

AGREEMENT

THIS AGREEMENT entered into this 25th day of May, 1989, by and between:

THE BOROUGH OF INDIAN LAKE, PENNSYLVANIA, a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its municipal office and headquarters at R. D. #1, Central City, Pennsylvania, 15926, hereinafter referred to as "Indian Lake"; and

PBS COALS, INC., a Delaware Corporation, in its own right and as successor by merger to NSM Coal Company Limited and NSM Coals, Inc., having its principal office at R. D. #2, P. O. Box 260, Friedens, Pennsylvania 15541, hereinafter called "PBS".

WITNESSETH:

WHEREAS, Indian Lake and NSM Coal Company Limited ("Limited") entered into an Agreement May 25th, 1982, concerning, inter alia, environmental protection and other issues resulting from the application by Limited for a strip mining permit for the proposed Clear Run Mine (the "Agreement") (a copy of the Agreement is attached hereto and marked Exhibit "A"); and,

WHEREAS, the Agreement was amended by the parties thereto on the _____ day of _____, 1982, a copy of said amendment is attached hereto as Exhibit "B"; and,

WHEREAS, the surface mining permits Numbers 56813006 and 56840107 to operate the Clear Run Mine were issued by the Pennsylvania Department of Environmental Resources ("DER"). The permits and mining activities and related operations by Limited, NSM Coals, Inc.

("Coals") and PBS have occurred since that date (the land area covered by the aforesaid permits, and areas lying within the natural watershed for Clear Run shall be referred to herein as the "Permit Area"); and,

WHEREAS, Coals and Limited merged into PBS by Articles of Merger dated April 1, 1988; and,

WHEREAS, under Paragraph 4 of the Agreement, Limited posted a surety bond in the amount of Two Million (\$2,000,000.00) Dollars (the "Surety Bond") for the purposes set forth therein and secured a liability insurance policy in the amount of Ten Million (\$10,000,000.00) Dollars (the "Insurance Policy") for the purposes set forth therein; and,

WHEREAS, for reasons which PBS represents to be beyond the control of PBS, it has not been possible to secure the renewal of the Surety Bond or continue to provide the level of insurance coverage described in the Insurance Policy, as required by the terms and conditions of the Agreement; and,

WHEREAS, the Agreement only referred to NSM mining activities at the job 1 site and which mining of the job 1 site has been completed and further that PBS is conducting further operations under current permits; and

WHEREAS, an incident of mine drainage pollution is alleged to

have been caused by mining activity on PBS sites possibly other than job 1 occurring on or about FEBRUARY 1988, resulting in degregation of Clear Run, and PBS has undertaken to correct the situation with temporary treatment of mine drainage and has proposed to the Department of Environmental Resources to install permanent treatment facilities in the form of a "bog" thereon or other permanent facility as necessary to comply with the Agreement and the laws of the Commonwealth of Pennsylvania; and,

WHEREAS, the parties have agreed to the terms and conditions supplementing the Agreement, as amended; and extending the scope thereof as hereinafter set forth:

NOW, THEREFORE, the parties hereto, intending to be legally bound, and also in consideration of the mutual promises and covenants herein contained hereby agree as follows:

1. PBS has proposed to the DER that it be permitted to install a permanent treatment facility in the form of a "bog" for the passive treatment of any degregation of the waters of the Commonwealth of Pennsylvania, including Clear Run, caused by mining activity of PBS and its predecessors, as set forth in the April 1, 1988, Articles of Merger, as defined in the Surface Mining Conservation and Reclamation Act 52 P.S. §1396.1 et. seq.; Coal Refuse Disposal Control Act 52 P.S. §30.51 et. seq.; and Clean Streams Act 35 P.S. §691.1 et seq. and which originates in the Permit Area and ultimately flows into or becomes a part of the watershed of Indian Lake. PBS has also agreed with the Department of Environmental Resources to do a water survey of

the conditions affecting mining. The permanent treatment facility in the form of a "bog", if insufficient, shall be replaced and/or modified by whatever permanent treatment facility which is necessary to correct any pollution of Indian Lake resulting from PBS's mining operations. PBS will acquire all property necessary for installation, maintenance, operation and preservation of any and all water treatment facilities. PBS will continue to operate all interim water treatment facilities and to comply with all orders, notices and violations issued by the Department of Environmental Resources, and in addition to any obligations thereunder, covenants, warrants and represents to Indian Lake that it will operate and treat the water to the standards required by the Commonwealth of Pennsylvania.

2. If PBS through neglect, unwillingness, inability or release by D.E.R. is not maintaining the water treatment facilities, PBS hereby agrees to convey to Indian Lake, at no cost to Indian Lake, all right, title and interest in the real estate and equipment installed in any water treatment facility being operated or installed or maintained to treat mine water discharges into Clear Run or any other stream or water source within the Permit Area which would be the responsibility of PBS. Further, PBS will, when necessary or required, convey to Indian Lake Borough, any and all easements, rights-of-ways, and access privileges as are necessary for the operation by Indian Lake for the enforcement of this Agreement by Indian Lake to facilities conveyed and/or necessary for Indian Lake to monitor the terms of this Agreement. Any conveyance which should result from this Agreement

shall be free and clear of all encumbrances and shall be sufficient to vest good and marketable fee title in the real estate easements and equipment in Indian Lake. Further, PBS hereby warrants that any and all equipment or facilities conveyed shall be properly maintained and functioning and in good operating condition at the time of conveyance or that if the facilities or equipment are not in operation that they shall be properly "mothballed" in order that they may be brought into operation within a reasonable period of time.

3. In lieu of surety bond but without waiving any or all prior rights or causes of action that may exist towards prior insurance coverage provided under the terms of the Agreement and the amendment thereto, the parties hereto agree that effective January 1, 1989, PBS agrees to give to Indian Lake Borough the sum of five (5) cents for every ton of coal mined by PBS on or after January 1, 1989, within the Permit Area or Two Thousand (\$2,000.00) Dollars per month, whichever sum is greater, until the total of all contributions equals Two Hundred Thousand (\$200,00.00) Dollars (the "Fund"). In addition, PBS agrees to maintain a pollution liability insurance policy in the sum not less than Five Hundred Thousand Dollars (\$500,000.00) and that this policy shall be in effect for the entire period of time in which PBS mines within the Permit Area. A copy of the insurance policy shall be forwarded to the Borough of Indian Lake annually within 30 days of the renewal date or other acceptable proof of insurance coverage so long as PBS is mining within the Permit Area and/or required to maintain such insurance as required by the Department of

Environmental Resources. Beginning January 1, 1989, PBS shall supply to the Borough of Indian Lake along with its payment as required under this Agreement a written statement as to the total tonnage mined within the Permit Area.

4. To secure the obligations of PBS under this Agreement, PBS agrees to provide security in the form of an irrevocable stand-by Letter of Credit issued by Barclays Bank PLC, or another bank of similar credit standing (the "Letter of Credit") in the initial amount of \$200,000.00, less the amounts of monthly tonnage payments as set forth above at the time the Letter of Credit is posted. The Letter of Credit issued by Barclays Bank or any other bank must be a Letter of Credit originating and being able to be drawn on the bank within the United States of America. The Letter of Credit shall be in the form and substance satisfactory to Indian Lake and its special counsel, and shall permit drafts only upon breach of this Agreement and will be subject to recalculation on renewal so that the total of PBS contributions to Indian Lake Borough and the face amount of the Letter of Credit posted at any renewal date shall never be more than \$200,000.00. The Letter of Credit shall include a provision that any renewal of the Letter of Credit must be delivered to Indian Lake no less than ninety (90) days prior to the expiration of the preceding Letter of Credit and in the event of such failure to provide a renewal within the ninety (90) day time period, Indian Lake shall be permitted to draw on the existing Letter of Credit for the face amount thereof with or without the consent of PBS. The Fund shall be and remain at

all times the property of Indian Lake, and PBS shall have no present or future interest in the monies held by Indian Lake Borough, and further, shall not be subject to any encumbrance or claim of PBS, its successors or assigns. Any Letter of Credit or renewal Letter of Credit shall be for a term of not less than one (1) year. The parties agree that replacement letters can be done prior to the expiration of the term of the letter of credit. It is specifically understood by the parties that this Letter of Credit is for the sole and exclusive use of Indian Lake Borough and the purpose of preventing pollution of the waters of the Permit Area from any form of pollution which would be within the responsibility of PBS based on all applicable rules, regulations and laws of the Commonwealth of Pennsylvania, and that the purpose of this Letter of Credit is to insure the public health, safety and welfare from pollution of the water sources of Indian Lake. The further purpose of this Letter of Credit is to provide for future protection of the Permit Area from any form of water pollution due to mining activities of PBS.

5. The parties agree, to the extent permitted by law, that the terms, conditions and covenants of this Agreement shall remain confidential.

6. PBS acknowledges that Indian Lake has incurred costs and expenses in conjunction with the evaluation of the water quality of Indian Lake, the evaluation of the position of Indian Lake under the Agreement with regard to insurance and other related matters, and with regard to legal representation. PBS agrees to reimburse Indian Lake a

sum of money not to exceed Thirty-Five (\$35,000.00) Dollars, for costs actually incurred in the negotiation and preparation of this Agreement and other preparation of reports necessary to the negotiation and preparation of this Agreement, supported by documentation.

7. It is hereby agreed by the parties that the execution of this Agreement does not release, waive or prejudice any legal rights or remedies that the Borough may have through the Department of Environmental Resources or other governmental unit occurring after date of execution of this Agreement. Further, that this Agreement shall not be deemed to prejudice or act as a waiver of any rights that the Borough may have under the prior insurance policies for any act or omission that the Borough can prove took place during the effective periods of those policies.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 25 day of March, 1989.

MAY EM

INDIAN LAKE BOROUGH COUNCIL

Attest: Melba D. Campbell Secretary
(SEAL)

By: Craig W. Holman President

PBS INC.

Attest: _____ Secretary
(SEAL)

By: _____ President