

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

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FINANCIAL WARRANTY AND CONDITIONAL PROMISSORY NOTE

FOR THE USE WITH DEED OF TRUST

(THIRD PARTY)

Operator: _____

Operation: _____

Permit No: _____

This form has been approved by the Mined Land Reclamation Board pursuant to sections 34-32-117, C.R.S., of the Mined Land Reclamation Act and 34-32.5-117, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials. Any alteration or modification of this form, without approval by the Board shall result in the financial warranty being invalid and result in the voiding of any permit issued in conjunction with such invalid financial warranty and subject the operator to cease and desist orders and civil penalties for operating without a permit pursuant to sections 34-32-123, C.R.S., of the Mined Land Reclamation Act and 34-32.5-123, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials.

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Colorado Mined Land Reclamation Act, C.R.S. 1973, 34-32-101 *et seq.* (the "Act"), as amended, provides that no permit may be issued under the Act until the Mined Land Reclamation Board (the "Board") receives a Financial Warranty (or Warranties) as described in the Act.

WHEREAS, _____ (the "Operator"), a _____ corporation, has applied for a permit to conduct a mining operation known as _____ (the "Operation"), on certain lands in _____ County, Colorado. These lands are described in Exhibit A, attached hereto, and are referred to herein as the "Affected Lands".

WHEREAS, as part of the application for the permit, the Operator has agreed to be bound by all requirements of the Act and all applicable rules and regulations of the Board, as amended from time to time.

WHEREAS, in its application for the permit, the Operator has agreed with the State to provide for reclamation of the Affected Lands that are now, or may become, subject to the permit, as required by law.

WHEREAS, the Board has determined, in accordance with the Act, that the estimated costs of reclamation of the Affected Lands are those amounts for the stated periods of time as set forth herein. Said amount may be amended from time to time to reflect revised estimates of said costs of reclamation.

WHEREAS, the Warrantor and the Operator, in accordance with the Act, have promised and hereby promise the Board that they will be responsible for all of the estimated costs of reclamation with regard to the Affected Lands.

WHEREAS, the Board has determined that the Financial Warranty by the Warrantor equals the estimated costs of reclamation, as approved by the Board, with regard to the Affected Lands.

WHEREAS, as proof of its financial responsibility and pursuant to Section 34-32-117(3)(IV) of the Act, the Warrantor has, as Grantor, executed and delivered to the State this Financial Warranty and Conditional Promissory Note (the "Financial Warranty") for the original principal sum of _____ Dollars (\$ _____), secured by a Deed of Trust in favor of the Public Trustee of _____ County, Colorado, conveying certain lands in said County and State, as assurance for the faithful performance by the Operator of the Operator's obligations to the State, as evidenced by this Financial Warranty. A copy of the Deed of Trust is attached hereto as Exhibit B and incorporated herein by reference.

NOW, THEREFORE, the Operator and the Warrantor are held hereby and firmly bound unto the State of Colorado, in the sum of _____ Dollars (\$ _____) for the period of time from _____, _____ to _____, _____, for the payment of which sum, well and truly made, the Operator and the Warrantor hereby bind themselves, their representatives, successors and assigns, jointly and severally, firmly by these presents, which obligation is represented by this Financial Warranty and the Deed of Trust.

The Board may, for good cause shown, increase or decrease the amount and duration of this Financial Warranty and the Deed of Trust. The Operator shall have sixty (60) days after the date of notice of any such adjustment to fulfill all new requirements. The principal sum of this Financial Warranty shall be amended in writing to reflect the revised amount of this Financial Warranty, and the Deed of Trust shall be similarly amended.

The Warrantor shall notify the Board immediately of any event which may impair this Financial Warranty. If the Board receives such notice, or otherwise has reason to believe that this Financial Warranty has been materially impaired, it may convene a hearing in accordance with the Act for the purpose of determining whether impairment has occurred.

The State may exercise its rights under this Financial Warranty and the Deed of Trust and foreclose for the principal sum of _____, as previously set forth in this Financial Warranty, plus interest and allowable costs of foreclosure, in accordance with the terms thereof and in accordance with applicable provisions of law, if the Board determines that this Financial Warranty shall be subject to forfeiture on account of existence of any one or more of the circumstances hereinafter set forth. No other condition precedent need be fulfilled to entitle the State to foreclose upon the Deed of Trust, but before instituting foreclosure proceedings, demand in writing shall be made upon the Warrantor. If, upon completion of reclamation by the Board, the amounts expended for reclamation (together with any amounts payable under the following paragraph) shall be less than the amount received upon foreclosure, the excess shall be promptly refunded to the Warrantor.

If the Board has made a determination of forfeiture on account of any one or more of the circumstances hereinafter set forth, the Operator and the Warrantor agree to pay the State, in addition to the amount demanded, all reasonable costs of collection, including reasonable attorneys' fees and interest on the Financial Warranty, which is four percentage points in excess of the average interest rate paid by the United States government on 90-day treasury bills sold at auction or regularly scheduled sale next preceding the date of determination of forfeiture.

The obligation of the Operator and the Warrantor shall continue until the Board has released this Financial Warranty or has ordered it forfeited in accordance with applicable provisions of the Act. It is understood that periods of years may necessarily be required before determination can be made that reclamation of the Affected Lands has been satisfactorily completed. It is also recognized that, as reclamation is accomplished, the amount of this Financial Warranty may be reduced with the approval of the Board so that it reflects the then current estimated cost of the remaining reclamation of the Affected Lands. No revision, extension, or renewal of the permit or of the time allowed to complete reclamation shall diminish the Warrantor's or the Operator's obligation under this Financial Warranty or under the Deed of Trust.

In any single year during the life of the permit, the amount of the Financial Warranty shall not exceed the estimated cost of fully reclaiming all lands to be affected in said year, plus all lands affected in previous permit years and not yet fully reclaimed. Reclamation costs shall be computed with reference to current reclamation costs.

The amount of this Financial Warranty is based upon estimates as to the cost of reclamation, and does not operate to liquidate, limit, enlarge, or restrict the Operator's obligations to complete the reclamation, even though the actual costs thereof may substantially exceed the amount of this Financial Warranty.

This Financial Warranty shall be subject to forfeiture whenever the Board determines that any one or more of the following circumstances exist:

1. A Cease and Desist Order entered pursuant to Section 34-32-124 of the Act has been violated, and the corrective action proposed in such Order has not been completed, although ample time to have done so has elapsed; or
2. The Operator(s) is in default under its Performance Warranty, and such default has not been cured, although written notice and ample time to cure such default has been given; or
3. The Warrantor has failed to maintain its Financial Warranty in good standing, as required by the Act; or
4. The Operator and/or Warrantor no longer has the financial ability to carry out its obligations in accordance with the Act.

The description of Affected Lands herein is for convenience of reference only, and no error in such description, nor any revision of the permitted mining area, nor the disturbance by the Operator of lands outside of the permitted mining area shall alter or diminish the obligations of the Warrantor and/or the Operator hereunder, or under the Deed of Trust, which shall extend to the reclamation of all such lands disturbed.

If this Financial Warranty applies to National Forest System lands, and if this Financial Warranty is accepted by the United States Forest Service ("U.S.F.S.") as the bond required under 36 C.F.R. 228.13, then the Operator, having requested that the Board and the U.S.F.S. accept this single Financial Warranty in lieu of the separate bonds which would otherwise be required by applicable law, hereby agrees that, notwithstanding any other provision hereof, or of law, this Financial Warranty shall remain in full force and effect until U.S.F.S. has advised the Board by written notice that the Operator's obligations to U.S.F.S., for which this Financial Warranty is executed, have been satisfied and, until its release, has been approved by the Board.

If this Financial Warranty applies to lands under the jurisdiction of the State Board of Land Commissioners ("Land Board"), and if this Financial Warranty, in whole or in part, is accepted by the Land Board as the bond required under its applicable law and procedures, then the Operator, having requested that the Board accept this Financial

Warranty in lieu of the separate bonds which would otherwise be required by the Colorado Mined Land Reclamation Board or Division and by the Land Board, hereby agrees that, notwithstanding any other provision hereof, or of law, this Financial Warranty shall remain in full force and effect until the Board is notified in writing by the Land Board that the Operator's obligations to the Land Board, for which this Warranty is executed, have been satisfied and, until its release, is approved by the Board.

If all or any part of the Affected Lands are under the jurisdiction of the Bureau of Land Management, United States Department of the Interior (the "BLM"), and if, at the request of the Operator on this Financial Warranty, the BLM has, pursuant to 43 C.F.R. 3809.1-9, accepted this Financial Warranty in lieu of requiring a separate reclamation bond payable to the United States, then, notwithstanding any other provision of this Financial Warranty, or of law, the Operator and Warrantor hereby agree that this Financial Warranty shall not be released until the Board is advised in writing by the BLM that the Operator's obligations to the BLM, for which this Financial Warranty is executed, have been satisfied and, until its release, is approved by the Board.

Upon termination of this Financial Warranty, or upon the providing of a substitute Financial Warranty approved by the Board, this Financial Warranty and the Deed of Trust, marked "Paid", shall be returned to the Warrantor, along with a properly executed request for release of Deed of Trust and the Public Trustee shall release the Deed of Trust.

This Financial Warranty may be executed in multiple copies, each of which shall be treated as an original, but together they constitute only one agreement, the validity and interpretation of which shall be governed by the laws of the State of Colorado.

The provisions hereof shall bind and inure to the benefit of the parties hereto and their successors and assigns.

Signed and dated this _____ day of _____, _____.

Seal

Warrantor

By: _____

Title

ATTESTED By _____

Title

APPROVED:

State of Colorado
Division of Reclamation, Mining and Safety
Mined Land Reclamation Board

By _____
Division Director

Date: _____, _____

Financial Warranty

Exhibit A

File No.: _____

Operation Name: _____

Legal Description: _____

Acreage: _____

County: _____

State: _____

34-32-101 et seq., C.R.S. 1973, as amended