



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

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USNRC

April 8, 1999

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OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

Chief Administrative Judge  
Peter B. Bloch, Esq.  
Presiding Officer  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Administrative Judge  
Thomas D. Murphy  
Special Assistant  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

In the Matter of  
HYDRO RESOURCES, INC.  
Docket No. 40-8968-ML

Dear Judges Bloch and Murphy:

Pursuant to 10 CFR § 2.1231(b)-(c), the Staff hereby updates the Hearing File in this proceeding by attaching hereto a copy of a cover letter dated March 19, 1999, and its referenced enclosures, from Hydro Resources, Inc. (Mark Pelizza) to the Staff (Robert Carlson).

Sincerely,

John T. Hull  
Counsel for NRC Staff

Enclosure: As stated

cc w/enclosure:

Diane Curran, Esq.  
Jep Hill, Esq.  
Richard Clement, Jr.  
Mitchell Capitan

Douglas Meiklejohn, Esq.  
W. Paul Robinson  
Anthony J. Thompson, Esq.  
Roderick Ventura, Esq.

Office of Commission  
Appellate Adjudication  
Adjudicatory File (2)  
ASLBP  
Office of the Secretary (2)

SECY-EHD-004

20220

# **HRI, INC.**

(A Subsidiary of Uranium Resources, Inc.)

2929 Coors Road NW  
Suite 101  
Albuquerque, N.M. 87120-2929  
Telephone: (505) 833-1777  
Fax: (505) 833-0777

12750 Merit Drive  
Suite 1020, LB 12  
Dallas, Texas 75251  
Telephone: (972) 387-7777  
Fax: (972) 387-7779

P.O. Box 777  
Crownpoint, New Mexico 87313  
Telephone: (505) 786-5845  
Fax: (505) 786-5555

March 19, 1999

Mr. Robert Carlson, Project Manager  
Office of Nuclear Materials Safety & Safeguards  
U.S. Nuclear Regulatory Commission  
2 While Flint North, 11545 Rockville Pike  
Mail Stop T-7J9  
Washington, D.C. 20852

Ms. Katherine Yuhas, Geochemist  
Ground Water Quality Bureau  
New Mexico Environment Department  
PO Box 26110  
Santa Fe, New Mexico 87502-6110

Re Revised Performance Bond & Trust Agreement Formats

Dear Mr. Carlson & Ms Yuhas:

By letter dated December 11, 1998, I provided both of you draft text for a Performance Bond, Performance Guarantee Bond and Trust Agreement that HRI would propose for the Crownpoint Uranium Project - License SUA-1508 (including the Churchrock location, Discharge Plan DP-558). On February 26, 1999, Ms. Yuhas returned these drafts marked with certain changes that would be required to make the documents consistent with the latest New Mexico Environment Department Ground Water Quality Bureau financial assurance regulations. These changes have been incorporated in the attached second draft.

As was the case with the December 11 submittal, two surety formats are provided. The Performance Bond is designed to cover plugging and abandonment and, presumably, would only be required by NMED through DP-558. The Performance Guarantee Bond would provide surety for all other restoration and decommissioning required by License SUA- 1508 and DP-558 and would need concurrence from both the NRC and NMED. The Trust Agreement would be written so the trust fund is for the benefit of NMED.

Please tell me if these surety formats are acceptable to NRC/NMED.

Sincerely,

  
Mark S. Pelizza  
Vice President  
Health, Safety and Environmental Affairs

Cc: Richard Clement

**PERFORMANCE BOND**

**Draft 2 - 3/19/99**

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: HRI, Inc., 2929 Coors NE, #120, Albuquerque, New Mexico 87120

Type of organization: Corporation

State of incorporation: Delaware

Surety(ies): United States Fidelity and Guaranty Insurance Company- Commercial Surety, 6225 Smith Avenue, Baltimore, Maryland 21209

NMED Discharge Permit No. 558, name, address, and plugging and abandonment amount(s) for each

injection well guaranteed by this bond: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

**Know All Persons By These Presents.**

That We, the Principal and Surety(ies) hereto are firmly bound to the New Mexico Environment Department [hereinafter called "NMED"], in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Water Quality Act and New Mexico Water Quality Control Commission Regulations, as amended, to have an approved discharge permit in order to operate each injection well identified above, and

Whereas said Principal is required to provide financial assurance for plugging and abandonment as a condition of the discharge permit, and

Whereas said Principal shall establish a standby trust fund as required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform plugging and abandonment, whenever required to do so, of each injection well for which this bond guarantees plugging and abandonment, in accordance with the plugging and abandonment plan and other requirements of the discharge permit as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in Discharge Permit DP-558 and the New Mexico Water Quality Control Commission Regulations and obtain the NMED Secretary's written approval of such assurance, within 60 days after the date of notice of cancellation is received by both the Principal and the NMED Secretary from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the NMED Secretary that the Principal has been found in violation of the plugging and abandonment requirements of Discharge Permit DP-558 and the New Mexico Water Quality Control Commission Regulations for an injection well which this bond guarantees performances of plugging and abandonment, the Surety(ies) shall either perform plugging and abandonment in accordance with the plugging and abandonment plan and other discharge permit requirements or other requirements or place the amount for plugging and abandonment into a standby trust fund as directed by the NMED Secretary.

Upon notification by the NMED Secretary that the Principal has failed to provide alternate financial assurance as specified in Discharge Permit DP-558 and the New Mexico Water Quality Control Commission Regulations and obtain written approval of such assurance from the NMED Secretary during the 60 days following receipt by both the Principal and the NMED Secretary of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the injection well(s) into the standby trust fund as directed by the NMED Secretary.

The surety(ies) hereby waive(s) notification of amendments to plugging and abandonment plans, discharge permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the Principal and to the NMED Secretary provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NMED Secretary, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NMED Secretary.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly in accordance with Discharge Permit DP-558 so that it guarantees a new amount(s) for the activities

required in the approved discharge plan and pursuant to the Water Quality Control Commission Regulations, provided that no decrease in the penal sum takes place without the written permission of the NMED Secretary.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies).

Principal

\_\_\_\_\_  
RICHARD F. CLEMENT, JR., PRESIDENT

[Corporate seal]

Corporate Surety(ies)

United States Fidelity and Guaranty Insurance Company  
Commercial Surety  
6225 Smith Avenue  
Baltimore, Maryland 21209  
State of incorporation: Maryland  
Liability limit: \$72,225,000.00

\_\_\_\_\_  
AVA M. SCHAEFER, ATTORNEY-IN-FACT

[Corporate seal]

Bond premium: \$ \_\_\_\_\_

**PERFORMANCE GUARANTEE BOND**

**Draft 2 - 3/19/99**

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: HRI, Inc., 2929 Coors NE, #101, Albuquerque, New Mexico 87120

Type of organization: Corporation

State of incorporation: Delaware

Surety(ies): United States Fidelity and Guaranty Insurance Company, Commercial Security, 6225 Smith Avenue, Baltimore, Maryland 21209

NMED Discharge Permit No. 558, name, address, and closure activities and, if applicable, long-term care cost amount(s) for each facility guaranteed by this bond: \_\_\_\_\_

Total penal sum bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Person By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Mexico Environment Department (hereinafter called "NMED"), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the NMED, an agency of the State of New Mexico, has promulgated regulations in the New Mexico Water Quality Control Commission Regulations. These regulations applicable to the Principal require that a discharge permit for a facility shall provide assurance that funds will be available when needed in accordance with the approved Closure Plan.

Whereas, said Principal is required under these regulations, to have a discharge permit in order to own or operate the Churchrock In Situ mine identified above, and

Whereas said Principal is required to provide financial assurance for closure activities as a condition of the discharge permit, and

Whereas said Principal shall establish a standby trust fund as required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform the activities for which financial assurance is given pursuant to the Water Quality Control Commission Regulations, whenever required to do so, of the Churchrock In Situ Mine for which this bond guarantees those activities, in accordance with the discharge plan

conditions, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in DP-558 & the New Mexico Water Quality Control Commission Regulations and obtain the NMED Secretary's written approval of such assurance, within 60 days after the date of notice of cancellation is received by both the Principal and the NMED Secretary from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the NMED Secretary that the Principal has been found in violation of the discharge permit conditions and requirements of the New Mexico Water Quality Control Commission Regulations for a facility for which this bond guarantees performance of closure activities the Surety(ies) shall either perform in accordance with discharge permit requirements and the regulations, or place the amount guaranteed for the Churchrock In Situ mine into the standby trust fund as directed by the NMED Secretary.

Upon notification by the NMED Secretary that Principal has failed to provide alternate financial assurance as specified in Discharge Permit DP-558 or New Mexico Water Quality Control Commission Regulations and obtain written approval of such assurance from the NMED Secretary during the 60 days following receipt by both the Principal and the NMED Secretary of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the Churchrock In Situ mine into the standby trust fund as directed by the NMED Secretary.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, discharge permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal and to the NMED Secretary, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NMED Secretary, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NMED Secretary.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly in accordance with Discharge Permit DP-558 so that it guarantees a new amount(s) for the activities required in the approved discharge plan and pursuant to the Water Quality Control Commission Regulations, provided that no decrease in the penal sum takes place without the written permission of the NMED Secretary.

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies).

Principal

---

RICHARD F. CLEMENT, JR., PRESIDENT

[Corporate seal]

Corporate Surety(ies)

United States Fidelity and Guaranty Insurance Company  
Commercial Surety  
6225 Smith Avenue  
Baltimore, Maryland 21209  
State of incorporation: Maryland  
Liability limit: \$72,225,000.00

---

AVA M. SCHAEFER, ATTORNEY-IN-FACT

[Corporate seal]

Bond premium: \$ \_\_\_\_\_



**TRUST AGREEMENT**

TRUST AGREEMENT, the "Agreement" entered into as of \_\_\_\_\_, by and between HRI, INC., a Delaware corporation, the "Grantor", and NationsBank of Texas, N.A., the "Trustee".

WHEREAS, the New Mexico Water Quality Control Commission "WQCC" has established certain regulations applicable to the Grantor, requiring that a discharger shall provide assurance that funds will be available when needed for certain activities as required in Discharge Permit DP-558 and WQCC Regulations.

WHEREAS, the Grantor acting through its duly authorized officers has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Whereas, the Grantor agrees to guarantee its financial assurance obligation and to indemnify, defend and hold harmless the New Mexico Environment Department "NMED" from any and all losses and expenses which NMED may sustain as a result of the Grantor's failure to comply with the conditions of its financial assurance obligation.

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

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the discharge permit holder who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and/or sites and NMED approved cost estimates identified in Discharge Permit 558 and shown in Schedule A.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of the State of New Mexico, C/O Secretary, New Mexico Environment Department (NMED) to be utilized for the sole purpose of guaranteeing completion of the closure, post closure and abatement activities required by Discharge Permit DP-558 and 20 NMAC 6.2. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee and to NMED, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee

pursuant to this Agreement. 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 established by NMED.

**Section 4. Payments Comprising the Fund.** Payments made to the Trustee for the Fund shall consist of cash, bank checks, bank wire transfers or other negotiable instruments acceptable to the Trustee and the Beneficiary. The Grantor warrants to, and agrees with the Trustee and Beneficiary that, unless otherwise expressly set forth in this agreement, there is no security interest in the Fund or any part thereof, no financing statement under the Uniform Commercial Code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the Fund or any part thereof, and the Trustee and Beneficiary shall have no responsibility at any time to ascertain whether or not any security interest exists in the Fund or any part thereof or to file any financing statement under the Uniform Commercial Code with respect to the Fund or any part of the Fund.

**Section 5. Payment for Decontamination, Decommissioning, Reclamation, Disposal, Restoration and (if applicable) Long Term Surveillance and Control.** The Trustee shall make payments from the Fund as the NMED Secretary shall direct, in writing, to provide for the payment of the costs of closure, post closure and abatement activities required by DP-558 and the WQCC Regulations. The Trustee shall reimburse the Grantor or other persons as specified by the NMED Secretary from the Fund for expenditures in such amounts as the NMED Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amount as the NMED Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

**Section 6. 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 general investment policies and guidelines 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 his duties with respect to the trust fund 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:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) 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 7. Commingling and Investment.** The Trustee is expressly authorized in its discretion:

(a) 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 provision thereof, to be commingled with the assets of other trusts participating therein, and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

**Section 8. Express Powers of Trustee.** Without in any way limiting the powers and discretion's 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 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;

(c) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issues 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 Federal or State government; and

(d) With written consent of the beneficiary, to compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.** Until such time as the Fund is fully funded by the payment of the principal amount of [\$], compensation of the Trustee and all other reasonable and

customary expenses incurred by the Trustee in connection with the administration of this Fund, including fees for legal services rendered to the Trustee, and all taxes of any kind that are assessed or levied against or in respect of the Fund, shall be paid directly by the Grantor and shall not be taken from the Fund. Upon full funding of the Fund, all compensation, expenses and taxes as theretofore stated shall be paid from the Fund provided that the principal amount of the Fund never falls below the amount required for financial assurance.

**Section 10. Quarterly Valuation.** The Trustee shall on a quarterly basis, furnish to the Grantor and to the NMED Secretary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 30 days prior to the reporting date. The failure of the Grantor to object in writing to the Trustee within 60 days after the statement has been furnished to the Grantor and the NMED Secretary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the Statement.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel, subject to the following conditions:

a. The Trustee shall give prompt written notice to the Beneficiary of each claim in favor or against the Fund, specifying the amount and nature of such claim. The Trustee shall also give prompt written notice to the Beneficiary of any controversies, demands, actions, losses, damages, costs, expenses or any other matter that is likely to give rise to a claim; and

b. The Beneficiary will have the right, but not the duty, to participate in the prosecution of or defense against, any claim in favor of or against the Fund with counsel of the Beneficiary's choosing. Upon notice to the Trustee that the Beneficiary will assume protection or defense, neither the Fund nor the Beneficiary will be liable to the Trustee for any subsequent costs of prosecution or defense which the Trustee may incur. No claim in favor of or against the Fund may be settled without written consent of the Beneficiary, provided that such consent shall not be unreasonably withheld.

**Section 12. Trustee Compensation.** Upon full funding of the trust, the Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Beneficiary.

**Section 13. Successor Trustee.** Until the Fund is fully funded, the Trustee may resign only after giving 120 days written notice to the Grantor and Beneficiary. Upon full funding of the Trust, the Trustee may resign only after giving 120 days written notice to the Beneficiary. The Trustee's resignation shall not be effective until a successor Trustee has been appointed by the Grantor and approved in writing by the Beneficiary, and the successor trustee accepts the 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 funds and property then

constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NMED Secretary, and the present Trustee by certified mail 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 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the NMED Secretary to the Trustee shall be in writing, signed by the NMED Secretary, or his designee(s), and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the NMED hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the NMED except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify in writing the Grantor and the NMED Secretary, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. Until the Fund is fully funded this agreement may be amended in writing by the Grantor and the Trustee, with written consent of the Beneficiary, or by the Trustee and Beneficiary if the Grantor ceases to exist, becomes insolvent or enters into liquidation, receivership or bankruptcy, or is legally incompetent. Upon the full funding of the Fund, this Agreement may be amended in writing only by the Beneficiary and the Trustee.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust Agreement shall be irrevocable and shall continue until terminated in writing by the NMED Secretary upon the NMED's written determination that the Grantor has met all of its obligations under the applicable regulations established by the New Mexico Water Quality Control Commission (WQCC). Upon termination of the Trust, all remaining property of the trust, less final Trust administration expenses shall be delivered to the Grantor by the trustee.

If the Grantor fails, refuses or otherwise becomes unable to fulfill its obligations under the WQCC regulations, or if the Grantor ceases to exist, becomes insolvent or enters into liquidation, receivership or bankruptcy, dissolves or becomes legally incompetent, the trustee shall not release the Fund to the Grantor. Upon notice by the Beneficiary of any of the above circumstances of insolvency or failures by the discharger, the Trustee shall vest all rights, title and interest of the Fund in the Beneficiary and shall pay to the Beneficiary all monies remaining in the Fund, together with any property of the Fund, less final Trust administration expenses of the Trustee.

In the event the Trustee shall for any reason fail, refuse or neglect to pay the monies and other property of the Fund to the Beneficiary within ten calendar days after receipt of the Beneficiary's notice and demand for payment, the Grantor agrees in such an event or events to, 1) hold the Beneficiary (NMED) free, harmless and indemnified of and from any cost, expense, or loss, actually incurred by reason of such refusal, including but not limited to court costs and attorney's fees, and 2) to pay the Beneficiary interest on the amount of the Fund required to be surrendered at the highest rate authorized by United States law computed from the date on which NMED demanded surrender of the Fund to the date on which the Fund monies and property are actually received by NMED.

**Section 18. 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 the NMED Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event that Grantor fails to provide such defense.

**Section 19. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of New Mexico.

**Section 20. 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.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

GRANTOR

BY:

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ATTEST:

(seal)

\_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_, 19\_\_, before me personally came Thomas H. Erlich to me known, who, being by me duly sworn, did depose and say that he is Vice President, Chief Financial Officer of HRI, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that is was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

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

My Commission Expires  
\_\_\_\_\_