

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
DEPARTMENT FOR SURFACE MINING RECLAMATION AND ENFORCEMENT

ESCROW AGREEMENT

(FOR USE WITH SUPPLEMENTAL ASSURANCE FORM ONLY)

THIS AGREEMENT, made, executed and delivered this the ___ day of _____, 19____, by and between _____ as applicant and _____ as Escrow Agent, and the Kentucky Natural Resources and Environmental Protection Cabinet, Department for Surface Mining Reclamation and enforcement, hereinafter called Department,

WITNESSETH:

WHEREAS, Applicant desires to obtain a permit to conduct surface coal mining and reclamation operations in the Commonwealth of Kentucky; and

WHEREAS, the regulations and laws of the Commonwealth require that a Supplemental Assurance be posted to insure the complete reclamation of the area so mined and to otherwise guarantee performance with all applicable regulations and laws of the Commonwealth administered by the Department; and

WHEREAS, Applicant desires to meet the Supplemental Assurance requirements for mining in the Commonwealth of Kentucky by executing such Supplemental Assurance and posting surety in the sum of (\$_____) with the Department to be held by the Escrow Agent, which sum is hereby acknowledged by the Department to be sufficient and acceptable for permit application number _____ relating to _____ acres in _____ County, Kentucky; and

WHEREAS, such sum shall be placed in the safe custody of the Escrow Agent, and the Escrow Agent is directed to purchase Certificates of Deposit of the _____ which Certificates of Deposit are hereinafter referred to as the Certificates, and are more fully described as follows, to wit:

<u>CERTIFICATE NO.</u>	<u>DATE OF ISSUANCE</u>	<u>PRINCIPAL AMOUNT</u>
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and WHEREAS, this agreement is a supplement to the bond(s) filed by the Applicant with permit application number _____, increment number _____ (if Applicable) for a permit to engage in surface coal mining and reclamation operations.

NOW, THEREFORE, in consideration of the premises set forth herein, the parties hereto mutually agree as follows:

1. The Escrow Agent hereby acknowledges receipt of the Certificates above listed, to be safely and securely kept by it for the stated purposes of this Agreement and subject to the terms and conditions herein, and hereby binds itself to perform completely under the terms of this Agreement and to dispose of the Certificates or the proceeds therefrom only as provided herein. The Escrow Agent hereby acknowledges the individual Certificates of Deposit have been issued by a F.D.I.C. or F.S.L.I.C. insured financial institution and the denomination is not in excess of the maximum insurable amount as determined by the insuring institution. The Escrow Agent further agrees to exercise due care in the safekeeping and delivery of the Certificates.

2. The parties agree The Certificates or any subsequent Certificates are and shall be payable in favor of the Escrow Agent only, and the parties further agree that until such time as the Department orders that the Supplemental Assurance for the permit application be forfeited or until such time as the Supplemental Assurance is released, all interest accruing on the Certificates shall be disposed of in accordance with paragraphs 4, 5, and 6 of this Agreement.:

3. The parties agree that the Escrow Agent is hereby authorized and directed to insure that the Certificates remain in full force during the term of this Agreement and the Escrow Agent may, upon notice to all parties, and upon the maturity of the Certificates, issue new Certificates of face value equal to the outstanding amount of the Supplemental Assurance. In the event of such issuance, the new Certificates shall replace the Certificates herein for all purposes and shall be subject to the conditions of this Agreement:

4. Any interest accruing on the Certificates shall be held by the Escrow Agent until such time as the Supplemental Assurance has been released or forfeited on the Certificates have matured and been replaced by new Certificates. No interest shall be paid to the Applicant on any Certificate until such time as the Certificate matures or a full release has been obtained from the Department or until the Supplemental Assurance has been forfeited any an penalty resulting for the cashing of the Certificate has been satisfied;

5. Upon the Department's written notice to the Escrow Agent of the Department's certification of the satisfactory completion of all surface coal mining and reclamation operations and the release of such Supplemental Assurance in whole or in part, the Applicant may direct the Escrow Agent to either issue one or more new Certificates in the name of the Applicant for the amount so released or to return the principal amount so released to the Applicant by Cashier's Check with accrued interest less any penalty for premature cashing of such Certificate;

6. In the event of forfeiture of the Supplemental Assurance herein and upon the Department's written notice of such forfeiture to the Escrow Agent, the Escrow Agent shall promptly cash the Certificates and forward to the Department a Cashier's Check in the outstanding amount of the Supplemental Assurance, pay any penalties which result from the cashing of the Certificates from the interest accrued thereon, and remit any remaining interest and principal to the Applicant;

7. The parties agree that neither the Escrow Agent nor the Department shall be liable for any loss of interest which may result to the Applicant as a result of an Order of Forfeiture;

8. The Escrow Agent shall not be liable for inquiring whether there has been performance by the Applicant or to see the application of any monies paid on the instruction of the Department, and in such matters the Escrow Agent may rely upon the instructions of the Department executed by the Secretary of the Cabinet, his designee, or his successor of the successor agency as provided by law. The Escrow Agent need not verify the apparent authority of an agent of the Department in carrying out the Department's instructions. Nothing herein shall prevent the Commonwealth from designating a person authorized to act for it in any other lawful manner;

9. That the value received, the Applicant does hereby assign, transfer, and set over to the Commonwealth all right, title, and interest which the Applicant may have in the Certificates. The parties agree that the Certificates are being held solely for the benefit of the Commonwealth and that the Applicant has relinquished all right, title, and interest to the Certificates as provided herein. The Applicant shall not pledge or encumber in any manner the Certificates, or the interest due thereon, so long as the same are subject to the conditions of the Supplemental Assurance herein. The Escrow Agent waives all rights of setoff or liens which it has or might have against the Certificate;

10. The Department agrees that upon the satisfactory completion of all surface coal mining and reclamation operations and the payment of any and all outstanding civil penalties and fees pursuant to the regulations and laws of the Commonwealth by the Applicant, and upon the Department's inspection and certification of the same, the Department shall release the Supplemental Assurance herein and promptly notify the Escrow Agent and the Applicant of Such release;

11. It is agreed, as between the parties, that in the event the Escrow Agent closes or goes into receivership, any Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Administration Insurance proceeds paid on, to, or as a result of the Certificates, shall first be applied to cover the Certificates;

12. The parties agree that the Escrow Agent shall be the Department's agent for holding the Certificates for the purpose of protecting the Department's security interest in those Certificates under KRS Chapter 355;

13. This agreement shall be binding upon the successors and assigns of the respective parties; and

14. Upon receipt by the Escrow Agent of written notification by the Department of the forfeiture or the release of the Supplemental Assurance herein, and disbursement pursuant to this agreement by the Escrow Agent of the Certificates or the proceeds therefrom and any interest accrued thereon, the Escrow Agent shall be discharged of any and all duties and liabilities arising out of or as a result of this Agreement.

SIGNED, SEALED, AND DELIVERED, the day and date first above written by the appropriately authorized officers.

APPLICANT: _____ ESCROW AGENT: _____

BY: _____ BY: _____

TITLE: _____ TITLE: _____

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

BY: _____ TITLE: _____