

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

BET ASSOCIATES IV, LLC : **Surface Mining Permit No. 54733020**
: **Alternative Financial Assurance Mechanism**

**POST-MINING TREATMENT TRUST
CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement (“Post-Mining Treatment Trust COA”) is entered into this 5th day of May, 2011, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and BET Associates IV, LLC (“BET Associates”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, as amended, 52 P.S. §§ 1396.1 et seq. (“Surface Mining Act”); the Coal Refuse Disposal Control Act, Act of September 24, 1968, P.L. 1040, as amended, 52 P.S. §§ 30.51 et seq. (“Coal Refuse Disposal Act”); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 et seq. (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 (“Administrative Code”) and the rules and regulations promulgated thereunder.

B. Pursuant to § 4(d.2) of the Surface Mining Act, 52 P.S. § 1396.4(d.2), the Department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms include the establishment of a site-specific trust fund funded by a mine operator for the treatment of post-mining discharges of mine drainage. The post-mining treatment trust ("Trust") being established as required by this Post-Mining Treatment Trust COA through the accompanying Post-Mining Treatment Trust Agreement constitutes an alternative financial assurance mechanism authorized by § 4(d.2) of the Surface Mining Act. Pursuant to Sections 5, 315 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.315 and 691.610, Section 4.3 of SMCRA, 52 P.S. § 1396.4c, and Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59, the Department has authority to issue such orders as are necessary to aid in the enforcement of the provisions of these acts, including orders compelling an operator to establish a post-mining discharge treatment trust as an alternative financial assurance mechanism.

C. BET Associates is a Delaware limited liability company with a business address of 1233 East Broad Street, P.O. Box 150, Tamaqua, Pennsylvania 18252-2221. Its members are Douglas Topkis and Bruce Toll.

D. BET Associates has applied to the Department for a transfer of SMP 54733020, ("Permit") currently held by Lehigh Coal and Navigation Company ("LCN"). It has agreed to treat a discharge known as the Route 309 Discharge, which is associated with current and historic surface and underground mining on the Permit area ("Site") pursuant to the Second BET Consent Order and Agreement ("Second BET COA") that is being executed simultaneously with this Post-Mining Treatment Trust COA.

E. BET Associates is obligated under Paragraph 5.a of the Second BET COA to construct a treatment system(s) at one or more new locations ("New Treatment System(s)") that is capable of treating enough water so that the flow of the Route 309 Discharge ceases except for de minimis amounts.

Post-Mining Discharges

F. Bethlehem Mines Corporation ("Bethlehem"), LCN's predecessor, and the Department entered into Consent Orders and Agreements ("Agreements") on July 7, 1978 and May 17, 1988. Pursuant to those Agreements and a 1980 Consent Decree between the United States and Bethlehem, Bethlehem agreed to treat water pumped from the Number 10 and Number 14 shafts on the Permit area. The treated water was discharged from Outfalls 001 and 004, respectively, pursuant to National Pollutant Discharge Elimination System ("NPDES") Permits that were not appealed. Pursuant to an amendment to the 1988 Agreement, among other things, liability for water treatment was transferred by consent to LCN.

G. Originally, water was pumped from the existing mine pool(s) in a network of abandoned underground mines, treated at two treatment plants, and discharged to Panther Creek. At certain times in 1994 and 1999, and, at all times subsequent to 2001, LCN ceased pumping from the mine pools, and water began to discharge from an abandoned muleway near Route 309 at what is now referred to as the Route 309 Discharge. The water was treated and discharged to the Little Schuylkill River via Outfall 005.

H. A topographic map depicting the location of the Route 309 Discharge is attached as Exhibit 1. The latitude and longitude coordinates for the Route 309 Discharge are as follows: Latitude N 40° 47' 36" and Longitude W 75° 58' 00".

I. Pursuant to Paragraph 6(f) of the June 2, 2008 Second Amendment to the September 25, 2002 Consent Order and Agreement between the Department and LCN, LCN agreed to make monthly payments of \$50,000 into an escrow account ("LCN Escrow Account") that would fund treatment of the Route 309 Discharge. The LCN Escrow Account was the predecessor to the establishment of a trust and the execution of all trust-related documents. Coaldale LLC, a company which managed LCN for a period of time, made a total of seven payments into the LCN Escrow Account. After Coaldale LLC was removed from management, LCN made a total of nine payments into the LCN Escrow Account. LCN failed to make any payments after September 30, 2009 and failed to establish the trust. The total amount in the LCN Escrow Account on February 28, 2011 was \$973,754.78.

J. Bonds in the amount of \$7,759,000.46 were posted for the Site, of which \$4,061,748.25 were surety bonds and \$1,597,252.21 were collateral bonds posted by LCN and \$2,100,000 were state-provided land reclamation guaranty funds.

K. The Department forfeited the bonds posted by LCN on May 2, 2011.

L. Subject to the terms and conditions of the Second BET COA, BET Associates has agreed to treat the Route 309 Discharge.

Post-Mining Treatment Trust

M. Pursuant to the Second BET COA, BET Associates is required to submit an NPDES permit revision to authorize the discharge(s) from the New Treatment System(s) required by the Second BET COA.

N. BET Associates will submit its plan for New Treatment System(s) within 180 days of the date of the Second BET COA. When submitted, the plan for the New Treatment

System(s) required by the Second BET COA will be incorporated herein by reference as Exhibit 2.

O. The Route 309 Treatment System is situated on land owned by BET Lehigh Real Estate, LLC ("BET LRE"). BET Associates has obtained from BET LRE a properly executed Consent to Right of Entry form which grants the parties and the Trustee access to any treatment system constructed or operated by BET Associates on land owned or leased by BET LRE. A copy of the executed Consent to Right of Entry is attached as Exhibit 3. Upon the Department's approval of the design of the New Treatment System(s), BET Associates shall obtain such additional Consent to Right of Entry forms that may be necessary to provide the parties and the Trustee with access to the New Treatment System(s).

P. The Department and BET Associates have discussed the costs to be used to set an initial value of the Trust. Because BET Associates is required by the Second BET COA to relocate the Route 309 Discharge and construct a New Treatment System(s), the costs associated with operation and maintenance of the Route 309 Treatment System do not provide a realistic basis for calculating the initial value of the Trust. Instead, as is indicated on Exhibit 4, the initial value of the Trust is being based on the estimated costs of adding to, operating and maintaining a formerly used treatment system at the Number 14 shaft on the Site.

Q. BET Associates has advised the Department that it intends to submit a proposal to build a new treatment system at a new location which is lower in elevation than the Number 14 shaft. Once that new system has been designed and built and its initial operating costs have been established, the parties have agreed to recalculate the amount of the Trust.

R. BET Associates is willing to establish the Trust, to be known as the Panther Valley Treatment Trust, with Woodlands Bank as an alternative financial assurance mechanism,

(and a financially-backed enforceable contract), in order to provide for the long-term treatment of post-mining discharges and obtain the release of collateral posted by BET Associates as provided in Paragraph 16.b. BET Associates agrees to establish the Trust by executing a Post-Mining Discharge Treatment Trust Agreement (“Treatment Trust Agreement”) with Woodlands Bank which conforms to the Department’s model trust agreement.

S. The parties have discussed the need to obtain accurate and timely information on the costs of operating and maintaining the New Treatment System(s) in order to maintain the proper amount of financial assurance.

T. The parties agree that the present value of the fully-funded Trust for the discharges covered by this Post-Mining Treatment Trust COA is \$13,829,645.00. This sum constitutes the current present value of the estimated future operation and maintenance costs for the New Treatment System(s), and the current present value of the estimated future recapitalization costs for the New Treatment System(s). The parties have also agreed to use the information and figures which will be provided by the Accounting required by Paragraph 4 to recalculate and adjust the amount of the Trust as described in Paragraphs 8 and 10 below.

U. The money currently in the LCN Escrow Account referenced in Paragraph I above will be transferred by the Department into the Trust. Any funds received from a settlement of the forfeiture of the bonds posted by LCN shall also be deposited in the Trust. BET Associates has agreed to make payments in accordance with Paragraph 6.d. below.

V. As is more fully set forth in Paragraph 6.a. below, BET Associates has agreed to assign to the Trust a security interest in certain coal reserves and provide an easement to those reserves.

W. The parties have agreed that the total amount of the Trust will be the cost to operate and maintain any and all treatment systems which are necessary to ensure that the discharge from the current location of the Route 309 Discharge is managed in accordance with the Second BET COA.

X. BET Associates is exploring various options for reducing the costs associated with treatment, including construction of alternative energy sources and negotiation of long-term power purchase agreements. The Department has advised BET Associates that any such agreement must be assignable to the Trust and that, in the absence of or termination of any such agreement, BET Associates must make payments into the trust that will reflect the full cost of power.

ORDER

After full and complete negotiation of all matters set forth in this Post-Mining Treatment Trust COA and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by BET Associates as follows:

1. This Post-Mining Treatment Trust COA is an Order of the Department authorized and issued pursuant to Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5 and 691.610; Section 4.3 of the Surface Mining Act, 52 P.S. § 1396.4c; Sections 3.1 and 9 of the Coal Refuse Disposal Act, 52 P.S. §§ 30.53a and 30.59; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of BET Associates to comply with any term or condition of this Post-Mining Treatment Trust COA shall subject BET Associates to all penalties and remedies provided by those statutes for failing to comply with an order of the Department.

2. Findings

a. BET Associates agrees that the findings in Paragraphs A through X are true and correct and, in any matter or proceeding involving BET Associates and the Department, BET Associates shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Post-Mining Treatment Trust COA in any matter or proceeding.

3. Definitions

a. Accounting. The accounting required by Paragraph 4 of this Post-Mining Treatment Trust COA.

b. Actual Treatment Cost. The average of three consecutive years of the costs and expenses of treatment, calculated by using the Accountings for those three years.

c. Annual Anniversary Date. Thirty (30) days after the last day of BET Associates' fiscal year or thirty (30) days after the last day of any fiscal year which BET Associates may adopt in the future.

d. Calculated Treatment Cost. The projected future annual cost of treatment, based on the Actual Treatment Cost, compounded at three and one tenth percent (3.1%) annually.

e. Capital Improvement Account. The sub-account within the Trust that is primarily used to finance anticipated and periodic capital expenditures for the New Treatment System(s).

f. Distribution Payment. The Trustee's disbursement of money from the Trust made at the written direction of the Department to a person and in an amount specified by the Department and as provided by this Post-Mining Treatment Trust COA.

g. Formula. The equation used to calculate the Present Value of the future operation and maintenance ("O&M") of the New Treatment System(s). The equation is:

where:

PV	=	$(A/[E-I]) + A$
PV	=	Present Value of the O&M Costs
A	=	Current Actual Treatment Cost
E	=	Expected annual earnings/Interest Rate (assumed to be 9.62%)
I	=	Inflation Rate (assumed to be 3.1% or .031)

h. Primary Basis Valuation. 100% of the present value of the future cost of treatment as determined by the Formula.

i. Primary Target Valuation. 116% percent of the present value of the future cost of treatment as determined by the Formula.

j. Primary Trust Account. The sub-account within the Trust that is primarily used to finance annual operating and maintenance costs of the New Treatment System(s).

k. Primary Trust Valuation. The cash, cash equivalents, investments at market value of investments and the face amount of surety bond currently held by the Trust in the Primary Trust Account.

4. Annual Treatment Costs; Records; Factors; Accounting

a. BET Associates shall keep accurate financial records of all the costs and expenses of treatment for each year. Such costs and expenses shall be categorized into the following general categories: Reagent; Polymer; Electrical; Sludge Removal; Labor, including benefits; Maintenance; Sampling; Overhead; and Miscellaneous. The individual items shall be tracked and reported for each general category.

b. BET Associates shall keep separate records for each treatment system.

c. BET Associates shall provide an annual Accounting of the costs and expenses of annual treatment to the Department on or before the 90th day following the last day of the fiscal year for which the Accounting is being provided. The Accounting shall cover the period beginning on January 1 and continuing through December 31 of each year, or such other fiscal year as BET Associates may adopt for its corporate finances in the future, and shall be in accordance with Generally Accepted Accounting Principles. The Accounting shall be accompanied by an affidavit of a member of BET Associates attesting to the completeness and accuracy of the records of the costs and expenses of annual treatment as reported in the Accounting.

d. BET Associates' obligation to keep records and provide the Accounting shall continue for the period during which BET Associates is operating the New Treatment System(s).

e. In the event of a dispute about the costs and expenses of treatment incurred by BET Associates, BET Associates shall bear the burden of proving the accuracy and completeness of the Accounting and the records upon which the Accounting is based. A Special Report prepared under Generally Accepted Accounting Principles as to the treatment costs incurred by BET Associates, prepared by an independent licensed public or certified public accountant, shall satisfy BET Associates' burden of proof as to any of these matters.

5. Treatment Trust

a. The Trust shall be an irrevocable trust. BET Associates shall establish the Trust by executing a Treatment Trust Agreement with Woodlands Bank ("Trustee"). The

Trust shall secure BET Associates' obligation to treat what is now the Route 309 Discharge, including its legal obligation to operate and maintain the New Treatment System(s) in perpetuity or until water treatment is no longer necessary. The Trust shall also secure BET Associates' obligation to provide financial resources to the Department and the citizens of the Commonwealth sufficient to operate and maintain the New Treatment System(s) and to treat the mine drainage in perpetuity in the event BET Associates becomes unable or unwilling to meet these obligations. The Trust shall provide for the demolition of treatment facilities and reclamation of the treatment site should treatment no longer be needed. BET Associates may replace the Trustee, provided such replacement is in accordance with Section 9.1 of the Treatment Trust Agreement. The agreement establishing the Trust is attached as Exhibit 5.

b. BET Associates shall establish within the Trust two sub-accounts: (i) a sub-account designated as the Primary Trust Account; and, (ii) a sub-account designated as the Capital Improvement Account.

6. Funding of the Primary Trust Account

a. Security Agreement and Easement: Upon its execution of this Post-Mining Treatment Trust COA, BET Associates shall deliver to the Trustee a fully executed agreement providing the Trust a security interest in coal reserves estimated to be valued at \$30 million. The coal reserves shall be designated by section, with each section being valued at \$1 million. A copy of that security interest and the related engineer's report is attached as Exhibit 6. BET Associates shall also provide the Department and the Trustee with a fully executed easement providing them with access to the coal reserves. A copy of the easement is attached as Exhibit 7.

b. Modification of the Security Agreement. With the consent of the Department and the Trustee, the security agreement and easement may be modified at any time to substitute other coal reserves of like value. The request to substitute coal reserves shall be accompanied by an engineer's report, and the Department and the Trustee shall act upon the request within 30 days of receipt of the request. In reviewing a request to substitute other coal reserves or to eliminate sections of the coal reserves, the Trustee and the Department shall limit their consideration to the value of such reserves and shall not unreasonably withhold their consent to the modification. The security agreement and easement may also be modified to eliminate sections of the coal reserves, as provided in Paragraph 16.b below. Any modification to the security agreement and easement shall be incorporated herein by reference.

c. Initial Payments to the Primary Trust Account: The Department agrees to transfer the funds in the LCN Escrow Account from the Clean Streams Foundation to the Primary Trust Account. The Department further agrees to deposit any proceeds from a settlement of the bond forfeiture upon receipt into the Primary Trust Account. BET Associates agrees to deposit any proceeds obtained in a settlement with LCN in Bankruptcy Court into the Primary Trust Account. The security interest, bond forfeiture or bond forfeiture settlement proceeds, and existing escrow sum shall constitute the current present value of the amount necessary to fully fund the Trust.

d. Ongoing Payments to the Primary Trust Account: Beginning on April 1, 2014, BET Associates shall make quarterly payments into the Trust in the amounts and in accordance with the payment schedule attached as Exhibit 8.

7. Annual Distribution or Contribution Payments – Primary Trust Account

a. All calculations under this Paragraph shall be based on values as determined on the Annual Anniversary Date.

b. If at the end of any year the Primary Trust Valuation is greater than the Primary Target Valuation, then a Distribution Payment shall be made to BET Associates. The amount of such Distribution Payment will be equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, or equal to the Calculated Treatment Cost, whichever is less. This amount is depicted graphically at Point 1, 2 and 3 on Exhibit 9.

c. If the Primary Trust Valuation is less than or equal to the Primary Target Valuation, but greater than or equal to the Primary Basis Valuation, then no Distribution Payment shall be made and no additional contribution shall be required. This provision is depicted graphically as Point 4 on Exhibit 9.

d. If the Primary Trust Valuation is less than the Primary Basis Valuation, then BET Associates shall make an additional contribution into the Primary Trust Account in an amount equal to the difference between the Primary Basis Valuation and the Primary Trust Valuation, or in an amount equal to the Calculated Treatment Cost, whichever is less, except as provided in Paragraph 13.a. This amount is depicted graphically as points 5 and 6 on Exhibit 9. This provision does not apply until BET Associates has fulfilled its obligations to make ongoing payments under Paragraph 6.d.

8. Adjustments to the Primary Target Valuation for Deviations Between Actual Treatment Cost and Calculated Treatment Cost

a. All calculations under this Paragraph shall be based on values as determined on the Annual Anniversary Date and before any Distribution Payment.

b. If the Actual Treatment Cost for any year is greater than or equal to 110% percent or less than or equal to 90% percent of the Calculated Treatment Cost, the Department will calculate a new Primary Basis Valuation using the Formula and the newly determined Actual Treatment Cost. A new Primary Target Valuation will then be determined by calculating 116% percent of the new Primary Basis Valuation. Exhibit 10 is a graphical depiction of the adjustment.

9. Distribution Payments for Adjustments to the Primary Target Valuation

a. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8 above is greater than the Primary Trust Valuation, no distribution payment shall be made under this Paragraph.

b. If the newly calculated Primary Target Valuation which has been adjusted under Paragraph 8. above is based on a reduced Actual Treatment Cost, and the Primary Trust Valuation is greater than the newly calculated Primary Target Valuation, then a Distribution Payment shall be made to BET Associates. The amount of such Distribution Payment will be equal to the percent change in Actual Treatment Cost times the Primary Trust Valuation, or in an amount equal to the difference between the Primary Trust Valuation and the newly calculated Primary Target Valuation, whichever is less. The amount of such Distribution Payment shall be determined by the following formulas:

$$DP = TR (1 - (\text{new ATC} / \text{prior ATC}))$$

Or

$$DP = TR - \text{new TV}$$

Where: DP = Distribution Payment
TR = Primary Trust Valuation
TV = Primary Target Valuation
ATC = Actual Treatment Cost

10. Capital Improvement Account

a. Assets of the Capital Improvement Account may be commingled with assets of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of a separate and distinct fund.

b. The required balance in the Capital Improvement Account has been determined by use of the AMDTreat Recapitalization tool based on the following methodology: For each planned capital replacement activity, the current cost and the projected year of replacement, are determined. The future cost of each replacement activity is calculated by compounding the present cost at a rate of 3.1% annually. The year in which each replacement activity will be needed is projected based on typical component life cycles. Assuming a net rate of return on investment of 9.62%, the initial amount of the Capital Improvement Account must be sufficient to cover all anticipated expenditures for capital replacement activities for a 75-year period.

c. A schedule for the Capital Improvement Account balance and projected capital expenditures is made a part of this agreement as Exhibit 11. The required balance in the Capital Improvement Account may be recalculated on an annual basis or each time a Distribution Payment is contemplated under Paragraph 11. Such recalculation shall be deemed an amendment to Exhibit 11 and this Post-Mining Treatment Trust COA, and

shall be used in making all future calculations involving the Capital Improvement Account.

11. Transfer of Funds to the Capital Improvement Account

a. If the Primary Trust Valuation after any Distribution Payment under Paragraph 7 above is greater than the Primary Target Valuation, then a transfer of funds to the Capital Improvement Account shall be made if the current balance in the Capital Improvement Account is less than the required balance for the current year as indicated on Exhibit 11. The amount of such transfer will be equal to the difference between the required balance and the current balance, or in an amount equal to the difference between the Primary Trust Valuation and the Primary Target Valuation, whichever is less.

12. Distribution Payments from the Capital Improvement Account

a. A distribution payment shall be made to BET Associates any time a planned capital replacement is made as indicated on Exhibit 11. The capital replacement and maintenance activities shall be made as needed, which may be sooner or later than the projected time. The amount of the Distribution Payment shall be equal to the calculated cost of the Capital Improvement as indicated on Exhibit 11 or in an amount equal to the difference between the current balance in the Capital Improvement Account and the required balance after the capital improvement Distribution Payment, whichever is less.

b. Each time a Distribution Payment from the Capital Improvement Account is contemplated under this Paragraph or Paragraph 13 below, the required balance in the Capital Improvement Account must be recalculated to determine the required balance

after the proposed Distribution Payment, and to determine the appropriate Distribution Payment.

13. Miscellaneous Distribution Payments from the Primary Trust Account and the Capital Improvement Account.

If the Primary Trust Valuation exceeds the Primary Target Valuation in the Primary Trust Account, or if the balance in the Capital Improvement Account exceeds the required balance as indicated on Exhibit 11, then such surplus funds may be used for the following purposes:

a. Surplus funds in the Capital Improvement Account shall be transferred to the Primary Trust Account to reduce or completely satisfy BET Associates' obligation to make a contribution payment under Paragraph 7.g. This amount is depicted graphically at Point 5 on Exhibit 9. However, the amount of surplus funds transferred to the Primary Trust Account may exceed BET Associates' obligation under Paragraph 7.g. if additional funds are needed so that the Primary Trust Valuation equals the Primary Basis Valuation. This amount is depicted graphically at Point 6 on Exhibit 9.

b. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by BET Associates to pay for unanticipated capital expenditures, or anticipated capital expenditures that exceed the calculated cost of the capital improvement as indicated on Exhibit 11.

c. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by BET Associates to finance implementation of a new treatment technology, provided the application of such treatment technology is first approved by the Department.

d. Surplus funds in the Capital Improvement Account or the Primary Trust Account may be used by BET Associates to implement remediation or abatement activities to reduce or eliminate the discharge, or to improve the quality of the discharge, provided the Department first approves such activities.

14. Real and Personal Property.

a. BET Associates shall submit to the Trustee and the Department's Pottsville DMO, at the address specified in Paragraph 23 below, a list of all equipment, pumps, plumbing, buildings, structures and other personal property which together comprise the Treatment System at the Number 14 shaft within 60 days of the commencement of operation of the system.

b. Within 30 days of providing the list of personal property required by Paragraph 14.a. above, BET Associates shall convey to the Trust a perfected first priority security interest, under the Uniform Commercial Code as in effect in the Commonwealth of Pennsylvania, in such personal property to ensure that the Trustee can utilize such property as necessary to operate and/or improve the Treatment System at the Number 14 shaft.

c. Within 60 days of the completion of any new treatment system(s), other than the one at the Number 14 shaft, BET Associates shall obtain and convey to the Trust a properly executed additional Consent to Right of Entry form.

d. Within 60 days of the completion of any new treatment system(s), other than the one at the Number 14 shaft, BET Associates shall submit to the Trustee and the Department's Pottsville DMO, at the address specified in Paragraph 23 below, a list of all

equipment, pumps, plumbing, buildings, structures and other personal property which together comprise the Treatment System at the Number 14 shaft.

e. Within 60 days of the completion of any new treatment system(s), other than the one at the Number 14 shaft, BET Associates shall convey to the Trust a perfected first priority security interest under the Uniform Commercial Code as in effect in the Commonwealth of Pennsylvania, in and to all personal property detailed in the listing required by Paragraph 14.d above, to ensure the Trust can utilize such property as necessary to operate and/or improve the Treatment System at the Number 14 shaft.

15. Public Liability Insurance

a. BET Associates shall maintain in effect public liability insurance coverage for the operation, maintenance, improvement and all other activities associated with the New Treatment Systems and the real and personal property which are identified in the Post Mining Treatment Trust Agreement as part of the trust principal. BET Associates shall also provide fire damage insurance in the amount of at least \$1 million. The Trustee and the Commonwealth of Pennsylvania shall be listed as additional insureds on the policy.

b. In addition to the requirements of Paragraph 15.a. the public liability insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the minimum amounts of \$500,000 per person and \$1,000,000 per occurrence. The insurance shall include a rider requiring the insurer to notify the Department thirty days prior to substantive changes being made to the policy or prior to termination or failure to renew. Proof of insurance shall consist of a certificate of

insurance filed annually with the Department which certifies BET Associates has a public liability insurance policy in force meeting the requirements of this Paragraph.

16. Annual Requirements

a. The parties will meet on or before the thirtieth day following delivery to the Department of the Accounting of each year: (i) to review and discuss the Accounting for the then completed fiscal year; (ii) to review the effectiveness of the New Treatment System(s) and any change in the fiscal year; (iii) to resolve any issues which arise as a result of that change or the performance of the Trust; (iv) to calculate, recalculate or adjust the size of the Primary Target Valuation, the Calculated Treatment Cost, and distribution payments from or additional payments into the Trust; and (v) to address any other issues that may concern this Post-Mining Treatment Trust COA or its implementation.

b. At any time after October 1, 2013 that the amount in the Trust is \$1,000,000 more than the amounts originally deposited pursuant to Paragraph 6.c., the Department, upon written request of BET Associates, agrees to release \$1,000,000 of the security interest required by Paragraph 6.a. Thereafter, and until such time as the Trust is fully funded, and, as provided in Paragraph 6.b, the Department, upon written request from BET Associates, will release additional amounts from such security interest in accordance with the schedule attached as Exhibit 12. When the Trust is fully funded, the Department shall release any remaining amount of the security interest

c. BET Associates shall provide annually to the Department, on forms furnished by the Department, the information required by 25 Pa. Code §§ 86.62(b) and (c) (relating to identification of interests).

17. BET Associates' Continuing Obligation

Neither BET Associates' agreement to fund the Trust nor the full or partial funding of the Trust, nor the exhaustion of the Trust shall in any way limit BET Associates' obligation to operate the New Treatment System(s) and to treat the discharge(s) in accordance with the Second BET COA and the Site's NPDES Permit, as applicable. Furthermore, exhaustion of the Trust shall not excuse BET Associates from its obligation to adequately treat or to abate the discharges, unless such obligation is otherwise terminated or released by the Department.

18. Stipulated Civil Penalties

a. In the event BET Associates fails to comply in a timely manner with any term or provision of this Post-Mining Treatment Trust COA, BET Associates shall be in violation of this Post-Mining Treatment Trust COA and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded to:

Michael J. Menghini
District Mining Manager
Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville, PA 17901-2522

c. Any payment under this Paragraph shall neither waive BET Associates' duty to meet its obligations under this Post-Mining Treatment Trust COA nor preclude the Department from commencing an action to compel BET Associates' compliance with the terms and conditions of this Post-Mining Treatment Trust COA. The payment

resolves only BET Associates' liability for civil penalties arising from the violation of this Post-Mining Treatment Trust COA for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

19. Additional Remedies

a. In the event BET Associates fails to comply with any provision of this Post-Mining Treatment Trust COA, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Post-Mining Treatment Trust COA.

b. In the event BET Associates defaults on the obligations of this Post-Mining Treatment Trust COA, BET Associates may be subject to a permit block on the Department's compliance tracking system and the federal Applicant Violator System and the Department may, in addition to any other remedy or penalty prescribed herein, list BET Associates as a violator on the Department's compliance tracking system and on the federal Applicant Violator System.

c. For purposes of the security agreement provided by BET Associates pursuant to Paragraph 6.a. above, the filing of a petition in bankruptcy by BET Associates shall constitute an event of default, and the Trustee may exercise its rights and remedies with regard to the coal reserves provided as collateral under the security agreement. Any and all proceeds from the sale or lease of such collateral shall be deposited in the Trust.

d. The remedies provided by this Post-Mining Treatment Trust COA are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that

remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

20. Reservation of Rights

The Department reserves the right to require additional measures to achieve compliance with applicable law. BET Associates reserves the right to challenge any action which the Department may take to require those measures.

21. Liability of BET Associates

BET Associates shall be liable for any violations of the Post-Mining Treatment Trust COA, including those caused by, contributed to, or allowed by its members, agents, employees, or contractors. BET Associates also shall be liable for any violation of this Post-Mining Treatment Trust COA caused by, contributed to, or allowed by its successors and assigns, unless the Department consents to the transfer of BET Associates' obligations as provided in Paragraph 22.c. below.

22. Transfer of Site

a. The duties and obligations of BET Associates under this Post-Mining Treatment Trust COA shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Site or any part thereof.

b. If BET Associates intends to transfer any legal or equitable interest in the Site which is affected by this Post-Mining treatment Trust COA, BET Associates shall serve a copy of this Post-Mining Treatment Trust COA upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer

and shall simultaneously inform the Director, District Mining Operations and the District Mining Manager identified in Paragraph 23 of such intent.

c. The Department in its sole discretion may agree to modify or terminate BET Associates' duties and obligations under this Post-Mining Treatment Trust COA upon transfer of the Site. BET Associates waives any right that it may have to challenge the Department's decision in this regard.

23. Correspondence with Department

All correspondence with the Department concerning this Post-Mining Treatment Trust COA shall be addressed to:

Michael J. Menghini
District Mining Manager
Department of Environmental Protection
Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville, PA 17901

24. Correspondence with BET Associates

a. All correspondence with BET Associates concerning this Post-Mining Treatment Trust COA shall be addressed to:

Douglas Topkis, Member
BET Associates IV, LLC
1233 East Broad Street
Post Office Box 150
Tamaqua, PA 18252-2229

b. BET Associates shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Post-Mining Treatment Trust COA, including its enforcement, may be made by mailing a copy by first class mail to the above address.

25. Force Majeure

a. In the event that BET Associates is prevented from complying in a timely manner with any time limit imposed in this Post-Mining Treatment Trust COA solely because of a strike, fire, flood, act of God, or other circumstances beyond BET Associates' control and which BET Associates, by the exercise of all reasonable diligence, is unable to prevent, then BET Associates may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Post-Mining Treatment Trust COA shall not constitute circumstances beyond BET Associates' control. BET Associates' economic inability to comply with any of the obligations of this Post-Mining Treatment Trust COA shall not be grounds for any extension of time.

b. BET Associates shall only be entitled to the benefits of this Paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by BET Associates to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. BET Associates' failure to comply with the requirements of this Paragraph specifically and in a timely fashion shall render this Paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by BET Associates and other information available to the Department. In any subsequent litigation, BET Associates shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

26. Administrative and Judicial Proceedings

In the event that (i) the amount of funds initially deposited in the Trust is less than the amount indicated in Exhibit 13 as a result of an order of the Bankruptcy Court or an appeal of the forfeiture of the LCN bonds, or (ii) the costs of treatment increase as a result of the U.S. Environmental Protection Agency's actions relating to the Total Maximum Daily Load for Panther Creek, the parties shall meet expeditiously to negotiate a mutually acceptable new payment schedule. Such new payment schedule shall constitute a modification to this Post-Mining Treatment Trust COA and will be incorporated herein by reference.

27. Severability

The Paragraphs of this Post-Mining Treatment Trust COA shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

28. Entire Agreement

This Post-Mining Treatment Trust COA shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

29. Attorney Fees

The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Post-Mining Treatment Trust COA.

30. Modifications

Except as provided in Paragraphs 6.b. and 16.b., no changes, additions, modifications, or amendments of this Post-Mining Treatment Trust COA shall be effective unless they are set out in writing and signed by the parties hereto.

31. Titles

A title used at the beginning of any Paragraph of this Post-Mining Treatment Trust COA may be used to aid in the construction of that Paragraph, but shall not be treated as controlling.

32. Decisions under Consent Order

Except for decisions made pursuant to Paragraphs 6.b., 16.b., 19 and 20, any decision which the Department makes under the provisions of this Post-Mining Treatment Trust COA is intended to be neither a final action under 25 Pa. Code §1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which BET Associates may have to the decision will be preserved until the Department enforces this Post-Mining Treatment Trust COA.

33. Successors

a. This Post-Mining Treatment Trust COA shall be fully and completely binding upon any successor of BET Associates. For purposes of this Paragraph, successor shall mean any corporation or entity: 1) BET Associates consolidates with or merges into or permits to merge with it and BET Associates is not the surviving corporation or entity; or 2) which acquires, by purchase or otherwise, all or substantially

all of BET Associates' voting stock. Successor does not include any corporation or other entity to which BET Associates transfers or assigns all or substantially all of its financial or non-financial liabilities.

b. BET Associates shall notify the Department, without delay, of any successor as defined herein and shall provide such successor with a copy of this Post-Mining Treatment Trust COA.

34. Counterpart Signatures

The parties agree that this Post-Mining Treatment Trust COA may be executed by counterpart signatures transmitted via electronic means.

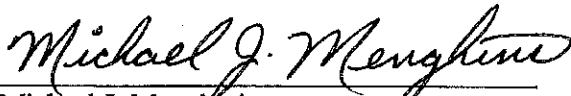
IN WITNESS WHEREOF, the parties hereto have caused this Post-Mining Treatment Trust COA to be executed by their duly authorized representatives. The undersigned representatives of BET Associates certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this Post-Mining Treatment Trust COA on behalf of BET Associates; that BET Associates consents to the entry of this Post-Mining Treatment Trust COA as a final ORDER of the Department; and that BET Associates hereby knowingly waives its rights to appeal this Post-Mining Treatment Trust COA and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by BET Associates' attorney certifies only that the agreement has been signed after consulting with counsel.

FOR BET ASSOCIATES IV, LLC:

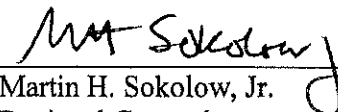
Douglas Topkis
Member

Maxine M. Woelfling, Esquire
Attorney for BET Associates

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**




Michael J. Menghini
District Mining Manager



Martin H. Sokolow, Jr.
Regional Counsel
Southcentral Region OCC

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FOR BET ASSOCIATES IV, LLC:



Douglas Topkis
Member

Maxine M. Woelfling, Esquire
Attorney for BET Associates

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**

Michael J. Menghini
District Mining Manager

Martin H. Sokolow, Jr.
Regional Counsel
Southcentral Region OCC

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FOR BET ASSOCIATES IV, LLC:

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**

Douglas Topkis
Member

Michael J. Menghini
District Mining Manager

Maxine M. Woelfling

Maxine M. Woelfling, Esquire
Attorney for BET Associates

Martin H. Sokolow, Jr.
Regional Counsel
Southcentral Region OCC

LIST OF EXHIBITS

- Exhibit 1: Topographic Map
- Exhibit 2: Plan for New Treatment System(s)
- Exhibit 3: Consent to Right of Entry
- Exhibit 4: Initial Trust Valuation
- Exhibit 5: Post-Mining Discharge Treatment Trust Agreement
- Exhibit 6: Security Interest in Coal Reserves Collateral and Engineer's Report
- Exhibit 7: Easement to the Coal Reserves Collateral
- Exhibit 8: Treatment Trust Payment Schedule
- Exhibit 9: Graph – Primary Trust Account: Annual Distribution or Contribution Payments
- Exhibit 10: Graph - Adjustments to the Primary Target Valuation for Deviations Between Actual Treatment Cost and Calculated Treatment Cost
- Exhibit 11: Schedule for Capital Improvement Account Balance and Projected Capital Expenditures
- Exhibit 12: Schedule for Release of Security Interest