

IN THE MATTER OF:

**ACTION MINING TREATMENT TRUST
POST-MINING DISCHARGE TREATMENT TRUST AGREEMENT**

This Trust Agreement ("Trust" or "Agreement") entered into this 12th day of February, 2002, by and among, Action Mining, Inc. with its principal place of business at 117 Shaw Mines Road, Meyersdale, Pennsylvania 15552 ("Settlor"), and the Somerset Trust Company, with its principal place of business at Somerset, Pennsylvania and incorporated under the laws of the Commonwealth of Pennsylvania ("Trustee").

WHEREAS, Settlor operates three (3) surface coal mines in Somerset County, Pennsylvania, identified as the Summit No. 2 surface mine permit, Permit No. 56663069 ("Summit No. 2 Mine"), Summit No. 3 surface mine permit, Permit No. 56823066 ("Summit No. 3 Mine") located in Summit Township, Somerset County and the Elk Lick No. 1 surface mine permit, Permit No. 56803015 (Elk Lick No. 1 Mine"), located in Elk Lick and Summit Townships, Somerset County.

WHEREAS, there are three (3) historical discharges of acid mine drainage identified as MD24, MD25 and MD26 located on the Summit No. 2 mine and the Summit No. 3 mine. Those discharges predated the existence and operations of Settlor.

WHEREAS, on February 23, 1996, the Department issued an Administrative Order No. 963015 to the Settlor in which it asserted that the Settlor was liable, as a matter of Pennsylvania law and regulation, to collect and treat the said discharges

known as MD24, MD25 and MD26. Action Mining timely perfected an administrative appeal from said Administrative Order to the Commonwealth of Pennsylvania Environmental Hearing Board in which it denied its liability under Pennsylvania law and applicable regulations to collect and treat said discharges. After litigation and negotiations, the Department and Settlor entered into a Consent Order and Settlement Agreement, dated June 30, 1999 ("June 30, 1999 Consent Order"), pursuant to which Action Mining did not admit liability for the discharges identified as MD24, MD25 and MD26, but in order to avoid litigation agreed to perpetually collect and treat those discharges and in which Settlor agreed to construct a treatment system to collect and treat the discharges identified as MD24, MD25 and MD26, and to create a trust fund or other financial guarantee to ensure for the perpetual operation, maintenance and repair of such treatment facility. Subsequently, the Department advised Settlor that Settlor was obligated to collect and treat three (3) additional discharges that are commonly known as MD62, MD63 and MD64 and which are located on the Summit No. 2 Mine or the Summit No. 3 Mine Permit. Settlor denied any liability to collect or treat those discharges under applicable Pennsylvania law and regulations, following which the Department and Settlor negotiated for several years over Settlor's liability for said discharges, and during which period negotiations the Department and Settlor exchanged hydrologic, geologic and other technical information regarding Settlor's potential liability to collect and treat those discharges identified as MD62, MD63 and MD64. Ultimately, the Department threatened to issue an administrative

order to Settlor to collect and treat the discharges identified as MD62, MD63 and MD64 and to require Settlor to construct a treatment system to treat said discharges and to establish a trust or other financial guarantee to ensure the perpetual operation, maintenance and repair of said treatment facility. After further negotiations, the Settlor accepted liability for the discharges identified as MD62, MD63 and MD64 and in the June 30, 1999 Consent Order, Settlor agreed to collect and treat those discharges, to construct a treatment facility for the collection and treatment of those discharges and to create a trust or financial guarantee to ensure the perpetual operation, maintenance and repair of a treatment facility for said discharges. This Trust is the trust that Settlor, in the June 30, 1999 Consent Order agreed to establish to ensure the perpetual operation, maintenance and repair of the treatment facility for the collection and treatment of the discharges commonly known as MD24, MD25, MD26, MD62, MD63 and MD64.

WHEREAS, the Settlor has entered into a Consent Order and Agreement dated February 8, 2002, (such Consent Order and Agreement referred to as the "CO&A"), with the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter referred to as "Department" or "Beneficiary") which is incorporated by reference and which contains, among other things, a requirement that the Settlor meet its reclamation obligations and provide financial guarantees to assure that funds will be available to provide for the Settlor's legal obligation to operate a mine drainage treatment system to treat and otherwise prevent

discharges of mine drainage emanating from or hydrologically connected to Settlor's mines;

WHEREAS, the treatment system consists of a conventional chemical treatment system within the boundary of the Summit No. 2 surface mine permit, Permit No. 56663069("Summit No. 2 Mine"), Summit No. 3 surface mine permit, Permit No. 56823066 ("Summit No. 3 Mine") located in Summit Township, Somerset County and the Elk Lick No. 1 surface mine permit, Permit No. 56803015 (Elk Lick No. 1 Mine"), located in Elk Lick and Summit Townships, Somerset County, more specifically, the Discharges are collected in two separate areas. Discharges MD 24, MD 25 and MD 26 are collected in a raw water pond and are pumped to one of the Aqua-Fix systems located in the treatment building using either the 15 or 25 horsepower pump located in the upper pump house. MD 62, MD 63 and MD 64 are collected and flow by gravity via HDPE piping along an abandoned railroad grade to the 70 foot diameter concrete raw water collection tank. The water is then pumped by one or both of the 40 horsepower pumps in the lower pump house to the second Aqua-Fix system, also located in the treatment building. Pebble lime is added to the water as it flows through the two Aqua-Fix wheels and is then discharged to and flows through the 500 foot rock lined aeration channel into one of the two narrow sludge ponds. From the sludge ponds the treated water flows through the large settling pond and the finishing pond and is discharged to Coal Run. On an as needed basis, sludge is pumped from the two narrow sludge ponds using a sludge pump and sludge disposal pipe to one of four

sludge disposal boreholes, (hereinafter referred to as the “Facility” or “Treatment Facility”). The discharge from MD 24, MD25, MD26, MD62, MD63 and MD64 (collectively the “Discharges”) is collected and pumped into and treated by the Facility following which the discharge from the Facility flows into Coal Run, a tributary of the Casselman River;

WHEREAS, the Surface Mining Conservation and Reclamation Act (“SMCRA”), requires a permittee to post with the Department a bond for each operation conditioned upon the permittee performing all of the requirements of SMCRA, the Clean Streams Law and the Coal Refuse Disposal Control Act and SMCRA further provides for the bond to be released where all reclamation standards have been satisfied with the exception of consistently meeting mine drainage effluent standards provided the operator has made provisions with the Department for the sound future treatment of the pollutional discharges, 52 P.S. §1396.4(d) and (g);

WHEREAS, the use of a trust fund is authorized as an alternative financial assurance mechanism under provisions of the Pennsylvania Surface Mining Conservation and Reclamation Act and which contemplates such a trust is for the public purpose of protecting the environment and the health and welfare of the public, without limitation on duration and is a means which provides for the sound future treatment of pollutional discharges. 52 P.S. §1396.4(d) and (d.2), 25 *Pa. Code* §86.158(f);

WHEREAS, the Settlor has elected to establish this Trust pursuant to the CO&A to assure funds are available to provide for Settlor's legal obligation to provide funds for the treatment of the post-mining discharges;

WHEREAS, the Settlor, acting through its duly authorized officers or representatives and with the approval of the Department, has selected the Trustee under this Agreement;

WHEREAS, the Trustee has been induced, and has agreed and is willing to perform the duties as are required to be performed pursuant to this Agreement;

WHEREAS, the Trustee is a Pennsylvania chartered or national bank or financial institution with trust powers or a trust company, with offices in Pennsylvania and whose trust activities are examined or regulated by a state or federal agency;

WHEREAS, the Department has joined in this Agreement to indicate its acceptance of the terms and conditions set forth in, as well as the powers and authorities granted by, this Agreement;

WHEREAS, the Department has stated that, to the best of its knowledge and belief, the Facility currently has been and is in compliance with all required federal and state permits and approvals necessary and required for the operation and maintenance of the Facility; and

WHEREAS, except as set forth in the CO&A, Settlor represents that, to the best of its knowledge, there are no violations of any environmental law regulating

the Facility or the Property, as it is hereinafter defined, and that the Facility is operating in compliance with all applicable permits and approvals.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and undertakings of the parties as set forth herein, and with the intention of being legally bound hereby, the parties agree as follows:

ARTICLE ONE

Establishment of Trust

§1.1 The Settlor and the Trustee hereby establish this Trust for the benefit of the Department, or its successor, to be utilized for the exclusive purpose of addressing environmental and reclamation obligations concerning the mine drainage discharges related to Settlor's mining activities on the Summit No 2 Mine, Summit No. 3 Mine and the Elk Lick No. 1 Mine permitted under SMCRA and under the Clean Streams Law which includes providing for the continued operation and maintenance of the Facility. For purposes of this Agreement, operation includes, but is not limited to, the operation, maintenance and replacement of the existing Facility approved by the Department and any other facilities, additions, modifications or improvements or other facilities or actions which may be required in the future to treat the Discharges, abate the Discharges or to reduce the cost of treating the Discharges.

§1.2 The Settlor and the Trustee intend for the Department to be legal beneficiary of this Trust and to have all rights of a beneficiary under the law, as well as all

rights granted under this Trust Agreement. The Department, as beneficiary, shall have access to the Trust as provided herein.

§1.3 The Trust principal, excluding any surety bonds held for the benefit of the Trust as hereinafter provided, shall consist of:

- (a) The initial payment or transfer to the Trustee of \$110,000.00 by Settlor.
- (b) Certain rights of entry, assignment of leases and real and personal property including buildings, structures, fixtures and appurtenances identified in Exhibit "A" (the "Property") attached to this Agreement or which may be conveyed to or acquired by the Trust in the future.
- (c) Certain personal property described in Exhibit "B". The personal property described on Exhibit B shall be contributed by Settlor to Trustee in its capacity as Trustee of the Trust according to the schedule also shown on Exhibit B
- (d) Ongoing Payments to be made by the Settlor in the amounts and on the dates specified in Exhibit "C" and such other payment as may be made from time to time by the Settlor.
- (e) Cash, funds or property transferred from any other person to the Trust and accepted by the Trustee as directed by the Department.
- (f) The delivery by the Settlor to the Trustee various surety bonds provided by Settlor and which shall name the Trustee as the Department's designee for purposes of declaring a forfeiture of the

surety bonds. The total sum of the surety bonds is \$374,985.00. The Trustee shall hold such surety bonds for the benefit of the Trust, but shall be under no obligation to pay any premiums or other costs associated therewith. All such premiums and costs, as well as the responsibility for maintaining the surety bonds in full force and effect, shall remain the obligation of Settlor.

- (g) All proceeds from surety bonds held by the Trustee and forfeited in accordance with provisions of this Trust Agreement.
- (h) All investments, reinvestments, assets or proceeds attributable to or derived from the items listed in this subparagraph.

§1.4 The Trustee agrees to act as the Department's designee for the purposes specified in this section. The surety bonds delivered by the Settlor shall be held for the benefit of the Trust by the Trustee until the Department either directs the Trustee to release such bonds or portion thereof or the Department directs the Trustee, as the Department's designee, to forfeit the surety bonds and deposit the proceeds of such forfeiture into the Trust. Trustee shall take no action with respect to the surety bonds except as directed, in writing, by the Department in accordance with the provisions of this Trust Agreement and the Trustee shall not be liable to any party for acting in accordance with such directions. Settlor and or Surety may appeal a forfeiture of the surety bonds to the Environmental Hearing Board.

§1.5 All of the preceding payments proceeds and assets referred to in Sections 1.3 and 1.4 hereof shall constitute the Trust principal, together with all earnings,

accretions and profits therefrom, less any payments or distributions made by the Trustee pursuant to the terms of this Trust Agreement, shall constitute the Trust Fund.

§1.6 The Trustee shall establish within the Trust Fund two subaccounts: a subaccount designated as the Primary Trust Account and a subaccount designated as the Capital Improvement Account. The Trustee shall deposit the Trust principal identified in Sections 1.3 through 1.5 into the Primary Trust Account. The Trustee shall transfer funds into the Capital Improvement Account from the Primary Trust Account as directed by the Department and shall deposit into the Capital Improvement Account funds received from any person for deposit into this Account. The Capital Improvement Account principal may be commingled with the principal of the Primary Trust Account for purposes of investment, but must be accounted for and reported separately as if they are assets of separate and distinct funds. The Trustee shall manage and make disbursements from the two subaccounts in accordance with the provisions of ARTICLE TWO, Distribution Payments and ARTICLE THREE, Trust Management, as set forth in this Trust Agreement.

§1.7 The Trust Fund and any other real and personal property held by the Trustee pursuant to this Trust Agreement shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by operation of law, by, on behalf of, or in respect of the Settlor, the Trustee or the Department, and shall not be subject or applied to the debts, obligations or liabilities of the Settlor, the Trustee or the Department,

including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, the Settlor shall have no legal title to any part of the Trust Fund, and it is the intention of the parties to this Trust Agreement that Settlor's entry into the Trust shall extinguish and remove all of Settlor's interest in the Trust from Settlor's estate under the Bankruptcy Code or similar laws.

§1.8 All payments made to the Trust or deposits into the Trust by the Settlor shall be irrevocable once made, and upon delivery thereof, by or on behalf of the Settlor, all interest of the Settlor therein shall cease and terminate, and no part thereof, nor any income therefrom, shall be used for or devoted to purposes other than for the exclusive benefit of the Department and the Trust as provided herein.

§1.9 The Trust Fund shall be held, administered, invested and reinvested by the Trustee, IN TRUST, as hereinafter provided, and all distributions therefrom shall be made in accordance with the provisions of this Trust Agreement.

§1.10 Any monetary payments made by the Settlor or on its behalf to the Trustee for deposit into the Trust shall consist of cash, bank checks, bank wire transfers or other negotiable instruments acceptable to the Trustee. The Trustee shall have no responsibility for the amount or adequacy of such payment or collection thereof, but the Trustee shall notify the Department of any deficiencies in the payments required to be made by the Settlor or on its behalf whenever the Trustee has knowledge of such deficiencies.

ARTICLE TWO

Distribution Payments

§2.1 The Trustee shall make distribution payments from the Trust upon the written order of the Department and the Department shall designate the subaccount from which such disbursement payment shall be made. The Department shall have the authority to designate, in writing, any person or entity to receive distribution payments from the Trust. The Trustee shall, upon receipt of written order for distribution payment from the Department, make distribution payments from the Trust as directed in the Department's written order. The Trustee shall be fully protected and entitled to rely upon the written orders of the Department and shall not be liable to any party for acting in accordance with those directions.

§2.2 The Trustee is authorized and shall, upon the written order of the Department, enter into contracts, and take title to easements, rights of way and other property interests and property as necessary to carry out the purposes of the Trust. The Trustee is authorized, upon the written order of the Department to contract with or otherwise engage the services of, and pay reasonable compensation to, such persons or entities as the Trustee may require to carry out this provision. This authorization is in addition to the other powers granted to the Trustee by this Trust Agreement with regard to the retention and compensation of agents. Any property acquired or services provided under this provision shall not be deemed to be acquired or provided to the Trustee or the Department, but shall be deemed to be

acquired or provided on behalf of the Trust, and the Trustee shall not incur any liability under the Trust when acting in accordance with the provisions of this paragraph.

§2.3 Except as provided by this Trust Agreement, no other disposition of monies shall be made unless directed, in writing, by the Department or by an order of a court of competent jurisdiction.

ARTICLE THREE

Trust Management

§3.1 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. The Trustee shall add to principal any income not distributed pursuant to the provisions of this Agreement.

§3.2 The Trustee shall discharge its investment duty solely in the interest of the Department as beneficiary of this Trust and, subject to section 3.3(i), the Trustee shall seek to manage the Trust with that degree of judgment, skill and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence, who are familiar with such matters, exercise in the management of their own affairs. The Department will provide written direction, with a copy to the Settlor, as to the investment strategy, which the Trustee shall pursue in discharging its duties under this Agreement. Until the Trustee receives further

written notice from the Department the Trustee will follow the written directions set forth in Exhibit D.

§3.3 For purposes of investing or reinvesting the assets in the Trust, the Trustee shall have investment discretion subject to the following guidelines:

- (a) The Trustee may purchase shares of any mutual funds or “money market funds” which have their assets invested in equity shares, including any mutual fund for which the Trustee or any affiliate may be an advisor, subadvisor, manager, custodian or Trustee.
- (b) The Trustee may purchase any equity shares, listed on a national or regional stock exchange or that are capable of being valued in accordance with any other daily-recognized valuation methodology.
- (c) The Trustee may purchase any bonds listed on a national exchange or that are capable of being valued in accordance with any other daily recognized valuation methodology, including, but not limited to, bonds or obligations of any state or municipality, or that are obligations of or are guaranteed by the United States of America. Provided, however, that the Trustee shall limit any such investment in Bonds to investment grade bonds.
- (d) The Trustee may invest in any interest bearing bank account or “money market” account.
- (e) The Trustee may sell at public or private sale any shares acquired under this article.

- (f) In regard to any shares or other equity interests the Trustee may hold, the Trustee may join in any merger, reorganization, voting-trust plan or any other concerted action of owners or shareholders.
- (g) The Trustee, in the exercise of its investment powers, may utilize puts and calls, short sales, options and warrants or other investment strategies generally recognized as prudent when utilized to enhance returns, reduce risk or mitigate loss.
- (h) The Trustee may hold cash awaiting investment or distribution for a reasonable period of time, provided however, where possible and consistent with sound investment practices, shall invest such cash in overnight investments.
- (i) The Trustee shall not be responsible for any losses incurred hereunder whether it is due to market fluctuations or otherwise, except in the case of its gross negligence or willful misconduct or that of its agents.

ARTICLE FOUR

Express Powers of Trustee

§4.1 Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Trust 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 power herein granted.
- (b) To register any securities held in the Trust in its own name or in the name of a nominee and to hold any security in bearer form or book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Trust and that such securities are not co-mingled with or made a part of any other account of another customer of the Trustee or the Trustee itself.
- (c) To deposit any cash in the Trust in interest-bearing accounts maintained by the Trustee, to the extent such are insured by an agency of the Federal or State Government or otherwise secured as provided under the laws of the Commonwealth of Pennsylvania.

- (d) To hold title to real and personal property and to generally exercise all rights and privileges appurtenant to any property held by the Trustee as may be necessary to preserve, protect, maintain, operate, transfer convey or sell *such* property, and to execute and deliver any and all instruments which may be necessary or expedient in any powers granted under this Trust Agreement. However, the Trustee shall not have the power to transfer, convey or sell the rights and property described in Exhibits "A" and "B" without written authorization from the Department.
- (e) To purchase public liability insurance and fire insurance, when directed to do so by the Department, to cover the operation, maintenance, improvement and all other activities associated with the real and personal property held by the Trust. The Trustee and the Commonwealth of Pennsylvania shall be listed on the policy as additional insureds. The insurance shall be written on an occurrence basis and shall provide bodily injury and property damage coverage in the amounts of \$250,000 per person and \$1,000,000 per occurrence. The fire insurance shall be in the amount determined by the Department.

ARTICLE FIVE

Advice of Counsel

§5.1 The Trustee may, from time to time, consult with counsel of its own choosing with respect to any question arising as to the construction or interpretation of this Agreement or any action to be taken hereunder. The Trustee shall be protected, to the extent permitted by law, in acting in good faith on the advice of counsel.

§5.2 The Trustee shall not be required to furnish any bond or security in any jurisdiction.

§5.3 No person dealing with the Trust or the Trustee shall be obligated to inquire as to the authority of the Trustee in connection with the acquisitions, investment, management or disposition of the Trust assets or in connection with the exercise of any other power granted under this Agreement.

ARTICLE SIX

Claims

§6.1 The Trustee shall not initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust without the written consent of the Department.

§6.2 The Trustee shall give prompt written notice to the Department and the Settlor of each claim in favor of or against the Trust, specifying the amount and nature of such claim. The Trustee shall also give prompt written notice to the Department and the Settlor of any controversies, demands, actions, losses,

damages, costs or expenses or any other matter which the Trustee believes is likely to give rise to a claim.

§6.3 The Department shall have the right, but not the duty to: (1) direct the Trustee to initiate, terminate, settle, compromise or otherwise adjust claims in favor of or against the Trust, and (2) participate in the prosecution of or defense against, any claim in favor of or against the Trust. To the extent the Department directs the Trustee to assume prosecution or defense, the Trustee shall retain counsel of the Department's choosing or counsel selected by the Trustee and approved by the Department. If the Department directs the Trustee to assume prosecution or defense of any claim, the Trustee shall prosecute or defend the claim at the expense of the Trust, and the Trustee shall be entitled to assess against the Trust Fund all costs associated with the prosecution or defense. Upon notice to the Trustee that the Department will assume prosecution or defense, the Trustee will not be responsible for the subsequent prosecution or defense nor for any loss ensuing therefrom. If the Department fails to instruct the Trustee with respect to the prosecution or defense of any claim, the Trustee may prosecute or defend any claim at the expense of the Trust, but shall be under no duty to do so, and shall have no liability for its failure or refusal to prosecute or defend the claim if deems such action to be in the best interest of the Trust.

ARTICLE SEVEN

Evaluation and Reports

§7.1 The Trustee shall at least quarterly furnish to the Department and to the Settlor a statement providing an accounting of all transactions involving the Trust and confirming the value of the Trust. Such statement shall value Trust investments at market value, which shall be that market value, determined not more than thirty (30) days prior to the date of statement. In the event that the Settlor (i) ceases to exist and shall not have notified the Trustee of its successor-in-interest, or (ii) shall suffer a forfeiture of its surety bonds , the Trustee is to discontinue providing any such statement to Settlor.

§7.2 The Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all monies and assets under this Trust Agreement. In addition, whenever called upon to do so, the Trustee shall exhibit to the Settlor, should the Settlor be in existence, and the Department, all documents, instruments or reports relating to the Trust or the Trust Fund. The Trustee shall also cause to be prepared all income tax returns required to be filed with respect to the Trust and shall execute and file such returns. The Department, upon request, shall furnish the Trustee with such information as may be reasonably required in connection with the preparation of such income tax returns.

ARTICLE EIGHT

Expenses, Taxes and Trustee Compensation

§8.1 Compensation of the Trustee and all other reasonable and customary expenses incurred by the Trustee, including fees for legal services rendered to the Trustee, shall be taken and paid from the Trust at the time that the Trustee shall deem appropriate. Trustee shall be paid a fee, semi-annually in advance, based on the schedule of fees attached hereto and marked Exhibit “E”. The Trustee must provide the Department and the Settlor not less than 120 days advance written notice of any proposed future changes of the Trustee’s schedule of fees. The Department and the Settlor have thirty (30) days after receipt of the proposed changes to approve or disapprove the proposed changes to the Trustee’s schedule of fees.

§8.2 The Trust is intended to be categorized, for federal income tax purposes, as a settlor trust in accordance with and under the provisions of Section 468B of the Internal Revenue Code and any implementing regulations cited therein including, without limitation, those codified at 26 CFR 1-468B-1 *et. seq.* or any corresponding successor provision. All federal taxes of any kind that may be assessed or levied against or in respect of the Trust shall be paid by the Settlor and shall not be taken from the Trust. The Trustee shall enter into such Agreements with the Settlor as are necessary to carry out this provision. If the Settlor fails, refuses or is unable to pay these taxes, the Settlor and the Trustee hereby agree that the Department may convert this Trust to a charitable trust for federal income tax purposes in which event both the Settlor and the Trustee shall fully cooperate with said conversion. In the event that either Settlor or the Trustee fails or refuses to cooperate with such a

conversion, then the Department shall have the right, but not the duty, to petition the appropriate judicial forum to reform the Trust to be a federal charitable trust or to take other measures to meet the requirements of federal law such that the Trust would not be taxable for federal income tax purposes. Notwithstanding any provision of this Section to the contrary, the Trust may not be reformed such that the purposes and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the CO&A.

§8.3 All Pennsylvania taxes of any kind, including all taxes assessed by the Commonwealth and all taxes assessed by any other taxing authority, that may be assessed or levied against or in respect of the Trust shall be paid by the Settlor and shall not be taken from the Trust. The Trustee shall enter into such Agreements with the Settlor as are necessary to carry out this provision. If the Settlor fails, refuses or is unable to pay these taxes, the Settlor and the Trustee hereby agree that the Department may convert this Trust to a charitable trust for Pennsylvania income tax purposes in which event both the Settlor and the Trustee shall fully cooperate with said conversion. In the event that either Settlor or the Trustee fails or refuses to cooperate with such a conversion, then the Department shall have the right, but not the duty, to petition the appropriate judicial forum to reform the Trust to be a Pennsylvania charitable trust or to take other measures to meet the requirements of Pennsylvania law such that the Trust would not be taxable for Pennsylvania income tax purposes. Notwithstanding any provision of this

subsection (a) to the contrary, the Trust may not be reformed such that the purposes and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the CO&A. Notwithstanding any provision of this section [8.3] to the contrary, the Trust may not be converted or reformed such that the purpose and objectives of the Trust cannot be met or that would alter any of the rights, obligations and duties of the Settlor as are provided in this Trust Agreement and in the CO&A.

§8.4 If at any time that the Trust itself shall become liable for any taxes, and if the Settlor shall fail, refuse or be unable to pay these taxes from its own funds, then the Trustee shall pay from the Trust Fund all such taxes then due and owing. As soon as possible after the happening of the Settlor failing, refusing or becoming unable to pay such taxes, except to the extent that the Settlor disputes the payment of such taxes in good faith, the Trustee and the Department shall negotiate and enter into an Agreement in respect of Trustee's payment of the taxes during the continuance of this Agreement. Further, unless the Department and the Trustee otherwise agree to the contrary, immediately upon the happening of the Settlor's failure, refusal or inability to pay any such taxes, the Trustee is directed and empowered (notwithstanding any provision of this Agreement to the contrary) to change the investment objective of the Trust to an objective which minimizes the tax liability of the Trust, giving due consideration to market conditions so as to

avoid, to the extent possible, losses on the conversion of existing instruments. In carrying out this investment objective, the Trustee shall invest in the following:

- (a) Any bonds or obligations of any state or municipality that are exempt from federal income tax.
- (b) Shares of any mutual fund or “money market fund” which has one hundred percent (100%) of its assets invested in the investments of the type described in the preceding subsection (a).
- (c) Such other investments as may be approved by the Department.

ARTICLE NINE

Successor Trustee and Conversion of Trust

§9.1 The Trustee may resign or the Settlor may replace the Trustee at Settlor’s discretion, which discretion is limited to replacement with a Pennsylvania chartered or national bank or corporate financial institution with trust powers or a trust company with offices in Pennsylvania and whose trust activities are examined or regulated by a state or federal agency. Any such action, however, shall only be effective by the Settlor after giving sixty (60) days notice to the Department. The Trustee’s resignation or replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department, which confirmation will not be unreasonably withheld. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder and shall be subject to the same reservations, limitations, terms and

conditions. The successor trustee shall specify the date on which it will assume administration of the Trust, in writing, sent to the Trustee and Department, by certified mail, return receipt requested, not less than ten (10) days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall assign, transfer, convey and pay-over to the successor trustee the funds and properties then constituting the Trust and shall provide the Department and successor trustee a full accounting of all transactions involving the Trust which occurred after the last quarterly statement provided in accordance with Article Seven and shall be discharged from any further liability or responsibility with regard to the administration of the Trust.

§9.2 Upon notice to and advice from the Settlor the Department may replace the Trustee for one or more of the following reasons:

- (i) the Department determines the Trustee violated its fiduciary duties,
- (ii) the Department determines the Trustee breached this Agreement,
- (iii) the Department determines the Trustee is at risk of becoming insolvent,
- (iv) another Trustee will provide the services specified by this Agreement at a lower fee,
- (v) the Settlor fails, refuses or is unable to pay any taxes that may be assessed or levied against or in respect of the Trust,
- (vi) the Trustee significantly raises its fees.

The successor trustee shall be a Pennsylvania chartered or national bank or corporate financial institution with trust powers or a trust company with offices in

Pennsylvania and whose trust activities are examined or regulated by a state or federal agency. The trustee's replacement shall not be effective until a successor trustee has been appointed and such appointment confirmed, in writing, by the Department. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder and shall be subject to the same reservations, limitations, terms and conditions. The successor trustee shall specify the date on which it will assume administration of the Trust, in writing, sent to the Trustee and Department, by certified mail, return receipt request, not less than ten days before such assumption takes effect. Upon the successor trustee's acceptance of the appointment, the Trustee hereunder shall assign, transfer, convey and pay over to the successor trustee the funds and properties in constant between the trust and shall provide the Department and successor trustee a full accounting of all transactions involving the Trust which occurred after the last quarterly statement provided in accordance with Article Seven and shall be discharged from any further liability or responsibility with regard to the administration of the Trust.

§9.3 The Settlor shall have the right to convert the Trust into a qualified charitable trust for federal income tax purposes and for Pennsylvania income tax purposes, provided that such conversion does not prevent the purposes and objectives of the Trust from being met, does not in any way diminish, alter or impair the rights of the Department or the Trustee (or any successor trustee) under this Agreement or the CO&A and does not alter the rights, obligations and duties of the Settlor under this Agreement or the CO&A.

ARTICLE TEN

Instructions to the Trustee

§10.1 All orders, requests and instructions by the Department to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule A, or such other persons as the Department may designate by amendment, in writing, to Exhibit F. The Trustee shall be fully protected and shall not be liable to any party in acting in accordance with the Department's orders, requests and instructions when authorized by the Agreement, and, to the extent necessary, shall be held harmless from the Trust fund. The Trustee shall not have the right to assume, in the absence of written notice to the contrary, that an event constituting a change or termination of the authority of any person to act on behalf of the Department hereunder has occurred. The Trustee, upon receipt of orders, requests or instructions by the Department which are signed by a person purporting to be designated by the Department, but not listed on the attached Exhibit F or any amendment thereto, shall with due diligence ascertain if such persons are designated by the Department and have authority to act on behalf of the Department hereunder.

§10.2 In the event that the Trustee is unsure of the application of any provision of this Agreement or any action contemplated hereunder, the Trustee may request and rely upon the written instruction of the Department. The Trustee shall not be liable

to any party for any affirmative action taken or omission made by the Trustee pursuant to written instruction given to the Trustee by the Department.

ARTICLE ELEVEN

Trustee Exculpation

§11.1 The Trustee shall not be responsible for the enforcement or policing of any environmental action nor be required to defend any claims relating thereto. The Trustee shall be a mere title holder and “fiduciary” as defined in the Pennsylvania Act entitled: “The Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act,” Act No. 3 of 1995, P.L. 33, 35 P.S. §§6027.1 through 6027.14, and its liability shall be limited as provided under Section 6 of the Act, 35 P.S. §6027.6.

§11.2 As to all actions taken by the Trustee with respect to the administration of the Trust, the Trustee shall not be answerable or liable for the exercise or nonexercise of any discretion or power under this Agreement nor for anything whatever in connection with the Trust hereunder, except for its own gross negligence or willful misconduct or that of its agents. Except in the case of the Trustee’s own gross negligence or willful misconduct, the Trustee shall be entitled to be exonerated and indemnified from the Trust Fund against any and all losses, claims, costs, expenses and liabilities arising out of in connection with the administration or distribution of the Trust Fund or the affairs of the Trust. In addition to the foregoing, as specified previously, the Trustee shall not be liable to

any party for actions taken in accordance with the directions of the Department. The provisions of this section shall also extend to the employees and agents of the Trustee.

ARTICLE TWELVE

Irrevocability and Termination

§12.1 The Trust shall be irrevocable and, except as provide in §16.5 of ARTICLE SIXTEEN hereof, shall continue from the date of inception, unless otherwise terminated by the occurrence of any one of the following:

- (a) The Department determines that the Trust is no longer required.
- (b) The Trustee determines that the size of the Trust does not warrant the continuation of the Trust.
- (c) The Trustee determines administration of the Trust renders it impractical to continue the Trust and the Department agrees.
- (d) Issuance of an order by a court of competent jurisdiction.
- (e) Upon termination of the Trust, the Trustee shall distribute any residuum, less final trust administration expenses of the Trustee, to the Department, unless directed otherwise, in writing, by the Department.

ARTICLE THIRTEEN

Amendments

§13.1 This Trust Agreement may be amended by an instrument in writing, executed by the Settlor, the Trustee and the Department, or by the Trustee and the Department in the event the Settlor ceases to exist and shall not have notified the Trustee and the Department of its successor-in-interest or the Settlor has had its bonds forfeited, but during the existence of the Settlor any amendment of this Trust Agreement cannot in any manner affect the irrevocable nature of the Trust.

ARTICLE FOURTEEN

Notices

§14.1 All notices, inquiries, directions or other written communications made or given pursuant to the Trust shall be given to the Department, the Trustee and the Settlor by certified mail, return receipt requested, addressed to the following addresses, and shall be deemed to be received upon the earlier of the date of signed receipt of the certified mailing or seven (7) days following the date of mailing:

Department:	Samuel C. Faith Mineral Resources Program Specialist District Mining Operations Department of Environmental Protection McMurray District Mining Office 3913 Washington Road McMurray, PA 15317
-------------	--

Trustee: Robert Ennos, Vice President and Senior Lending
Officer
Somerset Trust Company
151 West Main Street
Somerset, Pa. 15501
Phone: 814 443 9200
Fax: 814 443 9369

Settlor: Action Mining, Inc.
R.D. No. 3, Box 138A
Meyersdale, PA 15552

§14.2 Any change in the above addresses shall be made by giving notice to all parties and to the Trust.

ARTICLE FIFTEEN

Interpretation

§15.1 As used in this Agreement, words in the singular include the plural, and words in the plural include the singular. Words used in this Agreement shall be given their plain and ordinary meaning, except that, words used in a financial or investment context that are terms of art shall be given their commonly accepted meaning when used in the context of financial services and investment practices. The headings of each section of this Agreement are for descriptive purposes only and shall not affect the interpretation or legal efficacy of this Agreement.

ARTICLE SIXTEEN

Construction

§16.1 This Agreement shall be constructed and governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

§16.2 In case of the merger or consolidation of any corporate Trustee serving hereunder, the resultant company shall become such Trustee's successor without notice to any party.

§16.3 Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

§16.4 All covenants and agreements contained herein shall be binding upon and inure to benefit the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or action, taken by the Department or the Trustee shall bind their successors and assigns.

§16.5 It is the intention of the parties hereto that this Trust remain in existence until terminated in accordance with the provisions of ARTICLE TWELVE hereof and that the Trust be exempt from the application of any rule against perpetuities by reason of the Department's beneficial interest herein because the Trust is authorized by the Pennsylvania Surface Mining Conservation and Reclamation Act

which contemplates no limitation on duration, and because the Trust is for the public purpose of assuring funds will be available in the future to ensure the Facility will continue to be maintained and operated to protect the environment and the health and welfare of the public. However, in the event that it is ever finally determined by a court with jurisdiction in the matter, that the Trust is subject to any such rule, then the Trust shall terminate twenty-one (21) years less one (1) day, after the death of the last descendent of Ambassador Joseph P. Kennedy living on the date of this Trust Agreement, and the Trust Fund shall be distributed to the Department, less final trust administration expenses of the Trustee.

ARTICLE SEVENTEEN

Situs

§17.1 The Trust created by this Agreement shall have a legal situs in Dauphin County, Pennsylvania.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:Kristin Atkinson**SETTLOR: ACTION MINING, INC.**BY: Larry P. Sanner Pres.

Name:

Larry Sanner

Title:

President

BY: _____

Name:

Title:

ATTEST:

BY: _____

Name: Ann Persun

Title: Vice President and
Trust Officer

BY: _____

Name:

Title:

ATTEST:

BY: _____

Name:

Title:

BY: _____

Name:

Title:

Approved as to Form:

BY: _____

Name:

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:

SETTLOR: ACTION MINING, INC.

BY: _____

Name: Larry Sanner
Title: President

BY: _____

Name:
Title:

ATTEST:

TRUSTEE: Somerset Trust
Company

BY: _____

Name: Ann Persun
Title: Vice President and
Trust Officer

BY: _____

Name:
Title:

ATTEST:

DEPARTMENT:

BY: _____

Name:
Title:

BY: _____

Name:
Title:

Approved as to Form:

BY: _____

Name: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:

SETTLOR: ACTION MINING, INC.

BY: _____

Name: Larry Sanner
Title: President

BY: _____

Name:
Title:

ATTEST:

**TRUSTEE: Somerset Trust
Company**

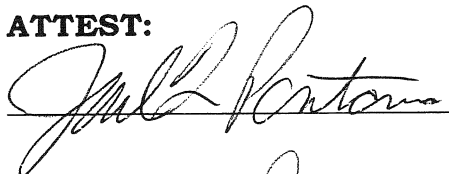
BY: _____

Name: Ann Persun
Title: Vice President and
Trust Officer

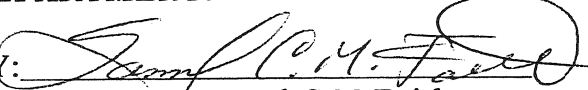
BY: _____

Name:
Title:


ATTEST:

_____

DEPARTMENT:

BY: _____

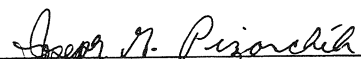
Name: Samuel C M Faith
Title: Mineral Res Prgm Spec

_____

BY: _____

Name: Donald R Barnes
Title: District Mining Mgr

Approved as to Form:

BY: _____

Name: Joseph G Pizarchik

Title: [Counsel for Department]

TABLE OF EXHIBITS

Exhibit "A"	Schedule of Rights of Entry and Access to Facility
Exhibit "B"	Schedule of Personal Property Comprising Facility and Date of Contribution to Trust
Exhibit "C"	Schedule of Ongoing Payments, Dates and Amounts Thereof to be made by the Settlor
Exhibit "D"	Initial Investment Instruction To Trustee
Exhibit "E"	Trustees Schedule of Fees
Exhibit "F"	Department Designees to Provide Instruction to Trustee

EXHIBIT A

Schedule of Rights of Entry and Access to Facility

To the best of Action Mining, Inc.'s knowledge, information and belief, it has rights, by various instruments of conveyance, to all of the surface lands on which the Treatment Facility described in that certain Post-Mining Discharge Trust Agreement dated February, 2002, by and between Action Mining, Inc., and Somerset Trust, which rights of access are expressed in Contractual Consent Of Landowner forms described as follows:

1. Landowner, Ed Hay for 2.05 acres of land in Elk Lick Township, Somerset County, Pennsylvania dated October 5, 1998, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 1426, Page 823.

2. Landowner, Venture Coal Sales Company for 1.65 acres of land in Elk Lick Township, Somerset County, Pennsylvania dated November 20, 1998, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 1433, Page 276.

3. Landowner, Ed Robertson within the 300 foot barrier of a home located in Elk Lick Township, Somerset County, Pennsylvania dated October 7, 1998, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 1426, Page 1102.

4. Landowner, Edna Platter within the 300 foot barrier of a home located in Elk Lick Township, Somerset County, Pennsylvania dated October 7, 1998, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 1426, Page 1104.

5. Landowner, Robert Miller within the 300 foot barrier of a home located in Elk Lick Township, Somerset County, Pennsylvania dated October 6, 1998, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 1426, Page 1106.

6. Landowner, Michael Ringler within the 300 foot barrier of a home located in Elk Lick Township, Somerset County, Pennsylvania dated October 7, 1998, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 1426, Page 1108.

7. Landowner, Ed Hay within the 300 foot barrier of a home located in Elk Lick Township, Somerset County, Pennsylvania dated October 5, 1998, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 1426, Page 1110.

8. Landowner, Willard Maust and Marie Ella Maust for land in Elk Lick Township, Somerset County, Pennsylvania dated June 4, 1981, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 909, Page 735.

9. Landowner, Keystone Coal Company for land in Elk Lick Township, Somerset County, Pennsylvania dated June 17, 1981, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 909, Page 735.

10. Owner Consent Form of Willard Maust granting permission to Action Mining, Inc. to leave a haul road as a permanent structure on Phase I of Bonding Instrument 03 map for Surface Mining Permit 56663069 for general farm use, dated August 6, 1987, a copy of which is not recorded.

11. Landowner, William H. Bodes and Betty M. Bodes for all land in Elk Lick Township, Somerset County, Pennsylvania dated July 17, 1994, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 920, Page 508.

12. Landowner, Marshall Lowery Heirs, by Attorney Robert M. Philson, 79 acres of land in Elk Lick Township, Somerset County, Pennsylvania dated March 29, 1982, a copy of which is recorded in the Office of Recorder of Deeds of Somerset County, Pennsylvania, at Vol. 889, Page 385.

Action Mining, Inc. ("Action" or "Settlor") hereby gives and grants to Somerset Trust ("Trustee") in trust, to be held for the purposes described in that certain Post-Mining Discharge Trust Agreement ("Trust Agreement") dated the 8th day of February, 2002, so much and only so much of Action's right, title and interest, if any, that is necessary for the Trustee to fulfill its obligations and the purposes of the aforementioned Trust Agreement, in all of the instruments by which Action became entitled to the foregoing consents and authorizations, including, without limitation, the following:

1. That certain Coal Lease Agreement dated 5th day of April, 1973 by and among Willard L. Maust and Ella D. Maust, her husband, lessors, and Edmund Sanner, Richard Sanner and Robert Sanner, partners, trading as Sanner Brothers Coal Co., lessees, and any and all amendments thereto, covering property located in Elk Lick Township, Somerset County, Pennsylvania, a copy of which Coal Lease Agreement and any and all amendments thereto, is annexed hereto as Exhibit "A-1". Sanner Brothers Coal Co. assigned the lease to River Hill Coal Company by instrument dated June 30, 1977 and River Hill assigned the lease to Venture Coal Sales Company by instrument dated June 25, 1981.

2. That certain Lease Agreement dated April 6, 1978, by and among William A. Bodes, Jr. and Betty M. Bodes, her husband, lessors, and River Hill Coal Company, Inc., doing business as Sanner Coal Company, lessee. The said lessors have subsequently conveyed their interests to David Gnagey.
3. Those properties described in a Deed from Ed Hay, grantor, to Action Mining, Inc., grantee, copies of which are recorded in the Office of the Recorder of Deeds of Somerset County, Pennsylvania at Deed Book Vol. 1521 ___, Pages 656 & 659. All that property conveyed by Keystone Coal Company to Venture Coal Sales Company located in Elk Lick and Summit Townships, Somerset County, Pennsylvania, a copy of which is recorded in the Office of the Recorder of Deeds of Somerset County, Pennsylvania at Deed Book Vol. 951, Page 813.
4. All that property owned now or formerly by Marshall Lowery Heirs described in a lease dated October 5, 1976 from the said Marshall Lowery Heirs, lessor, to Sanner Brothers Coal Co., lessee, located in Elk Lick Township, Somerset County, a copy of which lease is not recorded.

Without in any way intending to limit the foregoing, Action Mining, Inc. hereby expressly disclaims the making of any warranty of title, whether general, special or otherwise in respect to the interests that are described in the foregoing Exhibit and which, for the purposes described therein, are granted and conveyed to Somerset Trust.

Any property acquired or services provided under this provision shall not be deemed to be acquired or provided to the Trustee or the Department, but shall be deemed to be acquired or provided on behalf of the Trust, and the Trustee shall not incur any liability under the Trust when acting in accordance with the provisions of this paragraph.

To the extent that any partial assignment set forth above in paragraphs 1 through 5 is prohibited by any instrument identified in paragraph 1 through 5, hereof, then the grant of such partial interest is hereby deemed to be null and void.

EXHIBIT B

Schedule Of Personal Property Comprising Facility And Date Of Contribution To Trust

Action Mining, Inc., ("Action" or "Settlor") hereby grants, bargains, sells and conveys to Somerset Trust ("Trustee"), in trust, to be held for the purposes set forth in that certain Post-Mining Discharge Treatment Trust (Trust Agreement") dated February 8, 2002, by and between Action and Somerset Trust, the following personal property, which personal property makes up the Treatment Facility for Action's Summit No. 2, Summit No. 3 and Elk Lick No. 1 surface mines in Summit and Elk Lick Townships, Somerset County, Pennsylvania.

Description of Personal Property	Contribution Date
1. That portion of the electric utility line extending from the road and transmitting electric power to the two pump houses and the Aqua Fix Building which is not owned by the utility company.	
2. Two Lime Silos Bin 1 – 9' D, 26' H, 48 ton capacity Bin 2 – 11.8' D, 24' H 72 ton capacity	
3. One Building for Two Aqua Wheels 16' x 16'	
4. One Rock Lined Ditch 500' long aeration	
5. Three Sludge Ponds Sludge Pond 1 with synthetic liner– 51, 814 ft ³ water volume Sludge Pond 2 –with synthetic liner 94,680 ft ³ water volume Big Sludge Pond – 606,560 ft ³ water volume	
6. One Finish Pond 26,949 ft ³ water volume	
7. One M.D. 24-25-26 Raw Water Collection Pond Combination 16' high, 1' thick cement retaining wall/earthen dam 118,737 ft ³ water volume	
8. One M.D. 24-25-26 Pump House 16' x 16' with two stainless steel pumps, 15 & 25 H.P., electric control panels, switches and all wiring, plumbing, etc. to operate the pumps.	

9. One M.D. 62-63-64 Raw Water Collection Tank
70' diameter, 12' high, 46,158 ft³ water volume
10. One M.D. 62-63-64 Pump House
16' x 28' with two stainless steel pumps, both 40 H.P., electric control panels, switches and all wiring, plumbing, etc. to operate the pumps including the backup electricity generator.
11. Two Aquafix Wheels.
12. 600 feet of 6 inch diameter Schedule 40 pipe to convey the pumped sludge from the sludge ponds to the four sludge disposal boreholes.
13. One 70 H.P. Duetz diesel sludge pump.
14. Four sludge disposal boreholes.
15. One 12 inch gate valve and a sump at the end of the 500' rock lined aeration ditch.
16. Access road to treatment plant and ponds.
17. All other components, including conduits, HDPE pipelines and PVC pipelines, not identified above but which are a part of the Facility shown on the attached Plan View for the Action Mining 2nd Lime Treatment System, Drawing No. P98-578 D01, dated 1-13-99 and prepared by Beitzel Corporation.

EXHIBIT C

Schedule Of Ongoing Payments, Dates And Amounts Thereof To Be Made By The Settlor

- On February 12, 2003, Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.
- On February 12, 2004, Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.
- On February 12, 2005, Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.
- On February 12, 2006 Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.
- On February 12, 2007 Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.
- On February 12, 2008 Action Mining shall deposit an amount of \$110,000.00 into the Primary Trust Account.
- On February 12, 2009, Action Mining shall deposit an amount of \$106,881.02 into the Primary Trust Account.

EXHIBIT D

Initial Investment Instruction To Trustee

Trustee, Somerset Trust, for purposes of investing the corpus of the Trust established pursuant to that certain Post-Mining Discharge Treatment Trust Agreement, by and between Action Mining, Inc. ("Action") and Somerset Trust dated the 8th day of February, 2002, is hereby authorized and directed to manage and invest the corpus, and the income therefrom, as nearly as reasonably possible, in the following manner consistent with the provisions of said Post-Mining Discharge Treatment Trust Agreement:

1. The corpus of the Trust, and income therefrom, shall be invested and reinvested in a mixture of common stocks and bonds in a ratio of approximately 80% common stock and 20% bonds.
2. All bonds shall be limited to investment grade bonds.
3. The common stock shall consist of a mixture of stocks that are designed to produce income and growth.
4. The Trustee shall carry out its investment functions with the goal of preserving principal and providing for reasonable growth and income.

Commonwealth of Pennsylvania
Department of Environmental Protection

By: _____

EXHIBIT E

Trustees Schedule Of Fees

EXHIBIT F

Department's Designees Authorized To Provide All Instructions,
Orders and Requests To The Trustee On Behalf Of The Department

Samuel C. Faith, Mineral Resources Program Specialist, Department of
Environmental Protection.

James Brahosky, Acting Director, Bureau of District Mining Operations,
Department of Environmental Protection.

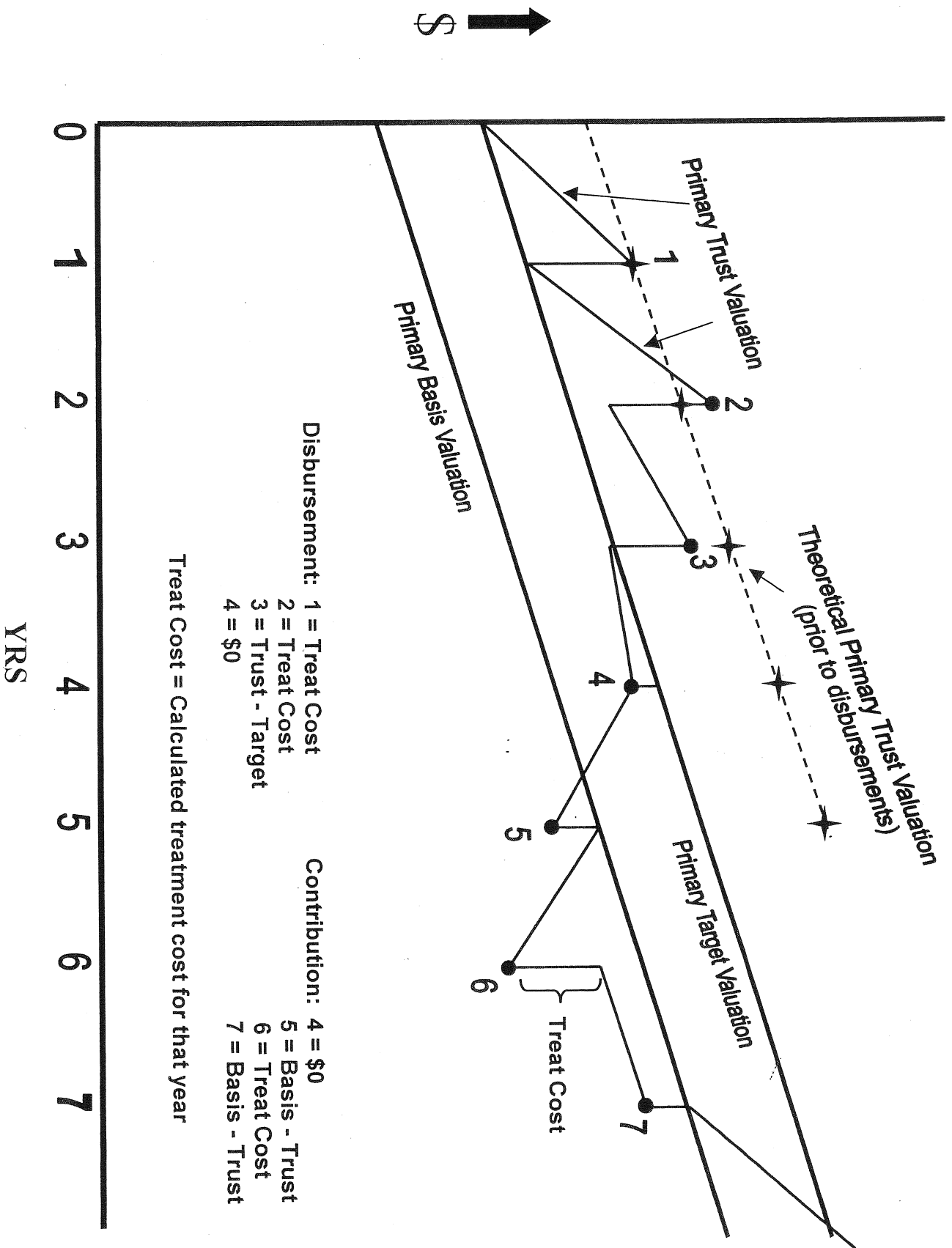


Exhibit C

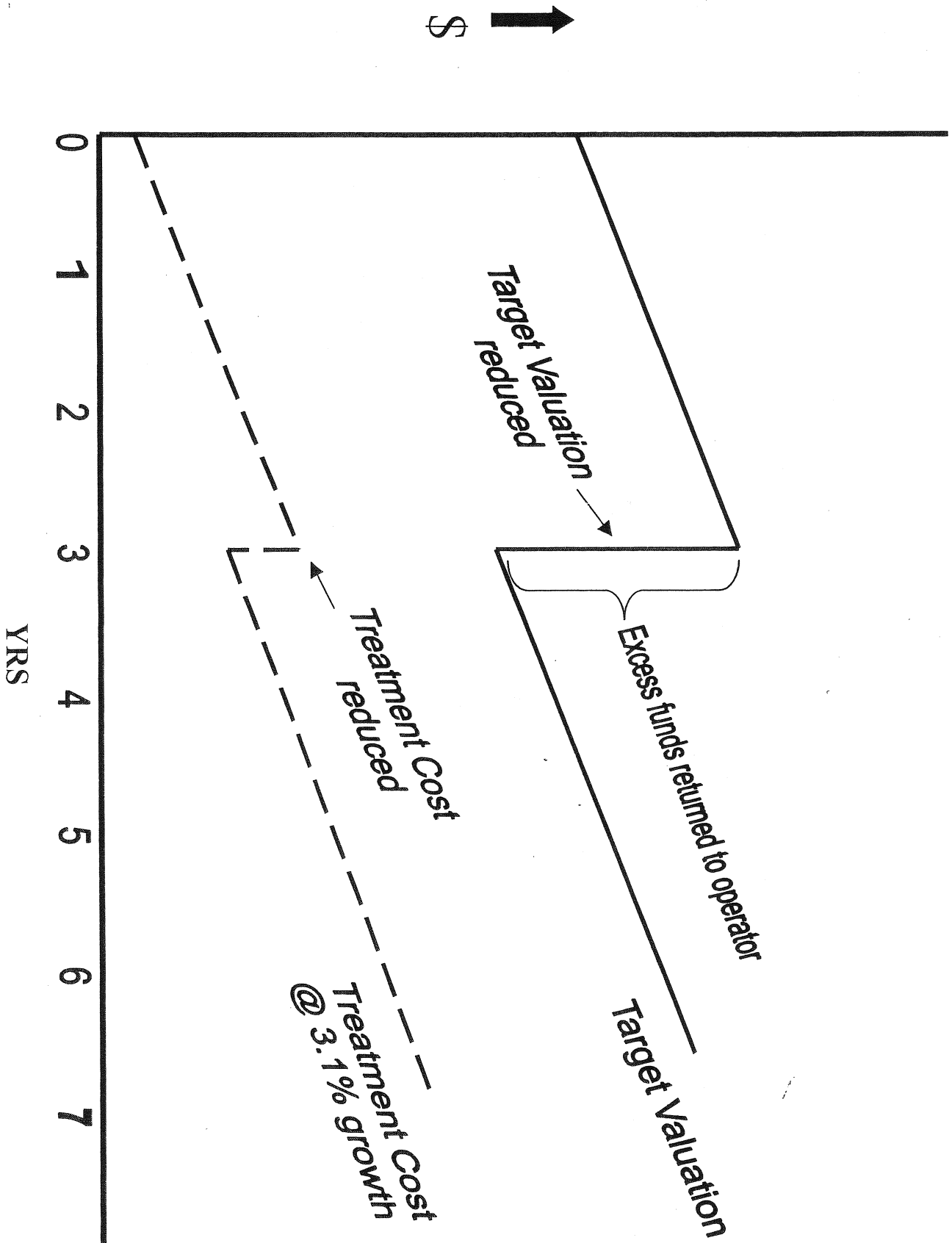


Exhibit D

Year	Capital Improvement Target	Anticipated Capital Expenditure	Comment
1	\$0.00		
2	\$0.00		
3	\$0.00		
4	\$0.00		
5	\$0.00		
6	\$0.00		
7	\$0.00		
8	\$0.00		
9	\$152,515.01		
10	\$166,698.91		
11	\$182,201.90		
12	\$199,146.68		
13	\$217,667.32		
14	\$237,910.38		
15	\$260,036.05	\$91,996.77	Five Pumps
16	\$192,222.63		
17	\$210,099.34		
18	\$229,638.57		
19	\$250,994.96		
20	\$274,337.49		
21	\$299,850.88		
22	\$327,737.01		
23	\$358,216.56		
24	\$391,530.69		
25	\$427,943.05		
26	\$467,741.75		
27	\$511,241.74		
28	\$558,787.22		
29	\$610,754.43		
30	\$667,554.59	\$412,050.28	Two Pebble Lime Silos, Five Pumps
31	\$317,586.89		
32	\$347,122.47		
33	\$379,404.86		
34	\$414,689.51		
35	\$453,255.63	\$96,000.51	Two Aqua-Fix Wheels
36	\$399,407.90		
37	\$436,552.83		
38	\$477,152.24		

39	\$521,527.40		
40	\$570,029.45		
41	\$623,042.19		
42	\$680,985.12		
43	\$744,316.73		
44	\$813,538.19		
45	\$889,197.24	\$229,896.59	Five Pumps
46	\$741,995.99		
47	\$811,001.62		
48	\$886,424.77		
49	\$968,862.27		
50	\$1,058,966.46	\$624,888.65	Raw Water Holding Tank
51	\$532,561.69		
52	\$582,089.93		
53	\$636,224.30		
54	\$695,393.16		
55	\$760,064.72		
56	\$830,750.74		
57	\$908,010.56		
58	\$992,455.54		
59	\$1,084,753.90		
60	\$1,185,636.02	\$1,029,698.72	Two Pebble Lime Silos, Five Pumps
61	\$266,201.45		
62	\$290,958.18		
63	\$318,017.29		
64	\$347,592.90		
65	\$379,919.04		
66	\$415,251.51		
67	\$453,869.90		
68	\$496,079.80		
69	\$542,215.22		
70	\$592,641.24	\$279,464.61	Two Aqua-Fix Wheels
71	\$368,292.26		
72	\$402,543.44		
73	\$439,979.98		
74	\$480,898.12		
75	\$525,621.65	\$574,503.24	Five Pumps
	\$1.22		