

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215  
Denver, Colorado 80203  
Phone: (303) 866-3567  
FAX: (303) 832-8106



### FINANCIAL WARRANTY

### CORPORATE SURETY

### (THIRD PARTY)

Principal: \_\_\_\_\_

Permittee: \_\_\_\_\_

Operation: \_\_\_\_\_

Permit No.: \_\_\_\_\_ Bond No.: \_\_\_\_\_

Surety: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Area Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

*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 "Permittee"), 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 the permit application, as amended and supplemented, and are referred to herein as the "Affected Lands".

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

WHEREAS, the Principal \_\_\_\_\_ of the County of \_\_\_\_\_ in the State of \_\_\_\_\_ and \_\_\_\_\_ (the " Surety"), a corporation organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact a bonding and surety business in the State of Colorado are hereby and firmly bound unto the State in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the life of mine or until such time as replacement is received, for the payment of which sum, well and truly made, we hereby bind ourselves and our personal representatives, successors and assigns, jointly and severally, firmly by these presents.

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 Principal and the Surety, in accordance with the Act, has promised and hereby promises the Board that it will be responsible for all the estimated costs of reclamation with regard to the Affected Lands.

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

NOW, THEREFORE, the Principal and the Surety are held hereby firmly unto the State of Colorado in the amount of those sums for those periods of time as set forth herein, until this Financial Warranty is amended or released in accordance with applicable law.

The Board may, for good cause shown, increase or decrease the amount and duration of this Financial Warranty. The Permittee shall have sixty (60) days after the date of notice of any such adjustment to increase the surety amount, but no such increase shall bind the Surety unless and until it shall have consented thereto in writing by the issuance of an additional Financial Warranty or by an endorsement to this Financial Warranty.

The Principal and the Surety 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 obligation of the Principal and the Surety 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 Principal's or Surety's obligation under this Financial Warranty. No misrepresentation by the Principal which may have induced the Surety to execute this Financial Warranty shall be any defense to demand by the State under this agreement.

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 Permittee's or Principal's obligations to complete reclamation and to comply in all respects with the permit and with applicable laws and regulations governing reclamation, even though the actual cost thereof may substantially exceed the amount of this Financial Warranty.

The Mined Land Reclamation Board or the Office of Mined Land Reclamation may recover the necessary costs, including attorney's fees or fees incurred in foreclosing on or realizing the collateral used in the event this Financial Warranty is forfeited. The face amount of this Financial Warranty shall be increased by five hundred dollars (\$500.00) to cover these costs.

The Surety shall not be liable under this Financial Warranty for an amount greater than the sum designated herein, unless increased by a later amendment to this Financial Warranty. This Financial Warranty shall be reviewed by the Board from time to time, and the Board may require an increase in the principal sum of this Financial Warranty (and a corresponding increase in the surety amount) to cover increases in the estimated costs of reclamation, but no such increase shall bind the Surety unless and until it shall have consented thereto in writing by the issuance of an additional Financial Warranty or by an endorsement to this Financial Warranty.

The Surety reserves the right to cancel this Financial Warranty, effective only upon an anniversary date, and only by giving written notice to that effect, mailed by Certified Mail, at least ninety (90) days prior to such anniversary date, addressed to both the Principal at its address herein stated, and to the Board at the address herein stated. In the event of such cancellation, this Financial Warranty shall nevertheless remain in full force and effect as respects the reclamation of all areas disturbed prior to the effective date of such cancellation, unless and until the Principal shall file a substitute Financial Warranty which: (1) assumes liability for all reclamation obligations which shall have arisen at any time while this Financial Warranty is in force; and (2) is accepted in writing by the Board.

In the event of such cancellation, if the Financial Warranty is not fully released, the amount of the continuing Financial Warranty available for the reclamation of areas disturbed and unreclaimed at the date of cancellation shall be fixed by the Board at the amount it determines necessary to complete such reclamation (which amount may not exceed the sum designated herein) and the Board shall concurrently identify such areas in writing, and notify the Surety and the Principal thereof. Thereafter, the obligation of the Surety shall be limited to reclamation of the areas so identified.

The consideration for the Surety's execution of this agreement is the promise of the Principal to pay the premiums, but failure by the Principal to pay such premiums shall not invalidate or diminish the Surety's obligation hereunder.

The Board may make demand upon the Surety for payment hereunder if the Board determines that reclamation which ought to have been performed by the Permittee, or its successors or assigns, remains unperformed, and if Financial Warranty forfeiture procedures required by law have been initiated. No other condition precedent need be fulfilled to entitle the State to receive the amount so demanded. However, if, upon completion of reclamation by the State, the amounts expended for reclamation shall be less than the amount received from the Surety, the excess shall be promptly refunded to the Surety.

If demand is made upon the Surety for payment of an amount due to the Board hereunder, and if the Surety fails to make payment of such amount within ninety (90) days after the date of receipt of such demand, or if it should thereafter be determined, by agreement of the Surety or by final judgment of court, that the amount demanded was properly payable, the Surety agrees to pay to the Board, in addition to the amount demanded, interest at the prime rate in effect from time to time at the Wells Fargo Bank, N.A. for the period commencing at the end of such ninety-day period and ending on the date of actual payment.

If the Board shall notify the Surety that the Permittee is in default, and if the Board shall initiate any Financial Warranty forfeiture procedures required by law or regulation, the Surety may, in lieu of making payment to the Board of the amount due hereunder, cause the reclamation to be timely performed in accordance with all requirements of the Act and all applicable rules and regulations. In such event, when and if the reclamation has been timely performed to the satisfaction of the Board or Division, this Financial Warranty shall be released. If the reclamation shall not be so performed to the satisfaction of the Board or Division, this Financial Warranty shall remain in full force and effect.

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 Principal or Permittee 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 Principal and/or the Surety has failed to maintain its Financial Warranty in good standing as required by the Act; or
4. The Surety no longer has the financial ability to carry out its obligations in accordance with the Act.

The description of 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 Permittee or Principal of lands outside of the permitted mining area shall alter or diminish the obligations of the Permittee or Principal and/or Surety hereunder, 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 Permittee, 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 Permittee's obligations to U.S.F.S., for which this Surety is executed, have been satisfied, and until the financial warranty has been released 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 Permittee, having requested that the State accept this Financial Warranty in lieu of the separate bonds which would otherwise be required by the Colorado Mined Land Reclamation Board or Division of Reclamation, Mining and Safety 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 Permittee's obligations to the Land Board, for which this Surety is executed, have been satisfied, and until the financial warranty has been released 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 Permittee 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 Permittee and Surety hereby agree that this Financial Warranty shall not be released until the Board is advised in writing by the BLM that the Permittee's obligations to the BLM, for which this Surety is executed, have been satisfied, and until the financial warranty has been released by the Board.



