

**PARTICIPATION AGREEMENT**  
**FOR THE CLEANS STREAMS FOUNDATION, INC. TRUST**

This Participation Agreement ("Participation Agreement") effective this 13 day of July, 2010, by and between Dean K. Hunt, Esq., Administrator and Agent for the Mon View Trust (hereinafter referred to as the "Participant" or "Agent"), with a place of business at 520 West Short Street, Lexington, Kentucky 40507, and the CLEAN STREAMS FOUNDATION, INC. ("Trustee" or "Foundation"), a Pennsylvania nonprofit corporation, with its registered place of business at 160 North McKean Street, Kittanning, Pennsylvania 16201.

WHEREAS, the Trustee has established through a Declaration of Trust, dated April 7, 2001 which Declaration of Trust establishes a Trust which purpose is to help assure that funds are available to the Commonwealth of Pennsylvania in the future to operate and maintain treatment systems, to prevent pollution, and to protect natural resources from the adverse impacts of untreated discharges into waters of the Commonwealth (the "Trust"); and

WHEREAS, the Trustee has agreed and is willing to accept the funds and perform the duties as are required to be performed pursuant to this Participation Agreement and the Declaration of Trust; and

WHEREAS, the Participant, as Agent for the Mon View Trust, wishes to establish a subaccount within the Trust so that funds and other assets will be available in the future for the operation of certain treatment systems, for the prevention of pollution, and for the protection of natural resources in the Commonwealth of Pennsylvania; and

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**

### **DEFINITIONS**

§1.1 The “Department” means the 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 “Operate” means, but is not limited to, the operation, maintenance, improvement, and replacement of the currently existing and functioning treatment facilities approved by the Department and any other facilities which may be required in the future.

§1.3 “Participant” means an individual, organization, or corporation that has elected to participate in the Trust pursuant to a Participation Agreement entered into between the Participant and the Foundation, for purposes of providing funds and/or financial guarantees to assure that funds will be available in the future for the operation of certain treatment systems, for the public purpose of prevention or abatement of pollution, and for the protection of natural resources, the environment, and the health and welfare of the public.

§1.4 “Treatment Systems” means those certain treatment systems and activities which are established for the sound future treatment of water discharges emanating from the Mon View Mine for the public purpose of protecting the environment, and for the health and welfare of the public.

§1.5 “Trustee” means the Foundation acting as trustee under the terms and provisions of this Declaration of Trust and a Participation Agreement entered into with a Participant.

## **ARTICLE TWO**

### **PARTICIPATION IN THE TRUST**

§2.1 The Participant agrees to provide certain funds, assets, and/or financial guarantees to be held by the Trustee for purposes of assuring that funds are available in the future for the operation of certain treatment systems named in Section 1.4 hereof, for the prevention of pollution, and for the protection of natural resources in the Commonwealth of Pennsylvania as determined by the Department.

§2.2 The Trustee agrees to establish within the Trust Fund a Sub-Account designated as “Mon View Trust Sub-Account”(“Sub-Account” or “Mon View Trust”).

§2.3 The Participant agrees to transfer to the Trust all of the funds paid to Agent for the Mon View Trust.

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

## **ARTICLE THREE**

### **ADMINISTRATION**

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

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

(b) Such payments from time to time and at any time to the Trustee 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 Trustee and accepted by the Trustee for said Sub-Account.

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

(e) All investments, reinvestments, assets or proceeds attributable to or derived from the foregoing items in this §3.1.

(f) All earnings, accretions and profits received with respect to the foregoing items in this §3.1.

§3.2 The Trustee shall hold and administer the funds of the Sub-Account in accordance with the terms and conditions of the Declaration of Trust

§3.3 The Trustee shall distribute such amounts from the Sub-Account as the Department shall direct to pay for the operation of the Treatment System or Treatment Systems. This amount shall be paid to a third party administrator to the Trust, who shall be responsible for paying the costs of operating the Treatment System 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 cited therein or any corresponding successor provision.

§3.5 The Participant hereby adopts the Declaration of Trust as the document which governs the administration of this Participation Agreement and the Sub-Account and directs the Trustee to hold and administer the Sub-Account in accordance with the terms and conditions of the Declaration of Trust. 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 Declaration of Trust. The Department shall have access to the Trust as provided therein.

§3.6 The funds in the Sub-Account and any other property held by the Trustee 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, the Participant shall have no legal title to any part of the Trust Fund, 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, all payments made to the Trustee 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 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, but the Trustee shall notify the Department of any deficiencies in the payments agreed to be made by the Participant whenever the Trustee has knowledge of such deficiencies.

§3.9 The Trustee shall at least quarterly furnish the Beneficiary 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 the statement.

§3.10 The Trustee 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 Agreement. The Trustee 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 Trustee with such information as may be reasonably required in connection with the preparation of such income tax or information returns.

§3.11 Upon the completion of the Participant's obligations as Agent for the Mon View Trust, all rights, titles and interest in the Sub-Account shall vest in the Department; provided, however, that the Trust as to the Sub-Account shall continue until the Trustee is

directed to terminate the Trust as to the Sub-Account. If the Department determines to terminate the Trust as to the Sub-Account, the Trustee shall pay over to the Department any remaining funds in the Sub-Account, less final administration expenses of the Trustee. Upon payment of such funds to the Department, the Trustee shall not be subject to any action by the Participant or the Department with regard to any claim or matter arising from the administration of the Trust as to the Sub-Account.

## **ARTICLE FOUR**

### **AMENDMENTS**

§4.1 This Participation Agreement may be amended by an instrument in writing, executed by the Participant and the Trustee, with the consent and acknowledgment of the Department, or by the Trustee and the Department in the event 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 Trustee 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:

Agent/Participant:

Dean K. Hunt, Esq., Agent  
520 West Short Street  
Lexington, KY 40507

Trustee:

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

With a copy to:

Clean Streams Foundation, Inc.  
c/o Dean K. Hunt, Esq.  
520 West Short Street  
Lexington, Kentucky 40507-1252  
Telephone: 859-252-3476  
Fax: 859-252-4167

Beneficiary:

Commonwealth of Pennsylvania  
Department of Environmental Protection  
Director, Bureau of Abandoned Mine Reclamation  
Fifth Floor, Rachel Carson Building  
400 Market Street  
Harrisburg, PA 17105-8461  
Telephone: 717-783-2267  
Fax: 717-783-7442

with a copy to:

Office of Chief Counsel  
Southwest Regional Office  
Attention: Regional Counsel  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
Telephone: 412-442-4262  
Fax: 412-442-4267

§5.2 Any change in the above addresses shall be made by giving notice to all parties to this Participation Agreement.

§5.3 Upon the completion of the Participant's obligations as Agent for the Mon View Trust, Notices need only be sent to the Trustee and the Beneficiary, unless such Notice specifically relates to any duties, obligations, or responsibilities of the Participant.



## **ARTICLE SIX**

### **DISPUTES**

§6.1 In the event of any dispute between the parties, the parties agree to attempt to resolve the dispute through negotiation or a method of alternative dispute resolution. No litigation shall be commenced without a certification by an authorized officer, employee, or agent of any party that the dispute cannot be resolved by negotiation or alternative dispute resolution provided in writing at least 20 days before commencing legal action.

§6.2 A party receiving such notice shall have 10 days after receipt of said notice to demand that said dispute be resolved by binding arbitration. If arbitration is requested, the dispute shall be resolved in accordance with the arbitration rules of the American Arbitration Association then in effect without regard to the date of execution of this Agreement.

## **ARTICLE SEVEN**

### **CONSTRUCTION**

§7.1 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 the meaning set forth in the Declaration of 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 Agreement are for descriptive purposes only and shall not affect the interpretation or legal efficacy of this Agreement.

§7.2 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. 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.

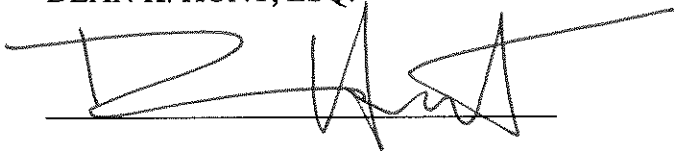
§7.3 All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Participant, the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or action taken by the Participant,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

§7.4 This Agreement shall be construed and governed in all respects in accordance with the laws of the Commonwealth of 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.

**AGENT/PARTICIPANT:**

DEAN K. HUNT, ESQ.



By Dean K. Hunt

**TRUSTEE:**

THE CLEAN STREAMS FOUNDATION, INC.

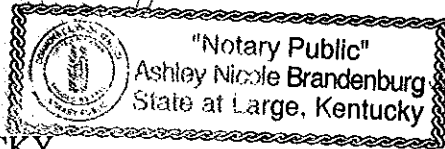
By Wayne [Signature]

Its Chairman

STATE OF Kentucky  
COUNTY OF Fayette, to-wit:

The foregoing instrument was acknowledged before me this 13 day of July, 2010, by Dean Hunt, the Agent of the Mon View Trust.

My commission expires June 17<sup>th</sup>, 2013.

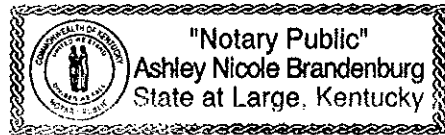


Ashley Nicole Brandenburg  
Notary Public

STATE OF KENTUCKY,  
COUNTY OF FAYETTE, to-wit:

The foregoing instrument was acknowledged before me this 13 day of July, 2010, by WAYNE MASTERMAN, the Chairman of the CLEAN STREAMS FOUNDATION, INC.

My commission expires June 17<sup>th</sup>, 2013.



Ashley Nicole Brandenburg  
Notary Public

This instrument was prepared by Dean K. Hunt, Esq. 520 West Short Street, Lexington, Lexington, Kentucky 40507, 859-252-3476.

## CONSENT AND ACKNOWLEDGMENT

The Commonwealth of Pennsylvania, Department of Environmental Protection hereby consents to Participant entering into this Participation Agreement and acknowledges the Commonwealth of Pennsylvania's and the Department's status as the beneficiary of the Trust and to evidence its consent and acknowledgment of the terms and conditions set forth herein, as well as the powers and authorities granted to the Department hereunder.

### **BENEFICIARY:**

THE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
COMMONWEALTH OF PENNSYLVANIA

By Michael Tenetto

Its DIRECTOR, DISTRICT MINING OPERATIONS