



COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY

1313 Sherman Street, Room 215, Denver, Colorado 80203, (303) 866-3567

**COAL RECLAMATION BOND
FOR USE WITH LETTER OF CREDIT
FEDERAL MINE**

Permit No.: _____

KNOW ALL MEN BY THESE PRESENTS, That

_____ of the County of _____ and the State of _____, as Principal, (hereinafter "Principal", whether one or more Principals) is held hereby and firmly bond unto the State of Colorado (the "State") and the United States ("the United States/Office of Surface Mining Reclamation and Enforcement (OSMRE)"), in the sum of

_____ Dollars (\$_____) for the payment of which sum, well and truly to be made, the Principals hereby binds itself and its successors and assigns firmly by these presents.

Principal has caused _____ Bank of _____, State of _____ (the "Bank"), to issue its Irrevocable Letter of Credit No. _____, dated _____, _____, payable to the State of Colorado Mined Land Reclamation Board (the "Board") and the United States/OSMRE in the amount of

_____ Dollars (\$_____) (the "Letter of Credit") and has delivered it to the State, to be held by the State as surety (the "Surety") for the faithful performance by the Principal of its obligations to the State as evidenced by this bond. The Bank is not a party to this agreement. Its obligations are set forth in its Letter of Credit. Nothing in this instrument diminishes or qualifies the Bank's obligations under its Letter of Credit.

WHEREAS, the Principal has applied for a permit (the "Permit") to conduct mining and reclamation operations on certain lands in _____ County, Colorado which, for convenience of reference, are described as follows:

WHEREAS, as part of the application for such Permit, Principal has agreed with the State to complete a specified plan (the "Plan") for the reclamation, as required by law, of the area or areas of lands disturbed by reason of mining operations. The Plan may be amended from time to time with the approval of the State, acting through the Department of Natural Resources, Division of Reclamation, Mining and Safety (the "Division"), or the Board, and the United States, acting through the Department of the Interior Office of Surface Mining Reclamation and Enforcement ("the OSMRE").

(The phrase "Board or Division" in this bond means that organ of State government which has the authority to act in the circumstances referred to, and recognizes that the Colorado Surface Coal Mining Reclamation Act (34-33-101 et seq.) confers distinctive and sometimes different responsibilities upon the Board and the Division.)

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall, in conducting such mining and reclamation operations, faithfully perform the requirements of the Plan, as amended from time to time, and comply with the conditions of the Permit and all applicable laws and regulations of the State, and if the Board of the Division shall make a finding that the lands upon which such operations have been conducted have been satisfactorily reclaimed, and if the OSMRE shall concur with this finding, then the Board or the Division shall, upon the receipt of a request for a bond release on such lands or a request for partial release as to any portion thereof, and upon the completion of applicable procedures of law and regulation governing release of bond, release the Principal and the Bank to the extent that it determines such reclamation to have been accomplished.

Additional Provisions

(1) Irrevocable letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the U.S. and located in the state of Colorado, except that the bank need not be located in the state of Colorado if the letter of credit can be exercised at an affiliate or subsidiary located in the state of Colorado, or is confirmed by a bank located in the state of Colorado;

(b) The letter shall be irrevocable, except prospectively, and then only upon the anniversary date of the letter and upon the giving, to the Division and the permittee, of at least ninety days prior notice of the intention to revoke. Letters of credit which have been prospectively revoked shall be forfeited and collected by the Division if not replaced by other suitable bond at least 30 days prior to the expiration date of the letter.

(c) The letter must be payable to the State of Colorado and the United States of America in part or in full upon demand and receipt from the Division of a notice of forfeiture issued in accordance with the law. Upon termination of the Cooperative Agreement entered into between the State of Colorado and the Department of Interior, all bonds shall revert to being payable only to the United States (OSMRE) to the extent that Federal lands are involved.

(d) The Division will not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a Certified Public Accountant.

(e) The Division will not accept letters of credit from a bank for any person, on all permits held by that person, in excess of 30 percent of the bank's capital surplus account as shown on a balance sheet certified by a Certified Public Accountant.

(f) The letter shall provide that:

(i) The bank will give prompt notice to the permittee and the Division of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(ii) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Division; and

(iii) Upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of the law.

(2) The letter of credit shall be automatically renewed until released in writing by the Board or Division in accordance with applicable laws. It is understood that periods of years may necessarily be required before determination can be made that reclamation work has been satisfactorily completed. It is recognized that, as reclamation is accomplished, the amount of this bond and the Letter of Credit may be reduced with the approval of the Board or the Division and the OSMRE so that it reflects the then currently estimated cost of the remaining reclamation required under the Plan and the Permit and by applicable laws and regulations of the State. No revision, extension, or renewal of the Permit or of the time allowed to complete reclamation shall diminish the Principal's obligation hereunder or the Bank's obligation under its Letter of Credit.

(3) The Board or the Division shall review this bond from time to time, and with the knowledge of the OSMRE, may require an increase in the principal amount of this bond (and a corresponding increase in the Surety amount) to cover increases in the estimated costs of reclamation, but no such increase shall bind the Bank unless and until it shall have consented thereto in writing by the issuance of an additional Letter of Credit or by a substitute Letter of Credit in the increased amount.

(4) With the prior consent of the Board or the Division, which consent shall not be unreasonably withheld, the Principal may, from time to time, change the Bank whose Letter of Credit is held by the State as Surety, or alter the form of Surety or assurance of financial responsibility held by the State for the faithful performance by the Principal of its obligations hereunder, provided that, at all times, there shall be in existence and delivered to the State such Surety or other evidence of

financial responsibility as shall be required by applicable laws and regulations of the State and as shall, in form and substance, be approved by the Board or the Division.

(5) The description of lands set forth 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 Principal of lands outside of the permitted mining area, shall alter or diminish the Principal's obligation hereunder or the Bank's obligation under its Letter of Credit, which shall extend to the reclamation of all such lands disturbed.

(6) The State may present drafts upon the Bank for payment under the Letter of Credit if the Board of the Division determines, and the OSMRE concurs, that reclamation which is required to have been performed by the Principal, of its successors or assigns, remains unperformed. No other condition precedent need be fulfilled to entitle the State to receive the amount of such drafts. However, if, upon completion of such reclamation, the amounts expended for reclamation shall be less than the amount received from the Bank upon presentation of drafts by the State, the excess shall be promptly refunded to the Principal.

(7) The amount of this bond is based upon estimates as to the cost of reclamation, and is not intended to liquidate, limit or enlarge the Principal's obligation to complete the reclamation plan and to comply in all respects with the Permit and with applicable laws and regulations of the state governing reclamation. If the actual cost of reclamation, in accordance with the Plan and the Permit, should exceed the estimated cost, the Principal shall be responsible for the excess to the full extent provided by law, including the Colorado Surface Coal Mining Reclamation Act (C.R.S. 1973, 34-33-101 et seq.), as amended:

NOTE: Consider use of the following paragraph (8) if removal of buildings and facilities is a substantial reclamation cost.

(8) (a) The Principal hereby represents that, as of the date of this bond, its interest in the lands above described is free and clear of any liens or encumbrances, except as described in Exhibit A hereto.

(b) The Principal agrees that it will not voluntarily subject such interest to any lien or encumbrance without giving to the Board sixty days prior written notice of such action and that it will notify the Board of any lien or encumbrance involuntarily imposed upon such interest promptly after the Principal's learning of such occurrence.

(c) If any lien or encumbrance other than that described in Exhibit A shall attach to any portion of the lands above described, the Board or Division may require that it be furnished with a subordination agreement in substantially the form of "Consent of Lienholder" below set forth, executed by the holder of such lien or encumbrance, in order that the surety for this bond may be deemed sufficient.

(9) (a) If this bond applies to National Forest System lands, and if this bond is accepted by the United States Forest service (“U.S.F.S.”) as the bond required under 36 C.F.R. 252.13, the, the Principal and the Surety having requested that the State and the U.S.F.S. accept this single bond in lieu of the separate bonds which otherwise be required by applicable law, hereby agree that, notwithstanding any other provision hereof, or of law, this bond shall remain in full force and effect until U.S.F.S. has advised the State that the reclamation work has been satisfactorily completed in accordance with the requirements of applicable Federal law and regulation.

(b) If this bond applies to lands under the jurisdiction of the State Board of Land Commissioners (“Land Board”), and if this bond, in whole or in part, is accepted by the Land Board as the bond required under its applicable law and procedures, the, the Principal and the Surety having requested that the State accept this single bond 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 agree that, notwithstanding any other provision hereof, or of law, this bond shall remain in full force and effect until released by the Land Board.

(c) If all or any part of the lands subject to this bond are under the jurisdiction of the Bureau of Land Management, United States Department of Interior (the “BLM”), and if, at the request of the Principal on this bond, the BLM has, pursuant to 43 C.F.R. 3809.1-9, accepted this bond in lieu of requiring a separate reclamation bond payable to the United States, then, notwithstanding any other provision of this bond, or of law, the Principal and the Surety hereby agree that this bond shall not be released until the State is advised in writing by the BLM that all reclamation requirements of Federal law and regulations have been fulfilled as to such lands.

(10) This agreement 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 Colorado.

(11) Words in any gender used herein shall include the other genders, the singular shall include the plural, and vice versa.

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

