

**APPENDIX G**

**FINANCIAL ASSURANCE TRUST AGREEMENT**

Big River Mine Tailings Superfund Site, St. Francois County, Missouri, Operable Unit 01

Dated \_\_\_\_\_, 2018

This Trust Agreement (the “Agreement”) relating to [**insert trustee-provided trust account number**] is entered into as of \_\_\_\_\_ between The Doe Run Resources Corporation, a corporation organized and existing under the laws of the State of New York (“Grantor”), and [**insert name of trustee**], [**insert as appropriate**: “incorporated in the state of [**insert name of state**]” or “a national bank”] (the “Trustee”).

**Whereas**, the United States Environmental Protection Agency (EPA), an agency of the United States federal government, the State of Missouri, and the Grantor have entered into a Consent Decree dated \_\_\_\_\_, Civil Action No. (“Consent Decree”), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675;

**Whereas**, the Consent Decree provides that the Grantor shall provide assurance that funds will be available as and when needed for performance of the Work required by the Consent Decree;

**Whereas**, in order to provide such financial assurance, Grantor has agreed to establish and fund the trust created by this Agreement; and

**Whereas**, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder.

**Now, therefore**, the Grantor and the Trustee agree as follows:

**Section 1. Definitions. As used in this Agreement:**

(a) The term “Agreement” shall have the meaning assigned thereto in the first paragraph of this Agreement.

(b) The term “Beneficiary” shall have the meaning assigned thereto in Section 3 of this Agreement.

(c) The term “CERCLA” shall have the meaning assigned thereto in the second paragraph of this Agreement.

(d) The term “Claim Certificate” shall have the meaning assigned thereto in Section 4(a) of this Agreement.

(e) The term “EPA” shall have the meaning assigned thereto in the second paragraph of this Agreement.

(f) The term “Fund” shall have the meaning assigned thereto in Section 3 of this Agreement.

(g) The term “Grantor” shall have the meaning assigned thereto in the first paragraph of this Agreement, along with any successors or assigns of the Grantor.

(h) The term “Objection Notice” shall have the meaning assigned thereto in Section 4(b) of this Agreement.

(i) The term “Consent Decree” shall have the meaning assigned thereto in the second paragraph of this Agreement.

(j) The term “Site” shall have the meaning assigned thereto in Section 2 of this Agreement.

(k) The term “Trust” shall have the meaning assigned thereto in Section 3 of this Agreement.

(l) The term “Trustee” shall mean the trustee identified in the first paragraph of this Agreement, along with any successor trustee appointed pursuant to the terms of this Agreement.

(m) The term “Work” shall have the meaning assigned thereto in the Consent Decree.

(n) The term “Work Takeover” shall have the meaning assigned thereto in the Consent Decree.

**Section 2. Identification of Site and Cost Estimate.** This Agreement pertains to costs for Work required at the Big River Mine Tailings Superfund Site, Operable Unit 01, in St. Francois County, Missouri (the “Site”), pursuant to the Consent Decree.

**Section 3. Establishment of Trust Fund.** The Grantor and the Trustee hereby establish a trust (the “Trust”), for the benefit of EPA (the “Beneficiary”), to ensure that funds are available to pay for performance of the Work in accordance with the terms of the Consent Decree. The Grantor and the Trustee intend that no third party shall have access to monies or other property in the Trust except as expressly provided herein. The Trust is established initially as consisting of cash and/or cash equivalents in the amount of \$1,000,000 and ultimately in the amount of \$35,800,000 pursuant to the schedule described in Schedule A attached hereto which is acceptable to the Trustee. Such funds, along with any other cash and/or cash equivalents hereafter deposited into the Trust, and together with all earnings and profits thereon, are referred to herein collectively as the “Fund.” The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or

adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor owed to the United States.

**Section 4. Payment for Work Required Under the Consent Decree.** The Trustee shall make payments from the Fund in accordance with the following procedures.

(a) From time to time, but not more often than twice per calendar year, the Grantor and/or its representatives or contractors may request that the Trustee make payment from the Fund for Work performed under the Consent Decree by delivering to the Trustee and EPA a written invoice and certificate (together, a “Claim Certificate”) signed by an officer of the Grantor (or the relevant representative or contractor). Any Claim Certificate should be in a form substantially identical to the sample provided in Exhibit A and, at a minimum, should:

- (i) Specify the amount of funds requested from the Trust; and
- (ii) Identify the payee(s) of the funds request.

(b) EPA may object to any payment requested in a Claim Certificate submitted by the Grantor (or its representatives or contractors), in whole or in part, by delivering to the Trustee a written notice (an “Objection Notice”) within 30 days after the date of EPA’s receipt of the Claim Certificate as shown on the relevant return receipt. An Objection Notice sent by EPA shall state (i) whether EPA objects to all or only part of the payment requested in the relevant Claim Certificate; (ii) the basis for such objection, (iii) that EPA has sent a copy of such Objection Notice to the Grantor and the date on which such copy was sent; and (iv) the portion of the payment requested in the Claim Certificate, if any, which is not objected to by EPA. EPA may object to a request for payment contained in a Claim Certificate only on the grounds that the requested payment is inconsistent with the terms and conditions of the Consent Decree.

(c) If the Trustee receives a Claim Certificate and does not receive an Objection Notice from EPA within the time period specified in Section 4(b) above, the Trustee shall, after the expiration of such time period, promptly make the payment from the Fund requested in such Claim Certificate.

(d) If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(b) above, but which Objection Notice objects to only a portion of the requested payment, the Trustee shall, after the expiration of such time period, promptly make payment from the Fund of the uncontested amount as requested in the Claim Certificate. The Trustee shall not make any payment from the Fund for the portion of the requested payment to which EPA has objected in its Objection Notice.

(e) If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(b) above, which

Objection Notice objects to all of the requested payment, the Trustee shall not make any payment from the Fund for amounts requested in such Claim Certificate.

(f) If, at any time during the term of this Agreement, EPA implements a “Work Takeover” pursuant to the terms of the Consent Decree and intends to direct payment of monies from the Fund to pay for performance of Work during the period of such Work Takeover, EPA shall notify the Trustee in writing of EPA’s commencement of such Work Takeover. Upon receiving such written notice from EPA, the disbursement procedures set forth in Sections 4(a)-(e) above shall immediately be suspended for costs of Work taken over by EPA, and the Trustee shall thereafter make payments from the Fund only to such person(s) as the EPA may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the Consent Decree. Further, after receiving such written notice from EPA, the Trustee shall not make any disbursements to Grantor for costs of Work taken over by EPA from the Fund at the request of the Grantor, including its representatives and/or contractors, or of any other person except at the express written direction of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the Consent Decree, EPA may so notify the Trustee in writing and, upon the Trustee’s receipt of such notice, the disbursement procedures specified in Sections 4(a)-(e) above shall be reinstated.

(g) While this Agreement is in effect, disbursements from the Fund are governed exclusively by the express terms of this Agreement.

**Section 5. Trustee Management.** The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with directions which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the Trust solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) securities, notes, and other obligations of any person or entity shall not be acquired or held by the Trustee with monies comprising the Fund, unless they are securities, notes, or other obligations of the United States federal government or any United States state government or as otherwise permitted in writing by EPA;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent such deposits are insured by an agency of the United States federal or any United States state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 6. Commingling and Investment.** The Trustee is expressly authorized in its discretion to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions hereof and thereof, to be commingled with the assets of other trusts participating therein.

**Section 7. Express Powers of Trustee.** Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this 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 powers herein granted;

(b) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in 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 the 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 the deposit of any securities issued by the United States federal government or any United States state 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 Fund; and

(c) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the United States federal government.

**Section 8. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the Fund shall be paid from the Fund. All other expenses and charges incurred by the Trustee in connection with the administration of the Fund and this Trust shall be paid by the Grantor.

**Section 9. Annual Valuation.** The Trustee shall annually, no more than 30 days after the anniversary date of establishment of the Fund, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. The annual valuation shall include an accounting of any fees or expenses levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as EPA may request from time to time.

**Section 10. Advice of Counsel.** The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder; provided, however, that any counsel retained by the

Trustee for such purposes may not, during the period of its representation of the Trustee, serve as counsel to the Grantor.

**Section 11. Trustee Compensation.** The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor and as notified in writing to the Beneficiary; provided, however, that the Trustee shall have minimal duties and shall be entitled to minimal compensation, if any, for time periods in which the Trustee does not make payments from the Fund for Work performed under the Consent Decree.

**Section 12. Trustee and Successor Trustee.** The Trustee and any replacement Trustee must not be affiliated with the Grantor. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the cash and/or cash equivalents then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Grantor, the Beneficiary, and the present Trustee by certified mail no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.

**Section 13. Instructions to the Trustee.** All orders, requests, and instructions to the Trustee shall be in writing, signed by such persons as are empowered to act on behalf of the entity sending such orders, requests, and instructions to the Trustee, including those designated in the attached Exhibit B or such other designees as the Grantor may designate by amendment to Exhibit B. The Trustee shall be fully protected in acting without inquiry on such written instructions given in accordance with the terms of this Agreement. The Trustee shall have no duty to act in the absence of such written instructions, except as expressly provided for herein.

**Section 14. Amendment of Agreement.** This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, and with the prior written consent of EPA, or by the Trustee and EPA if the Grantor ceases to exist.

**Section 15. Irrevocability and Termination.** This Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) the written direction of EPA to terminate, consistent with the terms of the Consent Decree and (b) the complete exhaustion of the Fund comprising the Trust as certified in writing by the Trustee to EPA and the Grantor. Upon termination of the Trust pursuant to Section 15(a), all remaining Trust property (if any), less final Trust administration expenses, shall be delivered to the Grantor.

**Section 16. Immunity and Indemnification.** The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or EPA issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 17. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of Missouri.

**Section 18. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

**Section 19. Notices.** All notices and other communications given under this Agreement shall be in writing, identify the Site, provide a contact person (and contact information), and be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

(a) If to the Grantor, to [**insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.)**].

(b) If to the Trustee, to [**insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.)**].

(c) If to EPA, to [**insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.) of appropriate EPA official/staff (e.g., Superfund Division Director, Remedial Project Manager, and/or Office of Regional Counsel contact)**].

**Section 20. Other.** The Grantor shall provide a copy of the Consent Decree to the Trustee, and the Grantor shall submit an originally-signed duplicate of the executed Agreement to EPA.

**[SIGNATURES ON FOLLOWING PAGE]**

**In Witness Whereof**, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

**FOR THE GRANTOR:**

Date: \_\_\_\_\_ By [signature]: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of [insert state]  
County of [insert county]

On this [insert date], before me personally came [insert name of PRP/Settling Defendant's signatory] to me known, who, being by me duly sworn, did depose and say that she/he is [insert title] of [insert name of PRP/Settling Defendant], the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

\_\_\_\_\_  
[Signature of Notary Public]

**FOR THE TRUSTEE:**

Date: \_\_\_\_\_ By [signature]: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of [insert state]  
County of [insert county]

On this [insert date], before me personally came [insert name of Trustee's signatory] to me known, who, being by me duly sworn, did depose and say that she/he is [insert title] of [insert name of Trustee], the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

\_\_\_\_\_  
[Signature of Notary Public]



**Schedule A**  
**Initial Trust Funding**

Deposit to Trust On or Before Date	Amount of Deposit	Principal Balance in Trust After Deposit
October 15, 2018 or 150 days after the Effective Date, whichever is later	\$1,000,000	\$1,000,000
6 months after previous deposit	\$1,000,000	\$2,000,000
6 months after previous deposit	\$6,500,000	\$8,500,000
6 months after previous deposit	\$6,500,000	\$15,000,000
6 months after previous deposit	\$2,600,000	\$17,600,000
6 months after previous deposit	\$2,600,000	\$20,200,000
6 months after previous deposit	\$2,600,000	\$22,800,000
6 months after previous deposit	\$2,600,000	\$25,400,000
6 months after previous deposit	\$2,600,000	\$28,000,000
6 months after previous deposit	\$2,600,000	\$30,600,000
6 months after previous deposit	\$2,600,000	\$33,200,000
6 months after previous deposit	\$2,600,000	\$35,800,000

**Exhibit A**  
**Sample Claim Certificate**

[Insert date]

[Insert Trustee's name pursuant to trust agreement's preamble]

[Insert Trustee's address pursuant to Section [19(b)] of trust agreement]

[Insert authorized EPA official pursuant to Sections [19(c)] of trust agreement]

[Insert address pursuant to Sections [19(c)] of trust agreement]

Re: Request for payment from the Trust [insert trust account number or other identifying information] established as financial assurance for the [insert site name] Site

Dear [insert name of Trustee and authorized EPA official]:

Pursuant to Section [4(a)] of the subject trust, the Grantor (as defined therein) and/or its representatives or contractors are authorized to request that the Trustee (as defined therein) make payment from the trust for Work (as defined therein) performed under the Consent Decree (as defined therein) by delivering to the Trustee and EPA (as defined therein) a written request for payment signed by an officer of the requesting entity. By this letter, [insert requesting entity] requests payment from the trust. The bases for the payment request are more fully described below.

1. Certification: [insert certification from officer of requesting entity that the request is submitted for Work performed in accordance with the Consent Decree].
2. Description of Applicable Work: [insert description of the Work that has been performed].
3. Amount of Payment Request: [insert amount of funds requested from trust].
4. Proposed Payee: [insert identification of payee(s) of the funds requested].

Please let me know if you have any questions. I can be reached at [insert telephone number and email address].

Sincerely,

\_\_\_\_\_  
[insert name of officer of the requesting entity]  
[insert address of the requesting entity]

[cc: [Insert other EPA staff to receive payment requests pursuant to Section [19(c)] of trust agreement]]

**Exhibit B**  
**Grantor-Designated Individuals Authorized for Orders, Requests, and  
Instructions**

**[Grantor to insert person(s) (and relevant contact information) designated to provide/make orders, requests, and instructions to the Trustee pursuant to Section [13] of trust agreement]**