface Mine	084		37.3852	81.4533	Not constructed
\$402096, E007400	WV1016539	Dynamic Energy	Coal Mountain No. 1 Surface Mine	090		37.3852	81.4533	Not constructed
8600502	KYG043943	Kentucky Fuel	Big Springs	Pond-3 (shared with 8600504)	003	37-25-39	82-50-59	will be combined with NPDES renewal
8600502	KYG043943	Kentucky Fuel	Big Springs	Pond-3 (shared with 8600502)	003	37-25-39	82-50-59	
8600502	KYG043943	Kentucky Fuel	Big Springs	Pond-5 (shared with 8600504)	005	37-25-45	82-50-56	will be combined with NPDES renewal
8600504	KYG044861	Kentucky Fuel	Triplett Branch Ridge 6	Pond-5 (shared with 8600502)	005	37-25-45	82-50-56	
8600502	KYG043943	Kentucky Fuel	Big Springs	Pond-4 (shared with 8600504)	004	37-25-57	82-51-10	will be combined with NPDES renewal
8600502	KYG043943	Kentucky Fuel	Big Springs	Pond-4 (shared with 8600502)	004	37-25-57	82-51-10	
8608020	KY0094510	Kentucky Fuel	Jones Fork Prep	Pond-5 (Shared with 8605339)	005	37-25-58	82-52-36	will NOT be combined with NPDES renewal
8605339	KYG043310	Kentucky Fuel	Jones Fork	Pond 5 (Shared with 8608020)	005	37-25-58	82-52-36	
8605342	KYG040523	Kentucky Fuel	Triplett Branch	Pond-5	005	37-26-23	82-50-16	will be combined with NPDES renewal
8600504	KYG044861	Kentucky Fuel	Triplett Branch Ridge 6	Pond-5A (shared with 8605342)	05A	37-26-23	82-50-16	
8605342	KYG040523	Kentucky Fuel	Triplett Branch	Pond-4A (shared with 8600504)	04A	37-26-37	82-49-54	will be combined with NPDES renewal
8600504	KYG044861	Kentucky Fuel	Triplett Branch Ridge 6	Pond-4A (shared with 8605342)	04A	37-26-37	82-49-54	