



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

MEMORANDUM ON COAL INDEMNITY AGREEMENT FOR SELF-BONDING

RE: Instructions for completing the Indemnity Agreement

1. The indemnity agreement shall be executed by all persons and parties who are bound to it including the corporate guarantor if applicable.
2. Two corporate officers of the mining operator and two corporate officers of the guarantor, if applicable, who are authorized to bind the corporation(s) must sign the agreement. The corporate seals must be affixed.
3. Each party is required to sign his/her own name. The legal capacity of each party must be stated.
4. The Guarantor, if applicable, must attach evidence from legal counsel demonstrating that it has full authority under the laws of the State of its incorporation, its articles of incorporation and by-laws to guarantee the self-bond and execute the indemnity agreement, and that its Board of Directors gives full approval of this indemnity agreement.
5. A corporation and parent, and non-parent corporations, submitting an indemnity agreement must provide an affidavit certifying that such an agreement is valid under all Federal and State laws.
6. If the operator or guarantor is a partnership, joint venture or syndicate, all parties who have beneficial interest directly or indirectly in the operation must sign.
7. **No changes of any kind shall be allowed to be made to the agreement form.** Changes to the Self-Bond are allowed through a Rider.

02-07-97

sb indem agree fd





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COAL SELF-BONDING INDEMNITY AGREEMENT

Self-Bond No. _____

Permit No. _____

THIS AGREEMENT OF INDEMNITY IS by and between the State of Colorado ("the State"), as indemnitee, and _____,
as indemnitor, (hereinafter referred to as the "Operator") duly authorized to do business in the State of Colorado.

WHEREAS, the Operator has filed with the State an Application to Self-Bond in compliance with the Colorado Surface Coal Mining Reclamation Act, 34-33-101 et seq., C.R.S. 1973 As Amended (hereinafter referred to as the "Act") and the rules and regulations promulgated thereunder, in connection with Permit No. _____ (Permit);

WHEREAS, the Operator has satisfied the self-bonding requirements and criteria set by the Colorado Mined Land Reclamation Board ("Board") and the Colorado Division of Reclamation, Mining and Safety ("Division");

WHEREAS, the Operator desires to indemnify the State from all loss and costs associated with its Self-Bond No. _____ (Self-Bond);

WHEREAS, the Operator has the full authority under the laws of the State of _____, under which it is incorporated, its articles of incorporation and bylaws to enter into this Indemnity Agreement;

WHEREAS, the Operator has full approval from its Board(s) of Directors to enter into this Indemnity Agreement;

WHEREAS, it is in the best interests of the Operator, in the legitimate furtherance of its purposes and business, to enter into this Indemnity Agreement;

WHEREAS, the Board or the Division, has the legal authority to administer the bonding requirements for coal mine operations in the State of Colorado;



NOW THEREFORE, effective upon the execution of this agreement by all parties, for value received, and in consideration of the approval and execution of this self-bond, it is agreed by and between the Operator, and the State as follows:

- I. The Operator, their successors and assigns, jointly and severally do hereby covenant and agree to indemnify the State from and against any and all demands, liabilities, charges, costs, and expenses of whatsoever kind or nature, which the State may sustain or incur in consequence of the failure by the Operator to faithfully perform all the requirements of the Act, and rules and regulations pursuant to the Act, and applicable federal laws and regulations as they apply to mining operations under the aforesaid mining permit and the mining and reclamation plans approved therewith. With the exception of litigation costs as referenced in paragraph VI, the Operator's liability hereunder shall not exceed the principal amount set forth in the Operator's self-bond.
- II. Upon this agreement becoming effective, the Board and the Division shall deliver and execute, as necessary, to the Operator, any and all documents and forms needed to allow the Operator to release any existing reclamation bond(s) posted with the Board or Division, pursuant to Rule 3.02.4 of the Rules and Regulations of the Colorado Mined Land Reclamation Board for Coal Mining (Rules), that are being replaced by this self-bond and self-bonding indemnity agreement.
- III. This indemnity agreement is continuous and is to be in full force and effect until all of the terms of the Operator's self-bond have been satisfactorily performed or otherwise discharged to the satisfaction of the Board and the Division.
- IV. Operator hereby fully consents and agrees that any of the following shall not affect nor change or discharge the obligations of this indemnity agreement:
 1. Any renewals, revisions, modifications or riders to the terms of the self-bond, including increases or decreases in the dollar amount of the bond, or the lands to which it applies, in accordance with the requirements of the Act and the rules and regulations promulgated thereunder.
 2. Any extension of time for performance of the whole or any part of the conditions of the self-bond.
 3. Any changes, revisions, modifications or renewals to the terms of the Permit including the mining and reclamation plans contained therein.
- V. If in the State's opinion, the Operator has violated any of the terms or conditions of the bond and has failed to take adequate corrective action; or failed to conduct their operations in accordance with the Act, Rules and permit within the time required and it is necessary to have someone other than the Operator correct or complete reclamation; or the permit has been suspended or revoked and the operator has not assumed liability for completion of reclamation

work under a compliance schedule; or has failed to comply with a compliance schedule, the Board or the Division may institute bond forfeiture proceedings against the Operator in accordance with the forfeiture proceedings set forth in Rule 3.04.

In the event an Order of forfeiture is entered by the Board and the Division against the Operator requiring the forfeiture of all or any part of the self-bond, the Board or the Division will mail to the Operator written demand for payment of the amount of the self-bond which was so ordered forfeited and the Operator shall pay such amount in full to the indemnitee within ten (10) business days after receipt of such demand. If such order is vacated, reversed, or otherwise made unenforceable by court or administrative agency of competent jurisdiction, any amount previously paid to the State by the Operator hereunder shall be refunded to the Operator in full within thirty (30) business days after receipt of a certified copy of the ruling, order or other action by such court or administrative agency.

VI. In the event the State initiates, pursues or is brought into litigation, as a result of attempts to enforce bonding requirements under this indemnity agreement, the Operator agrees to pay all litigation costs incurred by the State in any successful effort to enforce this agreement against the Operator with respect to the operations or activity for which this agreement is made. This agreement pertains to all costs reasonably connected to the operation or activity for which this agreement is made. This agreement pertains to all costs reasonably connected to the litigation costs and all administrative costs reasonably incurred in the course of enforcing or in preparation to enforce the rules and regulations for self-bonding against the Operator with respect to the operation or activity for which this agreement is made. Liability for payment of litigation costs shall not be limited by the principal amount of the Operator's self-bond. The Operator agrees that vouchers or other proper evidence showing payment shall be conclusive evidence of the fact and amount of liability of such costs.

VII. This agreement shall be deemed terminated in whole or in part; (a) when and as the Board and the Division, certifies in writing to the Operator that the Operator has successfully completed the mining and reclamation activities pursuant to the Permit as required by the Act, the rules and regulations pursuant to the Act, and applicable federal laws and regulations for which this agreement is posted; or (b) when, and as the Board or the Division certifies in writing to the Operator that, the Operator has provided an acceptable substitution for this agreement in compliance with Rule 3; or (c) when the Division, otherwise authorizes release of this agreement in whole or in part to the Operator pursuant to the Act and the rules and regulations promulgated thereunder.

Operator shall have the right at any time to post a corporate surety bond, letter of credit or other securities complying with Rule 3 in substitution for and release of all or part of this agreement. Operator shall notify the Division in writing of any such substitution, and the Division shall notify the Operator in writing of the acceptability of any such substitution. Said substitution shall not be valid and effective until the Division certifies such in writing.

- VIII. There are no conditions or limitations to this indemnity agreement except those contained herein at the date hereof, and thereafter no alteration, change or modification hereof shall be binding or effective unless executed in writing, signed by the Operator, and approved by the Board or the Division.
- IX. Operator agrees to pay all costs and expenses incurred by the State which are expended in any successful action instituted to enforce the terms of this indemnity agreement.
- X. This indemnity agreement shall be good and effective notwithstanding any change or changes in the business name of the Operator.
- XI. No changes, revisions, modifications or renewals to the self-bond of the Operator or the terms of the Permit shall act as a release of the Operator from this indemnity agreement.
- XII. All notices required to, or which may be given shall be effective when received by the addressees at the addresses specified below.

1. For the Operator:

2. For the Division:

State of Colorado
 Division of Reclamation, Mining and Safety
 1313 Sherman Street, Room 215
 Denver, Colorado 80203

Personal delivery shall have the same effect as notice given by mail. Notices given by mail shall be sent certified.

- XIII. In case of the insolvency, bankruptcy or dissolution of the Operator, all funds represented by the self-bond shall immediately become due and payable.
- XIV. The failure of any person or persons to sign this indemnity agreement shall not release or affect the liability of the Operator.
- XV. This indemnity agreement is a binding contract and shall be construed under and subject to the laws of the State of Colorado.

- XVI. This agreement, together with the application for self-bonding applicable to the Permit, contain the entire agreement of the parties hereto with respect to indemnification.
- XVII. If permitted under the laws of the State where the Operator's mine operation is located, this indemnity agreement when under forfeiture shall operate as a judgement against those parties liable under this indemnity agreement.
- XVIII. If at any time during the period the self-bond is posted, the financial conditions of the Operator or Corporate Guarantor change so that the financial criteria at Rule 3.02.4(2)(e) are not satisfied, the Operator shall notify the Division immediately and shall within ninety (90) days post an alternate, allowable form of bond in the same amount as the self-bond.

EXECUTION BY THE OPERATOR:

OPERATOR: _____

BY: _____ TITLE: _____

BY: _____ TITLE: _____

ATTEST: _____ (AFFIX CORPORATE SEAL)

STATE OF: _____)

)SS.

COUNTY OF: _____)

The foregoing instrument was acknowledged, subscribed and sworn to before me this ____ day of _____, 20____.

(Notary Public)

My Commission Expires: _____

CORPORATE ACKNOWLEDGMENTS:

Attached and incorporated herein as Exhibit A.

EXECUTION BY GUARANTORS:

GUARANTOR: _____

BY: _____ TITLE: _____

BY: _____ TITLE: _____

ATTEST: _____ (AFFIX CORPORATE SEAL)

STATE OF: _____)

)SS.

COUNTY OF: _____)

The foregoing instrument was acknowledged, subscribed and sworn to before me this _____ day of _____, 20____.

(Notary Public)

My Commission Expires: _____

CORPORATE ACKNOWLEDGMENTS:

Attached and incorporated herein as Exhibit B

**EXECUTION BY THE STATE OF COLORADO:
DIVISION OF RECLAMATION, MINING AND SAFETY
MINED LAND RECLAMATION BOARD**

In witness whereof, this Agreement is dated and effective as of _____, 20__.

BY: _____
Division Director

DATE: _____

STATE OF: _____)

COUNTY OF: _____)

The foregoing instrument was acknowledged, subscribed and sworn to before me this _____ day of _____, 20__.

Witness my hand and official seal.

(Notary Public)

My Commission Expires: _____