

**PARTICIPATION AGREEMENT WITH THE CLEAN STREAMS FOUNDATION, INC.  
FOR THE MAPLE CREEK MINING, INC. POST-MINING WATER TREATMENT  
AND GINGER HILL II POND 3 RECLAMATION CONSENT ORDER AND  
AGREEMENT**

This Participation Agreement ("Participation Agreement") is entered into this 23<sup>rd</sup> day of November, 2010, by and between MAPLE CREEK MINING, INC. ("MCMC"), a Pennsylvania corporation with a mailing address of (the "Participant") and the CLEAN STREAMS FOUNDATION, INC., a Pennsylvania Nonprofit Corporation with a mailing address of 160 North McKean Street, Kittanning, Pennsylvania 16201 (the "Foundation") (hereinafter the "Parties").

WHEREAS, the Participant is the permittee and operator of the Maple Creek Mine, pursuant to Coal Mining Activity Permit ("CMAP") No. 63841302, located in New Eagle Borough, Washington County, Pennsylvania and the Ginger Hill II Coal Refuse Disposal Area ("CRDA"), pursuant to Coal Refuse Disposal Permit ("CRDP") No. 63723707, located in Carroll and Nottingham Townships, Washington County, Pennsylvania;

WHEREAS, the Participant desires to provide funding of a trust sub-account established for ensuring the ongoing operation of a water treatment system for the water discharge from the Maple Creek Mine and for reclamation of the Ginger Hill II Pond 3 CRDA; and

WHEREAS, the Foundation has established through a Declaration of Trust dated April 7, 2001 (a copy of which is attached) a trust for the purpose of assuring that funds are available to the Commonwealth of Pennsylvania in the future to operate and maintain a mine water discharge treatment system and for reclamation ("Trust") pursuant to the MCMC Post-Mining Water Treatment and Ginger Hill II Pond 3 Reclamation Consent Order and Agreement; and



WHEREAS, the Foundation has agreed and is willing to accept the Participant's funds and perform the duties as are required to be performed pursuant to this Participation Agreement and the Declaration of Trust; and, the MCMC Post-Mining Water Treatment and Ginger Hill II Pond 3 Reclamation Consent Order and Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and undertakings of the Participant and the Foundation as set forth herein, and with the intention of being legally bound hereby, the Participant and the Foundation hereby agree to the terms and conditions of this Participation Agreement as set forth immediately below.

**ARTICLE ONE**  
**DEFINITIONS**

1.1 The "Department" means the Commonwealth of Pennsylvania Department of Environmental Protection, and its successor if any, which is the governmental agency with responsibilities related to the administration of the water pollution control and mining reclamation programs in Pennsylvania.

1.2 "MCMC CO&A" means the Maple Creek Mining, Inc. Post-Mining Water Treatment and Ginger Hill II Pond 3 Reclamation Consent Order and Agreement

1.3 "Operate" means, but is not limited to, the operation, maintenance, improvement and replacement of the currently existing and functioning mine water discharge treatment facilities approved by the Department and any other mine water treatment facilities which may be required in the future.

1.4 "Reclamation" means reclamation activities pursuant to a Department-approved plan for reclamation of the Ginger Hill II Pond 3 CRDA that MCMC submitted to the Department with its permit renewal for CRDP No. 63723707.

1.5 "Participant" means an individual, organization or corporation that has elected to participate in the Trust pursuant to a Participation Agreement for the purpose of providing funds and/or financial guarantees to assure that funds will be available in the future for the operation of a water treatment system and reclamation.

1.6 "Treatment System and Reclamation" means those certain mine water treatment systems and reclamation activities which are more particularly described in the MCMI CO&A for which the Participant provides funds and/or financial guarantees to be held in trust by the Foundation as an alternate financial assurance mechanism which provides for the treatment of water discharges and reclamation for the public purpose of protecting the environment.

1.7 "Foundation" means the Clean Streams Foundation acting as trustee under the terms and provisions of the Trust and a Participation Agreement entered into with the Participant.

1.7 "Sub-Account" means the Sub-Account within the Trust Fund designated as "Sub-Account For Maple Creek Mining, Inc. - The Maple Creek Mining, Inc. Treatment System and Reclamation Obligations."

**ARTICLE TWO**  
**PARTICIPATION IN THE TRUST**

2.1 The Participant agrees to provide certain funds to be held by the Foundation for purposes of assuring that said funds are available in the future for the operation of the Treatment System and Reclamation.

2.2 The Foundation agrees to establish the Sub-Account within the Trust.

2.3 The Participant agrees to make an initial payment to the Sub-Account of \$533,816.00 within ninety (90) days of execution of this Participation Agreement.

2.4 The Participant agrees to make total payments or transfers to the Sub-Account as agreed upon between the Participant and the Department pursuant to the MCFI CO&A entered into between the Department and the Participant on November 18, 2010.

2.5 Any guarantees, including but not limited to, letters of credit, insurance, surety bonds, etc., delivered by the Participant shall be held by the Foundation until the Department either directs the Foundation to release such guarantee or portion thereof or the Department directs the Foundation to forfeit said bonds or enforce said guarantee and deposit the proceeds of such guarantee into the Trust. The Foundation shall be under no obligation to pay any premiums or other costs associated therewith. Instead, all such premiums and costs, as well as the responsibility for maintaining the guarantees in full force and effect, shall remain the obligation of the Participant. The Foundation shall take no action with respect to guarantees except as directed, in writing, by the Department in accordance with the provisions of the Trust and the Foundation shall not be liable to any party for acting in accordance with such directions.

### ARTICLE THREE ADMINISTRATION

3.1 The principal of the Sub-Account shall consist of:

(a) The payments or transfers to the Foundation made by the Participant pursuant to this Participation Agreement for said Sub-Account;

(b) Such payments from time to time and at any time to the Foundation as such may be directed by the Department pursuant to any agreement between the Department and the Participant;

(c) Cash, funds or property transferred from any person to the Foundation and accepted by the Foundation for said Sub-Account;

(d) Any proceeds from surety bonds which are transferred to the Foundation for said Sub-Account;

(e) All investments, reinvestments, assets or proceeds attributable to or derived from the foregoing items in this Paragraph; and

(f) All earnings, accretions and profits received with respect to the foregoing items in this Paragraph.

3.2 The Foundation shall hold and administer the funds of the Sub-Account in accordance with the terms and conditions of the Trust and this Participation Agreement, and in accordance with the MCM CO&A.

3.3 The Foundation shall distribute such amounts from the Sub-Account as the Department shall direct to pay for the operation of the Treatment System and Reclamation. This amount may be paid to a third-party administrator to the Trust, who shall be responsible for paying the costs of operating the Treatment System and Reclamation in accordance with any instructions that may be issued by the Department in relation thereto.

3.4 The Participant understands that the Trust is intended to be categorized, for federal and state income tax purposes, as a charitable trust in accordance with and under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and any implementing regulation(s) cited therein or any corresponding successor provision(s).

3.5 The Participant hereby adopts the Trust as the document which governs the administration of this Participation Agreement and the Sub-Account and directs the Foundation to hold and administer the Sub-Account in accordance with the terms and conditions of the Trust, this Participation Agreement and the MCM CO&A. The Participant acknowledges that the Commonwealth of Pennsylvania, acting through the Department, is the legal beneficiary of the

Trust and has all rights of a beneficiary under the law, as well as the rights granted under the Trust. The Department shall have access to the Sub-Account as provided in the Trust.

3.6 The funds in the Sub-Account and any other property held by the Foundation pursuant to this Participation 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 Participant and shall not be subject or applied to the debts, obligations or liabilities of the Participant, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, except for the distribution authorized under Paragraph 3.3 of this Participation Agreement and the MCMC CO&A, the Participant shall have no legal title to any part of the Trust, and it is the intention of the Parties to this Participation Agreement that the Participant's entry into the Trust shall extinguish and remove all of Participant's interest in the Trust from Participant's estate under the Bankruptcy Code or similar laws.

3.7 Except as otherwise provided in this Participation Agreement and the MCMC CO&A, all payments made to the Foundation or deposits into the Trust by the Participant shall be irrevocable once made, and upon delivery thereof by the Participant, all interest of the Participant 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.

3.8 Any payments made by the Participant or on its behalf to the Foundation for deposit into the Trust shall consist of cash, bonds, bank checks, bank wire transfers or other negotiable instruments acceptable to the Foundation. The Foundation shall have no responsibility for the amount or adequacy of such payment, but the Foundation shall notify the

Department of any deficiencies in the payments agreed to be made by the Participant whenever the Foundation has knowledge of such deficiencies.

3.9 Within thirty (30) days of the conclusion of each quarter (March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>), the Foundation shall furnish the Participant a statement providing an accounting of all transactions involving the Sub-Account and confirming the value of the Sub-Account. 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.

3.10 The Foundation shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all moneys and assets under this Participation Agreement. The Foundation shall also cause to be prepared all income tax or information returns required to be filed with respect to the Trust and shall execute and file such returns. The Participant, upon request, shall furnish the Foundation with such information as may be reasonably required in connection with the preparation of such income tax or information returns.

#### **ARTICLE FOUR** **AMENDMENTS**

4.1 This Participation Agreement may be amended by an instrument in writing, executed by the Participant and the Foundation (with the consent and acknowledgment of the Department) or by the Foundation and the Department in the event the Participant ceases to exist or defaults, but during the existence of the Participant any amendment under this paragraph cannot in any manner affect the irrevocable nature of the Trust.

**ARTICLE FIVE**  
**NOTICES**

5.1 All notices, inquiries, directions or other written communications made or given pursuant to the Trust shall be given to the Participant, the Department and the Foundation by certified mail, return receipt requested, addressed to the following addresses, and shall be deemed to be received upon the date of signed receipt of the certified mailing:

Participant: Ronnie Dietz  
Vice President and Treasurer  
Maple Creek Mining, Inc.  
153 Highway 7 South  
Powhatan Point, OH 43942

With a copy to:

John E. Jevicky, Esq.  
Dinsmore & Shohl, LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, OH 45202

Foundation: Clean Streams Foundation, Inc.  
c/o Jack J. Steiner  
160 North McKean Street  
Kittanning, Pennsylvania 16201

With a copy to:

Clean Streams Foundation, Inc.  
c/o Dean K. Hunt  
520 West Short Street  
Lexington, Kentucky 40507-1252

Beneficiary: Pennsylvania Department of Environmental Protection  
Director, Bureau of Mining and Reclamation  
Fifth Floor, Rachel Carson Building  
400 Market Street  
Harrisburg, PA 17105-8461

5.2 Any change in the above addresses shall be made by giving notice to the Participant, the Foundation and the Department at the addresses set forth in Paragraph 5.1.



**ARTICLE SIX**  
**DISPUTES**

6.1 Any dispute between the Parties arising out of this Participation Agreement shall be resolved by arbitration provided that a notice to arbitrate is delivered to the other party within one hundred eighty (180) days of the date of the first knowledge of the claiming party of the occurrence or conditions giving rise to the dispute. A failure to request arbitration within the one hundred eighty (180) day time period shall be deemed a waiver of the right to arbitrate and the Parties shall then be free to litigate the dispute in accordance with the laws and procedures of the Commonwealth of Pennsylvania and its courts. The Parties shall first make a diligent good faith attempt to resolve the dispute by mutual agreement or alternative dispute resolution. If unsuccessful, any request for arbitration shall be in writing setting forth in detail one claim to be arbitrated as a single issue, and the amount involved, if any, and shall specify the position of the Party giving the notice, the reasons therefore and the remedy sought and shall name one qualified person to act as an arbitrator.

6.2 Within thirty (30) days after a notice to arbitrate is received, the Party receiving the notice shall by notice to the other party specify its position, the reasons therefore and the remedy sought with respect to such issue and shall name one qualified person to act as an arbitrator. All persons appointed to act as arbitrator (including the third arbitrator selected as provided below) shall be disinterested persons qualified by experience to hear and determine the question(s) to be arbitrated.

6.3 The two (2) arbitrators so designated shall select a third arbitrator who shall be mutually acceptable to the Foundation and the Participant. If the two arbitrators cannot agree within fifteen (15) days as to the designation of a third arbitrator, then said third arbitrator shall be selected pursuant to the Commercial Arbitration Rules of the American Arbitration

Association ("AAA Rules"). The arbitrators and the Foundation and the Participant shall hold hearings in Pittsburgh, Pennsylvania, on the matters to be arbitrated within sixty (60) days after the appointment of the third arbitrator. The arbitrators shall make such examinations and investigations as they may deem necessary and shall render their decision in writing within thirty (30) days following such hearings.

6.4 The decision of the arbitrators shall be limited to one claim per arbitration, which shall be treated as a single issue and, with respect to such single issue, shall be limited to selecting either the position and remedy stated by the Foundation in its notice or the position and remedy stated by the Participant in its notice as provided above. The arbitrators shall have no power to mediate or compromise any dispute but shall have only the limited authority herein provided to review the information presented by the Parties and to select the position and remedy proposed by one of the Parties.

6.5 The decision of the arbitrators shall be final and binding on the Parties, and judgment thereon may be entered in any court of competent jurisdiction. The cost and expense for the arbitration shall be shared equally between the Parties. Except as herein otherwise specified, the arbitration shall be conducted pursuant to the AAA Rules in effect at the time of such arbitration. Unless the Parties mutually agree otherwise, each arbitration procedure and hearing shall be limited in scope to one dispute.

#### **ARTICLE SEVEN** **CONSTRUCTION**

7.1 As used in this Participation Agreement, words in the singular include the plural and words in the plural include the singular. Except as defined in this Participation Agreement, words used in this Participation Agreement shall be given the meaning set forth in the Trust, or in the absence of a definition therein, 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 Participation Agreement are for descriptive purposes only and shall not effect the interpretation or legal efficacy of this Participation Agreement. The "Whereas Clauses" set forth above are deemed to be incorporated into this Participation Agreement.

7.2 Any provision of this Participation Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability. Such prohibition or unenforceability shall not invalidate the remaining provisions hereof nor shall such prohibition or unenforceability in a jurisdiction render any provision invalid or unenforceable in any other jurisdiction.

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

7.4 This Participation Agreement shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Parties hereto have caused this Participation 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.

**[SIGNATORIES APPEAR ON THE FOLLOWING PAGE]**

With the intent of being legally bound, the following Parties have executed this Participation Agreement on this \_\_\_\_ day of November, 2010:

**THE PARTICIPANT**

**THE FOUNDATION**

MAPLE CREEK MINING, INC.

THE CLEAN STREAMS FOUNDATION, INC.

\_\_\_\_\_  
By: Ronnie Dietz  
Its: Vice President and Treasurer

\_\_\_\_\_  
By:  
Its: President

COMMONWEALTH OF PENNSYLVANIA,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of November, 2010 by Ronnie Dietz, the Vice President of Maple Creek Mining, Inc.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF PENNSYLVANIA,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of November, 2010 by \_\_\_\_\_, the President of the Clean Streams Foundation, Inc.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

With the intent of being legally bound, the following Parties have executed this Participation Agreement on this 18<sup>th</sup> day of November, 2010:

**THE PARTICIPANT**

MAPLE CREEK MINING, INC.

Ronnie Dietz  
By: Ronnie Dietz  
Its: Vice President and Treasurer

**THE FOUNDATION**

THE CLEAN STREAMS FOUNDATION, INC.

Wayne Masterman  
By: Wayne Masterman  
Its: ~~President~~ Chairman

COMMONWEALTH OF PENNSYLVANIA, *State of Ohio*  
COUNTY OF Belmont, to-wit:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2010 by Ronnie Dietz, the Vice President of Maple Creek Mining, Inc.

My commission expires:

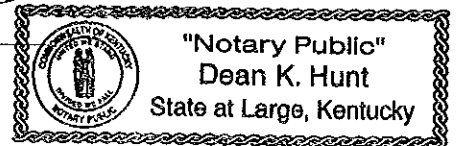
Sept. 26, 2015  
Denise R. Parker  
Notary Public

~~COMMONWEALTH OF PENNSYLVANIA,~~  
KENTUCKY  
COUNTY OF Fayette, to-wit:

The foregoing instrument was acknowledged before me this 18 day of November, 2010 by Wayne Masterman, the ~~President~~ Chairman of the Clean Streams Foundation, Inc.

My commission expires:

March 1, 2014  
D. Hunt  
Notary Public



CONSENT AND ACKNOWLEDGMENT

The Department hereby consents to the Participant entering into this Participation Agreement pursuant to the MCMC CO&A entered into between the Participant and the Department on November 18, 2010 and acknowledges the Department's status as the beneficiary of the Trust. This Consent and Acknowledgement is intended to be evidence of the Department's consent and acknowledgment of the terms and conditions set forth in the Participation Agreement, as well as the powers and authorities granted to the Department under the Participation Agreement.

**BENEFICIARY:**

THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Wm. S. Plassio  
Its: DISTRICT MINING MANAGER

COMMONWEALTH OF PENNSYLVANIA,  
COUNTY OF WASHINGTON to-wit:

The foregoing instrument was acknowledged before me this 18 day of November, 2010 by Wm. S. Plassio, the DISTRICT MINING MANAGER of the Pennsylvania Department of Environmental Protection.

My commission expires: 10-1-2012

Deborah J. Ferenc  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Deborah J. Ferenc, Notary Public  
Redstone Twp., Fayette County  
My Commission Expires Oct. 1, 2012  
Member, Pennsylvania Association of Notaries

**CONSENT AND ACKNOWLEDGMENT**

The Department hereby consents to the Participant entering into this Participation Agreement pursuant to the MCFI CO&A entered into between the Participant and the Department on November 18, 2010 and acknowledges the Department's status as the beneficiary of the Trust. This Consent and Acknowledgement is intended to be evidence of the Department's consent and acknowledgment of the terms and conditions set forth in the Participation Agreement, as well as the powers and authorities granted to the Department under the Participation Agreement.

**BENEFICIARY:**

THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

COMMONWEALTH OF PENNSYLVANIA,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of November, 2010 by \_\_\_\_\_, the \_\_\_\_\_ of the Pennsylvania Department of Environmental Protection.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public